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**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS AND BYLAWS
FOR
NINE MILE LAKE DEVELOPMENT HOMEOWNERS ASSOCIATION, INC.**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND BYLAWS FOR NINE MILE LAKE DEVELOPMENT HOMEOWNERS ASSOCIATION, INC. (this "Amendment") is made this 28th day of August, 2023, by Heritage Development LLC, a South Dakota limited liability company (hereinafter referred to as "Declarant"), and by Nine Mile Lake Development Homeowners Association, Inc. (hereinafter referred to as "Association"), and those undersigned Owners of record.

RECITALS

WHEREAS, the Association desires to amend and restate its Declaration of Covenants, Conditions, Restrictions, Easements and Bylaws ("Declaration") for its own benefit and for the mutual benefit of all future Owners of Units of the property described herein, or any part thereof;

WHEREAS, Article IX of the Declaration permits the Association to amend the Declaration by an affirmative vote or written consent or any combination thereof of Members representing seventy-five percent (75%) of the total Class A votes in the Association and the consent of the Class B Members;

WHEREAS, the Association has agreed to amend and restate the Declaration; and

WHEREAS, the Association desires that the Declaration remain unchanged and binding except as written herein;

NOW THEREFORE, the Declaration is hereby amended as follows:

**ARTICLE I
DEFINITIONS**

For purposes of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

"Articles of Incorporation" or "Articles" shall mean the Articles of Incorporation of Nine Mile Lake Development Homeowners Association, Inc., as filed with the Secretary of the State of South Dakota.

"Association" shall mean the Nine Mile Lake Development Homeowners Association, Inc., a non-profit corporation, incorporated under S.D.C.L. Chapter 47-22, and its successors or assigns.

"Board of Directors" shall mean the Board of Directors of the Association, having its normal meaning under South Dakota corporate law.

“Bylaws” shall mean the Bylaws governing the conduct of the Association attached hereto as **Exhibit C** and incorporated herein by reference, as they may be amended from time to time.

“Class “B” Control Period” shall mean the period of time during which the Class “B” Member is entitled to appoint a majority of the members of the Board of Directors, as provided in the Association’s Bylaws.

“Common Expenses” shall mean the actual and estimated expenses incurred by the Association for the general benefit of all Owners, including any reasonable reserve found to be necessary, but not including any expenses incurred during the Class “B” Control Period for initial development, original construction or installation of infrastructure, original capital improvements, or other original construction costs, unless approved by Voting Members representing a majority of the total Class “A” vote of the Association. Common Expenses shall be funded by assessments levied against all Units in the Properties.

“Common Areas” shall mean the neighborhood beach, the lake shore and adjacent sidewalk on Thompson Avenue between Poinsett Circle and Nine Mile Court, the green areas, and personal properties incident thereto and any other properties owned and maintained by the Association for the common and exclusive benefit and enjoyment by the residents of the Association.

“Declarant” shall mean Heritage Development LLC, a South Dakota limited liability company, its successors and assigns.

“First Mortgage” shall mean a person owning a mortgage on any Unit, which mortgage is first in priority upon foreclosure to other mortgages which may affect such Unit.

“Member” shall mean a person entitled to membership in the Association as provided herein.

“Outbuildings” shall mean any freestanding shed, gazebo, pool house, pavilion and any other enclosed or partially enclosed structures.

“Owner” shall mean the Person or Persons whose estates or interests, individually or collectively, aggregate fee simple and absolute ownership of a Unit.

“Person” shall mean a natural person, corporation, partnership, limited liability company, trust, or other legal entity capable of holding title to real property.

“Properties” shall mean the real property described in **Exhibit B** attached hereto together with such additional property as is hereafter subjected to this Declaration or by a Supplemental Declaration.

“Site Plan” shall mean the land use plan attached hereto marked **Exhibit D**. The Site Plan shows development of the Properties.

“Supplemental Declaration” shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which, by way of example and not limitation, subjects additional property to this Declaration, or imposes, expressly or by reference additional restrictions and obligations on the land described therein, by recorded instrument.

