

FILED SARPY CO. NE.

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98-028374

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Glenn J. Downing

REGISTER OF DEEDS

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DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR BALLENA

THIS DECLARATION, made on the date hereinafter set forth by Ballena Limited Partnership, a Nebraska Limited Partnership, hereinafter referred to as the "Declarant", and Ralph A. and Mary Anne Burgett, husband and wife, hereinafter collectively referred to as the "Other Property Owners";

WITNESSETH:

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

Lots 1 through 122, inclusive, of Ballena, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska; and

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

Lots 34 and 107, in Ballena, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska; and

WHEREAS, all of the above-described real estate has been zoned for single family use, and

WHEREAS, the Declarant and the Other Property Owners will convey said lots, subject to certain protective covenants, conditions, restrictions, reservations, liens, and charges as hereinafter set forth,

NOW, THEREFORE, the Declarant and the Other Property Owners hereby declare that all of the lots described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said lots. These easements, covenants, restrictions, and conditions, shall run with said real property, and shall be binding upon all parties having or acquiring any right, title or interest in the above described lots, or any part thereof, and they shall inure to the benefit of each owner thereof.

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ARTICLE I
DEFINITIONS

- A. "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.
- B. "Properties" shall mean and refer to all such lots that are subject to the Declaration or any supplemental Declaration under the provisions hereof, which shall initially consist of Lots 1 through 122, inclusive, of Ballena, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.
- C. "Lot" shall mean and refer to any one of Lots 1 through 122, inclusive, of Ballena, subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.
- D. "Lots Adjoining Golf Course" shall mean and refer to all Lots, as defined above, for which one or more of the Lot boundary lines is shared with any boundary line of the golf course.
- E. "Lots Not Adjoining Golf Course" shall mean and refer to all Lots which have no boundary line in common with any boundary line of the golf course.
- F. "Declarant" shall mean and refer to BALLENA LIMITED PARTNERSHIP, a Nebraska Limited Partnership, its successors and assigns.
- G. "Other Property Owners" shall mean and refer to the current owners of Lots 34 and 107, Ballena, namely Ralph A. and Mary Anne Burgett, husband and wife.
- H. "Architectural Control Committee" shall mean the individual or committee appointed by the Declarant, its successors or assigns.
- I. "Applicant" shall mean Owner, Contractor, or Realtor.

ARTICLE II
ARCHITIECTURAL CONTROL

- A. No dwelling, fence, wall, driveway, patio, patio enclosure, deck, rock garden, swimming pool, television or radio antenna, satellite dishes, solar collecting panels or equipment, air conditioning equipment, wind-generating power equipment, or other external improvements, above or below the surface of
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the ground shall be built, erected, placed, planted, altered or otherwise maintained or permitted to remain on any Lot, nor shall any grading, excavation or tree removal be commenced without express written prior approval of the Declarant through its Architectural Control Committee.

B. The Declarant, through its Architectural Control Committee, shall consider general appearance, exterior color or colors, architectural character, harmony of external design and location in relation to surroundings, topography, location within the lot boundary lines, quality of construction and size and suitability for residential purposes as part of its review procedure. Only exterior colors of certain earthtone hues will be acceptable. Designs of a repetitive nature and/or within close proximity to one another will not be approved. Superficial, cosmetic or minor architecture detail differences in like designs will not constitute a basis for approval. The Architectural Control Committee specifically reserves the right to deny permission to construct or place any of the above-mentioned improvements which it determines will not conform to the general character, plan and outline for the development of the Properties.

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 Architectural Control Committee. Submittals for the approval shall be made in duplicate and the comments and actions of the Architectural Control 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 Architectural Control Committee the following documents, materials and/or drawings:

1. Site plan indicating specific improvements and indicating Lot number, street address, and sidewalks.

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.

D. The approval or disapproval of the Architectural Control Committee as required in these Covenants shall be in writing. Failure of the Architectural Control Committee to give either written approval or disapproval of submitted plans within thirty (30) days after receipt of all of the documents above, by mailing such written approval or disapproval to the last known address of the applicant as shown on the submitted plans, shall operate as an Architectural Control Committee approval.

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ARTICLE III.
RESTRICTIONS FOR RESIDENTIAL UNITS

A. The Lot shall be used only for residential purposes, and no Lot shall contain more than one (1) detached, single family unit.

B. No building shall be created, altered, placed or permitted to remain on any Lot other than the one (1) detached, single family dwelling referred to above, and said dwelling shall conform to the following requirements:

1. Houses built on Lots Adjoining Golf Course shall comply with the following minimum size requirements:

a. Each one story house shall contain no less than 1,800 square feet of Living Area above the basement level and exclusive of garage area.

b. Each one and one-half or two story house shall contain no less than 2,000 square feet of total Living Area above the basement level with a minimum of 1,200 square feet on the main floor, exclusive of garage area.

2. Houses built on Lots Not Adjoining Golf Course shall comply with the following minimum size requirements:

a. Each one-story house shall contain no less than 1,600 square feet of Living Area above the basement level and exclusive of garage area.

b. Each one and one-half or two story house shall contain no less than 1,800 square feet of total Living Area above the basement level with a minimum of 1,000 square feet on the main floor, exclusive of garage area.

3. Other house styles not described in 1. And 2. Above will be permitted only if approved by the Architectural Control Committee and shall not be approved unless they are compatible with other homes to be built in Ballena in the opinion of the Architectural Control Committee in its sole and absolute discretion.

4. All houses 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 house. Other or additional garages may be permitted at the discretion of the Architectural Control Committee.

C. For the purposes of these restrictions, two-story height shall, when the basement wall is exposed above finish grade, be measured from the basement ceiling on the exposed side(s) to the eave of the structure on the same side(s).

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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 thirty-five feet. 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.

D. All buildings on all Lots shall comply with the set back requirements of the Zoning Code of Sarpy County, Nebraska as the same may be amended from time to time. In the event a waiver or variance of some of the zoning requirements for a Lot or Lots is granted by the appropriate authority, the Architectural Control 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 waiver or variance, all in the sole and absolute discretion of the Architectural Control Committee.

E. 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 be covered with clay-fired brick, stone, siding or shall be painted.

F. Portions of the front face wall or walls of each dwelling are to be covered with clay-fired brick or stone even if a portion of those faces may be perpendicular, or nearly so, to the affronting street. The portion of the front face wall to be covered shall be subject to the approval of the Architectural Control Committee in its sole and absolute discretion and shall be no less than fifty (50%) percent of the front face wall area above the foundation, not including garage door area, on one story houses and no less than twenty-five (25%) percent of the front face wall area above the foundation, not including garage door area, on one and one half and two story houses.

G. Regarding fireplaces and flues constructed as a part of the dwelling on any Lot the following shall apply:

1. In the event that a wood-burning fireplace is constructed as a part of the dwelling on any Lot Adjoining Golf Course, any portion of said fireplace and/or the enclosure for the fireplace flue which protrudes from the exterior or above the roof of the dwelling shall be constructed of or finished with, clay-fired brick or stone.

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2. In the event that a wood-burning 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 on a Lot Not Adjoining Golf Course, the enclosure of the fireplace and flue shall be constructed of, or finished with, clay-fired brick or stone. If the wood-burning fireplace and/or enclosure for the wood-burning fireplace flue is constructed in such a manner so as to protrude beyond the outer perimeter of the rear of the dwelling on a Lot Not Adjoining Golf Course, the enclosure of the wood-burning fireplace and flue shall be constructed of, or finished with, the same material as is the dwelling at the point from which the wood-burning fireplace and/or the flue protrudes or shall be constructed of, or finished with clay-fired brick or stone.

3. In the event that a non-wood-burning or direct vent fireplace is constructed as a part of the dwelling on any Lot and is vented directly through an exterior wall of the dwelling or is vented through the roof of the dwelling with a vent similar in style, size and location to that of a furnace flue, no clay-fired brick or stone closure will be required. Provided however, if said non-wood-burning or direct vent fireplace is constructed in such a manner so as to protrude beyond the outer perimeter of a front or side wall of the dwelling on a Lot Not Adjoining Golf Course or beyond the outer perimeter of any wall of the dwelling on a Lot Adjoining Golf Course, the protrusion for the fireplace shall be finished with clay-fired brick or stone. Also any fireplace vent which protrudes above the roof of any dwelling shall be finished with clay-fired brick or stone unless it is on the rear slope of the roof of a dwelling on a Lot Not Adjoining Golf Course or is vented in similar style, size and location to that of a furnace flue as shown herein.

4. No furnace flue may protrude more than four (4) feet 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 of the roof ridge.

H. No fences may be built forward of the rear-most wall at each side (corner) of the rear of the dwelling. On Lots Adjoining Golf Course, no fence may be built within twenty-five (25') feet 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 Architectural Control Committee referred to above. Wire or chain-link fences shall not be permitted. Temporary or permanent barbed wire, electrified, and/or snow fences are strictly prohibited.

I. No structure of a temporary character, trailer, basement, tent, shack, barn or other out building shall be erected on said Lot, 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 dwellings or log houses shall be constructed or erected on any Lot. No dwelling shall be moved from outside of the Properties onto any of said Lots.

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J. 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 Architectural Control Committee in its sole and absolute discretion.

K. 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 on the Lots.

L. 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.

M. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot. No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets maintained within the dwelling may be kept, provided that they are not kept, bred or maintained for any commercial purpose and, provided, that they are kept confined to the Lot of their owner and are not permitted to run loose outside the Lot of the Owner.

N. No incinerator or trashburner shall be permitted on any Lot. No garbage or trash can or container shall be permitted to remain outside of any dwelling unless completely screened from view from every street and from all other Lots in the subdivision and from the golf course. 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. No garage door shall be permitted to remain open except when entry to and exit from the garage are required. No clothesline 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.