“Unit” shall mean that part of the Properties intended for development, use and occupancy as an attached residence for a single family on separately described real estate, as well as vacant land intended for development as such. The terms shall include all portions of the real estate owned as well as any structure thereon. Although the structures contemplated main contain multiple dwellings, each dwelling shall be deemed a separate Unit. In the case of a parcel of vacant land or land on which improvements are under

construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Site Plan approved by the Declarant, until such time as a certificate of occupancy is issued on all or a portion thereof by the local governmental entity having jurisdiction. After issuance of a certificate of occupancy on any portion thereof, the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

“Voting Member” shall mean the Member registered to cast the vote for the Unit as provided in the Bylaws.

Terms capitalized but not defined herein shall have the definitions ascribed to them in the Bylaws.

ARTICLE IV ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

The Properties and all Units thereon are subject to the architectural standards and use restrictions set forth in this Article, its Bylaws, and Rules and Regulations (as defined below). The Properties shall be governed by the following provisions:

4.1 Residential Use. The Properties shall be used for single family residential purposes only, which purposes shall include parking and recreation, and such other purposes by the Owners and their families, guests and tenants, as may be permitted by the Bylaws or by the Association, through its Board of Directors. No Unit may be subdivided into smaller Units unless agreed to by the Board of Directors. Notwithstanding the foregoing, the Declarant may maintain a business and sales office and/or model units on the Properties so long as the Declarant owns any properties subject to this Declaration, and may display signs offering the same for sale.

4.1.1 Single Family Dwellings. Each Single-Family Dwelling, or Building if it is a multiplex housing, shall be subject to the approval of the Developer. Specifically, each Owner shall provide any and all plans, roof pitch, exterior colors, materials, specifications of the building, fence, walls, and any other structures to the Developer and the Developer shall approve or decline the same in writing.

4.1.2 Additional Structures. Additions to the primary structure must be approved by the Board of Directors prior to construction commencement. Additional structures must maintain the same exterior appearance.

4.1.3 Outbuildings. Outbuildings must be permanently constructed on concrete foundations and the exterior design shall be in conformance with the principal residence. Outbuildings must be approved by the Board of Directors prior to construction commencement. Approval of outbuildings may be denied for any reason. Outbuildings are not to be approved if the proposed location would affect the view of the lake in any capacity to any other lot. No living space may be contained in an approved outbuilding.

4.1.4 Fences. Fences must be constructed of approved material only. Fencing material and proposed location must be approved by the Board of Directors prior to installation. Fences must be installed by a licensed, bonded contractor. Lake Lots (lots that are purposefully and directly adjoined to the lake) may have fencing only constructed of 4 feet tall, iron rod material. Non-Lake Lots (all lots in the development that are not purposefully or directly adjoined to the lake) may have fencing constructed of 4 feet tall, iron rod material OR 6 feet tall, privacy vinyl of neutral color (white, tan, or grey). Absolutely no fences constructed of wood, chain link or any other non-approved material are allowed on any lot.

4.1.5 Landscaping. No box elder, Siberian elm, Chinese elm, American elm, native cottonwood, columnar poplar, or other such noxious tree shall be planted on any Lot or within the Property. Lake Lots must obtain approval from the Board of Directors prior to tree placement in the backyards of the lots. Trees shall not be approved if the tree placement will block the view of any neighboring lots.

4.1.5.1 Lake Lots. Lake Lots have dedicated beach areas. These beach areas must be seeded with fescue grass. Homeowners must leave 10 feet of fescue grass from the property line. In between the fescue grass sections, homeowners may place sand or boulders, or the entire area may remain fescue grass.

4.1.6 Docks. All docks must be floating docks. Docks cannot extend more than 15 feet beyond the shoreline and must be placed at a minimum of 10 feet inside the property lines. All docks must be branded. Candock or an equivalent brand is acceptable.

4.1.7 Temporary Structures. No trailer, tent (other than children's sleepover/play tents, blow up children's items such as slides and the like), camper, mobile, home, shack or any other outbuilding or structure of temporary character shall be used on any Lot at any time as a residence, either temporarily or permanently. Trampolines, basketball hoops, hockey nets, soccer nets and the like are acceptable if they do not obstruct or encroach on neighbors' properties.