O. No automobile, boat, camping trailer, van-type campers, auto-drawn trailer of any kind, mobile home, motorcycle, snowmobile or other self-propelled vehicles shall be stored or maintained outside of the garage. For purposes of the preceding provision, "stored or maintained outside of the garage" shall mean, parking the vehicle or trailer on the driveway, or any other part of the Lot, outside of the garage, for seven (7) or more consecutive days. All repair or maintenance work on automobiles, boats, camping trailers, van-type campers, auto-drawn trailers of any kind, mobile homes, motorcycles, snowmobiles or other self-

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propelled vehicles done on the premises must be done in the garage. The dedicated street right-of-way located between the pavement and the Lot line of any residential Lot shall not be used for the parking of any vehicle, boat, camper or trailer. Automobiles and other self-propelled vehicles parked out-of-doors within the premises above-described, or upon the streets thereof, must be in operating condition.

P. All Lots shall be kept free of rubbish, debris, merchandise and building material; however, building materials may be placed on Lots when construction is started on the main residential structure intended for such Lot. In addition, vacant Lots where capital improvements have not yet been installed shall not be used for dumping of earth or any other waste materials, and shall be maintained level and smooth enough for machine mowing. No vegetation on vacant Lots where capital improvements have not yet been installed shall be allowed to reach more than a maximum height of twelve (12) inches.

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

R. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation.

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

T. 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 Architectural Control Committee.

U. 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 Architectural Control Committee.

V. No advertising signs or posters of any kind shall be erected or placed on any of said Lots, except the residential "For Sale" and "Sold" signs, not exceeding six (6) square feet in size, shall be permitted and, provided further, that such restriction as to sign size shall not apply to signs erected by the Declarant, or his agents, in the development of Tiburon.

W. All driveways shall be constructed of concrete or brick.

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X. The front, side and rear yards of all Lots shall be sodded, and two (2) trees, each not less than two (2) caliper inches in diameter, shall be planted in the front yard of each residence. No trees shall be planted in the dedicated street right-of-way located between the pavement and the Lot line. All yards shall be sodden and the trees planted within one (1) year from the date that construction for the residence on the Lot was initiated.

Y. No solar collecting panels or equipment, no wind generating power equipment shall be allowed on the Lots. No television antenna, no antenna of any kind or nature, no satellite dish over 18" in diameter, shall be allowed on the Lots unless completely screened from view from every street and from all other Lots in the Subdivision and from the golf course in a manner approved by the Architectural Control Committee. Satellite dishes of 18" or less shall be permitted only with the approval of the Architectural Control Committee.

ARTICLE IV EASEMENTS AND LICENSES

A. A perpetual license and easement is hereby reserved in favor of and granted to the U. S. West Telephone Company, the City or County franchised cable television firm and/or the Declarant, 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 services and cable television under a 8-foot strip of land adjoining the rear boundary lines of all interior Lots, a 16-foot strip of land adjoining the rear boundary lines of all exterior Lots and a 5-foot strip of land adjoining all side boundary lot lines and license being granted for the use and benefit of all present and future owners of said Lots; provided, however, that said lot line easement is granted upon the specific condition that if any said utility companies fail to construct wires or conduits along any of the said lot lines within 36 months of the date hereof, or if any wires or conduits are constructed but hereafter removed without replacement within 60 days after their removal, then this lot line easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent building shall be placed in perpetual easementway, but the same may be used for gardens, shrubs, landscaping and other purposed 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 line to dwelling shall be underground.

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ARTICLE V.
GENERAL PROVISIONS

A. The Declarant, or its assigns, or any Owner of a Lot named herein, shall have the right to enforce by proceeding at law or in equity, all restrictions, conditions, covenants, and reservations, now or hereinafter imposed by the provisions of this Declaration, either to prevent or restrain any violation of same, or to recover damages or other dues for such violation. Failure by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. 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. This Declaration may be amended by the Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots covered by this Declaration.

C. Invalidation of any one of these covenants by judgment or court order shall in no way effect any of the other provisions hereof which shall remain in full force and effect.

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

DECLARANT:

BALLENA LIMITED PARTNERSHIP
A Nebraska Limited Partnership

BY: DRELLA II, Inc., a Nebraska
Corporation, General Partner

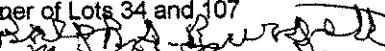

Date: 9-30-98

By: 
Eric B. Waddington, President

OTHER PROPERTY OWNERS:

Owner of Lots 34 and 107

Date: 9/30/98

By: 

Ralph A. and Mary Anne Burgett

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The foregoing instrument was acknowledged before me this 30th day of Sept, 1998, by Eric B. Waddington, President of Drella II, Inc., a Nebraska Corporation, General Partner of Ballena Limited Partnership, a Nebraska limited partnership.

Lavon Stephens
Notary Public



STATE OF NEBRASKA)
COUNTY OF Lincoln) ss.