4.1.8 Businesses. No business activities shall be carried out in any Single Family Dwelling unless it is carried out in a home office where clients and customers do not visit. Door-to-door sales activities are prohibited on the Property.

4.1.9 Signs. All signs, except "For Sale" signs, must be approved by the Board of Directors prior to being displayed.

4.1.10 Vehicles, Machinery, Equipment. No trucks, buses, trailers, boats, mobile homes, campers, snowmobiles, motorcycles, snow blowers, lawn mowers or other similar equipment or vehicles are permitted on the Property unless maintained in an enclosed garage.

4.1.11 Fixtures. No non-residential type antenna, tower, satellite dish, or similar device may be erected or constructed on the lot without prior approval of the Board of Directors. Regardless of the type of fixtures, attention must be made to not unreasonably obstruct the views of other properties. Any and all utility lines or structures shall be constructed underground.

4.1.12 Mailboxes. The developer hereby reserves an easement for itself and for the Associations for the maintenance, access, and repair of a community mailbox.

ARTICLE V MEMBERSHIP AND VOTING RIGHTS

5.1 **Membership.** An Owner, as defined in Article I, shall be deemed to have a membership in the Association. When more than one person is Owner of a single Unit, all such persons shall be Member of the Association, but multiple ownership of a Unit shall not increase the number of votes appurtenant to such Unit. The membership rights of a Unit owned by a Person who is not a natural person shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association, subject to the provisions of this Declaration and the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Unit. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation.

5.2 **Voting.** The Association shall have three (3) classes of membership, Class A, Class B, and Class C, as follows:

(a) **Class A.** Class A Members shall be entitled to one (1) equal vote for each Unit in which they hold the interest required for membership under Section 5.1. There shall only be one (1) vote per Unit. The vote for each Unit shall be exercised by the registered voter for the Unit, or a proxy, as provided for in the Bylaws. The Unit's vote shall be suspended if more than one Person seeks to exercise it.

(b) **Class B.** The Class B Member shall be the Declarant. The rights of the Class B Member, including the right to approve actions taken under this Declaration and the Bylaws, are specified elsewhere in this Declaration or the Bylaws. The Class B Member shall be entitled to one (1) vote per Unit owned and in addition, shall be entitled to appoint members of the Board of Directors as described in the Bylaws. The Class B Membership shall cease and terminate upon the happening of either of the following events, whichever first occurs:

- (i) When seventy-five percent (75%) of the Units within the entire development (Phases 1, 2a and 2) of the Association are sold and occupied by the homeowners;
- (ii) December 31, 2027; or
- (iii) When in its discretion, the Class B Member so determines.

(c) **Class C.** The Class C Member shall be Thompson Place Twin Homes at Nine Mile Lake Homeowners Association. The Class C Member shall be entitled to one (1) vote and in addition, shall be entitled to appoint one (1) member to the Board of Directors as described in the Bylaws. It is understood that the Class C Member will be a separate association with its own Declaration of Covenants, Conditions, Restrictions, Easements and Bylaws. However, no contrary provision, if any, shall affect the validity of this Declaration.

ARTICLE VI MAINTENANCE

6.1 **By the Owners.** Except to the extent provided in Section 6.2 below, each Owner shall have the obligation to maintain, replace and keep in good repair all portions of their Unit. This includes, but is not limited to, structural portions, glass surfaces, windows, window frames, interior and exterior doors, doorways, frames, hardware, walls, patios, lawns, landscaping, fences – as hereinbefore set forth in Section 4.1.4 (Permitted: Vinyl fences in neutral colors, iron rod fence. Prohibited: wood fences of any type, chain link fences of any type. Installation of fences must receive pre-approval from the Association), heating and cooling systems and components thereof, plumbing and related systems and components thereof, electrical and related systems and components thereof including appliances, fixtures and lights, all gas, water, or sewer systems, fireplaces, pipes, lines, ducts, conduits or other apparatus serving only the Unit. The Owner shall perform their responsibilities in such manner so as to not unreasonably disturb other Persons residing in adjacent Units. Owners are responsible for immediately picking up after their pet(s) on a continuous basis. Owners shall not make any interior or exterior alterations that will have a substantial or detrimental effect on any other Unit.

6.2 **Multiplex.** If a Unit is part of a multiplex, each such Unit is owned subject to, and together with the mutual easements of support and shelter over and to the party walls provided for party walls by law. In the event, by virtue of reconstruction, repair or removal of structures, affecting elements supported or sheltered by the party wall, the removing Owner shall share, reconstruct and weather proof such party

wall so it can perform its function of support and shelter, and if such reconstruction, repair or removal is to be permanent, finish all surfaces exposed to weather in an architecturally finished manner consistent with the rest of the building. The Owner shall have an easement upon or into adjoining Units and/or a right-of-entry as is necessary to perform such work and shall not be liable for trespass for such entry or work.

6.3 **By the Association.**

(a) **Required Obligations.** The Association's obligation extends only to maintenance and repair of items as is necessary to create a uniform exterior appearance of the Units and the Common Areas. In the event a maintenance responsibility is not clearly shown by this Declaration, the Board of Directors shall have the authority to determine whether the Owner or the Association shall bear the responsibility. The Association is responsible for maintenance, security, repairs, and improvements of all Common Areas, including snow removal from the sidewalks of Common Areas and from areas in front of the mailbox easements.

(b) **Optional Obligations.** If agreed to by the Board of Directors, the maintenance provided by the Association may include painting, garbage service, other work, snow removal from the paved driveways, sidewalks, and streets, mowing and other landscape maintenance, excluding gardens or flower beds planted by the Owner or occupant of such Unit. An Owner shall be required to opt-in to such maintenance, repair, or replacement, and shall not be required to participate. The cost shall be assessed to each Owner individually shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Unit as hereinafter provided.

6.4 **Failure to Maintain.** If the Board of Directors determines that (a) any Owner has failed or refused to discharge properly their obligation with regard to the maintenance, repair or replacement of items of which they are responsible hereunder; or (b) that the need for maintenance, repair, or replacement in the Common Areas is caused through the willful or negligent act of any Owner, their family, guests, lessees or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense. Such cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Unit as hereinafter provided. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary by the Board of Directors. In the case of (a) above, when the Owner has not discharged their responsibility, unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten days. If the Board of Directors determines that an emergency exists, that an Owner has not complied with the demand given by the Association as herein provided, or that the need for maintenance or repair is in a Common Area as in (b) above, then the Association may, but is not obligated to, provide any such maintenance, repair or replacement in the manner described above. The Association or its agents or employees shall have a right of entry upon or into the Unit as necessary to perform such work and shall not be liable for trespass for such entry or work.

6.5 **Rights of the Association.** The Board of Directors shall have, by a two-thirds (2/3rds) vote, the power to dedicate portions of the Common Areas to any local, state, or federal governmental entity including, but not limited to, Lincoln County, South Dakota, subject to easement rights of Owners set forth in Article III. The Association may maintain other property which it does not own including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable. With respect to the Common Areas and in accordance with the Articles of Incorporation and Bylaws of the Association, the Association shall have the right to contract with any

person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational or other agreements with trusts, condominiums, cooperatives or neighborhood and other owners or residents associations. Such agreements shall require the consent of two-thirds (2/3rds) of all Directors of the Association. See Section 4.3 of the Bylaws.

ARTICLE IX AMENDMENT

9.1 **By the Declarant.** So long as Declarant owns Properties subject to this Declaration, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is:

(a) Necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation or judicial determination;

(b) Necessary to enable any reputable title insurance company to issue title insurance coverage on the Units;

(c) Necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing; or

(d) Necessary to add new Lots permitted by the Site Plan for the property described in **Exhibit B and Exhibit D** of the Declaration. Upon the addition of new Lots, Declarant shall only need to obtain written consent of the Owners of said Lots.

9.2 **By the Association.** Thereafter, this Declaration may be amended only by the affirmative vote or written consent or any combination thereof of Members representing seventy-five percent (75%) of the total Class A votes in the Association and the consent of the Class B Members so long as such membership exists. In addition, the approval requirements of any First Mortgagee shall be met if applicable. Any amendment to be effective must be recorded in the public records of Lincoln County, South Dakota.

[Signatures on following pages]

EXHIBIT C
BYLAWS
OF
NINE MILE LAKE DEVELOPMENT HOMEOWNERS ASSOCIATION, INC.

The following are the Bylaws ("Bylaws") of Nine Mile Lake Development Homeowners Association, Inc., a South Dakota non-profit corporation (the "Association") and are subject to and made a part of the Declarations of Covenants, Conditions, Restrictions, and Easements (collectively, the "Declarations"). The terms used in these Bylaws shall have the same meaning as they have in the Declaration, except as otherwise specified herein.

ARTICLE I
DEFINITIONS

As used in these Bylaws, the following terms have the following meanings:

"**Articles**" shall mean and refer to the Articles of Incorporation filed with the Secretary of State of South Dakota by which the Association was incorporated as a South Dakota non-profit corporation.

"**Association**" shall mean and refer to Nine Mile Lake Development Homeowners Association, Inc., a South Dakota non-profit corporation, and its successors and assigns.

"**Board of Directors**" shall mean and refer to the Board of Directors of the Association, as authorized by these Bylaws and the Articles.

"**Common Areas**" shall mean the neighborhood beach, the lake shore and adjacent sidewalk on Thompson Avenue between Poinsett Circle and Nine Mile Court, the green areas, and personal properties incident thereto and any other properties owned and maintained by the Association for the common and exclusive benefit and enjoyment by the residents of the Association.

"**Declarations**" shall mean and refer to those Declarations of Covenants, Conditions, Restrictions, and Easements, dated July 29th 2022, 2023, incorporated herein, and all amendments thereto.

"**Developer**" shall mean and refer to Heritage Development, LLC, a South Dakota Limited Liability Company, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Developer for the purpose of the development.

"**Director**" shall mean and refer to any person serving as a director of the Association on the Board of Directors, as designated in Article IV herein.

"**Lot**" shall mean and refer to each lot making up the Property.

"**Member**" shall mean and refer to all Owners who are members of the Association as provided in Section 2.1.

"**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property, but notwithstanding any applicable theory of the mortgage shall not mean or refer to the mortgagees unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

"**Property**" shall mean and refer to that certain real property located in the City of Tea, South Dakota, more particularly described on the attached Declarations, incorporated herein.

Terms capitalized but not defined herein shall have the definitions ascribed to them in the Declaration of Covenants, Conditions, Restrictions, and Easements of even date herewith.

ARTICLE II MEMBERSHIP

2.1 **Membership Defined.** Every person or entity who is a record owner of a fee or undivided interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a “Member” of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

2.2 **Registration of Owner.** It shall be the duty of each Owner and occupant of said Lot to register with the Secretary of the Association in writing: (a) the name and address of such Owner or Occupant, (b) the nature and satisfactory evidence of such Owner’s or Occupant’s interest or estate in a Lot, (c) the addresses at which such Owner desires to receive notice, if entitled to such notice, of any duly called meeting of the Members, and (d) the name of the Owner, if there is more than one Owner or occupant with respect to a Lot, who shall be authorized to cast the vote. If all of the registered Owners and occupants of a Lot do not agree as to the Owner or occupant authorized to cast the vote or when more than one vote is cast for their Lot, then the vote associated with the Lot shall not be recognized. If an Owner or occupant does not register as provided in this Section 2.2, the Association shall be under no duty to recognize the rights of such person hereunder, but such failure to register shall not relieve any Owner or occupant of any obligation, covenant or restriction under the Declaration or these Bylaws. If there is more than one Owner or occupant of a Lot, each must execute the registration as provided in this Section 2.2.

2.3 **Non-Transfer of Membership.** The interest of a Member in the funds and assets of the Association cannot be assigned, pledged, encumbered or transferred in any manner, except as an appurtenance to the Lot.

ARTICLE III ASSOCIATION MEETINGS OF MEMBERS

3.1 **Place.** All meetings of the Members of the Association shall be held at such place in Lincoln or Minnehaha County, South Dakota, as may be designated by the Board of Directors in any notice of a meeting of the Members.

3.2 **Annual Meetings.** The annual meeting of Members shall be held on a date determined by the Board of Directors during the month of September every year unless the Members at any annual or special meeting designate a different date for the annual meetings. Any matter which is properly brought before an annual meeting of the Members, and is a proper subject for discussion or decision by the Members, may be passed upon at the meeting.

3.3 **Special Meetings.** Special meetings of the Members may be called by the President of the Association. Special meetings of the Members must be called and scheduled to be held by the President or Secretary within thirty (30) days of the written request by a majority of the Members of the Board of Directors or of Members possessing the right to vote one-fourth of the total votes of all Members. The requests shall state the purpose or purposes of the meeting requested. The business transacted at a special

meeting shall be confined to the purposes stated in the notice thereof.

3.4 **Notice of Meetings.** At least fifteen (15), but no more than thirty (30), days in advance of any annual or regularly scheduled meeting of the Members, and at least seven (7) days in advance of any special meeting of the Members, the Secretary shall send to each Owner of record, notice of the time, place and complete agenda of the meeting, by United States mail, to the address of the respective Lots or to such other address as any Owner may have designated in writing to the Secretary. Owners of record shall be those Owners who are registered with the Secretary as provided in Section 2.2 on a date specified by the Board of Directors (the "Record Date"). Such Owners of record shall be entitled to notice of any duly called meeting of the Members, provided that the Board of Directors may not specify a Record Date which is more than thirty-five (35) days prior to the date of an annual meeting or more than twenty (20) days prior to the date of a special meeting.

3.5 **Waiver of Notice.** Any Member may, in writing, waive notice of any meeting, before or after the meeting. Attendance shall be deemed a waiver of notice.

3.6 **Quorum.** The presence of Members, in person or by proxy, who have the authority to cast a majority of the total votes of all Members of the Association shall be necessary to constitute a quorum at all meetings of the Members for the transaction of any business, except that of adjourning the meeting to reconvene at a subsequent time. In the event a quorum shall not be present at any meeting of the Members, the meeting may be adjourned from time to time, without notice other than announcement at the meeting of adjournment, until a quorum shall be present, at which time any business may be transacted which might have been transacted at the meeting as initially called had a quorum been present. The quorum, having once been established at a meeting, shall continue to exist for that meeting notwithstanding the departure of any members previously in attendance or by proxy.

3.7 **Association May Not Vote.** The Association may not cast any vote or be counted in determining a quorum as to any Lot of which the Association is an Owner.

3.8 **Voting Register.** At the beginning of each meeting of the Members, the Secretary shall present to the meeting a written list of the Lots, the respective name or names of the Owners and of the occupants entitled to notice of such meeting, and the respective name of the person (in the case of multiple Owners or occupants) authorized to vote for each Lot (the "Voting Register").

3.8 **Order of Business.** The order of business at annual meetings of the Members, and at such other membership meetings of the Members as may be practical, shall be as follows:

- (a) Designation of President as chairman of the meeting.
- (b) Proof of notice of the meeting as required by Section 3.4.
- (c) Presenting of Voting Register, proxy certification and establishment of a quorum.
- (d) Reading of minutes of the preceding meeting of the Members.
- (e) Reports of Officers.
- (f) Reports of Committees.
- (g) Appointment by the Chairman of inspectors of election as determined by the

Chairman or when requested by a Member of the Board of Directors.

- (h) Election of Members of the Board of Directors.
- (i) Unfinished business.
- (j) New business.
- (k) Adjournment.

3.9 **Reports.** The Treasurer shall be required to prepare an annual report on behalf of the Association to be provided to each Owner prior to each annual meeting of the Members. The report shall contain at a minimum the following:

(a) A statement of any capital expenditures in excess of two percent (2%) of the current budget or Five Hundred Dollars (\$500.00), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.

(b) A statement of the status and amount of any reserve or replacement fund, and any portion of the fund designated for any specified project by the Board of Directors.

(c) A copy of the statement of financial condition for the Association for the last fiscal year.

(d) A statement of the status of any pending suits or judgments in which the Association is a party.

(e) A statement of the insurance coverage provided by the Association.

(f) A statement of any unpaid assessments by the Association on individual Lots, identifying the Lot and the amount of the unpaid assessment.

(g) A statement as to real estate taxes and assessments paid for the Common Areas as defined in the Declaration.

A copy of the foregoing report shall be delivered or sent by United States mail to all Owners entitled to notice of an annual meeting of the Members at the address of their respective Lots at least seven (7) days in advance of any annual meeting of the Members, and shall be made available to all Members at such annual meeting.

3.10 **Voting Rights.** The voting rights of the Members and Developer are set forth in Article IV of the Declaration.

3.11 **Voting by Proxy.** A Member may cast the vote to which the Member is entitled and be counted as present at any meeting of the Members by written proxy naming another person or persons entitled to act on that Member's behalf, and delivered to the Secretary before the commencement of any such meeting. All proxies granted by a Member shall be revocable by the Member by written notice or by personally attending and voting at a meeting of the Members and shall be invalid after one year from the date thereof.

3.12 **Vote Required.** The majority vote of Members constituting a quorum shall decide all matters properly brought before such meeting, except where a different vote is specifically called for in the Articles, the Declaration, these Bylaws or the laws of South Dakota.

3.13 **Action Without Meeting.** Any action which might be taken at a Members' meeting may be taken upon the written consent of all those entitled to vote at any meeting, determined at such time as is designated by the President and where there is more than one holder of an interest in a Lot, all holders must give consent unless one person is authorized to vote according to the Voting Register maintained by the Secretary, in which event, only the consent of the named party need be obtained.

ARTICLE IV BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

4.1 **Composition and Selection.**

(a) **Governing Body; Composition.** The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) vote. Except with respect to Directors appointed by the Class B Member, who shall be the Declarant and whose rights are identified in the Articles, the Declaration, and these Bylaws, and the Director appointed by the Class C Member, the Directors shall be Members or spouses of such Members; provided, however no person and his or her spouse may serve on the Board of Directors at the same time. In the case of an Owner which is an entity, the person designated in writing to the Secretary of the Association as the representative of such entity shall be eligible to serve as a Director.

(b) **Directors During Class B Control Period.** Subject to the provisions of Section 4.1(f) below, the Directors shall be selected by the Class B Member acting in its sole discretion and shall serve at the pleasure of the Class B Member until the first to occur of the following:

(i) when seventy-five percent (75%) of the Lots contemplated by the Site Plan for the property described in **Exhibit B** and **Exhibit D** of the Declaration have been conveyed to persons other than the Declarant ("owners") for purposes of development and sale;

(ii) December 31, 2027; or

(iii) When, in its discretion, the Class B Member so determines.

(c) **Right of the Class B Member to Disapprove Actions.** This Section 4.1(c) may not be amended without the express, written consent of the Class B Member as long as the Class B Membership exists. So long as the Class B Membership exists, the Class B Member shall have a right to disapprove actions of the Board of Directors and any Committee, as is more fully provided in this Section 4.1(c). This right shall be exercisable only by the Class B Member, its successors, and assigns who specifically take this power in a recorded instrument. The right to disapprove shall be as follows:

(i) The Class B Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board of Directors or any Committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meetings with Sections 4.2(a), (b), and (c) of these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, the Class B Member shall be given the opportunity at any such meeting to set forth in reasonable particularity, the agenda to be followed at said meeting; and

(ii) The Class B Member shall join in or to have its representatives or agents

join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board of Directors, any Committee thereof, or the Association. The Class B Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the subject Committee and/or the Board of Directors. The Class B Member shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Board of Directors or any Committee thereof and to be taken by the Board of Directors, such Committee, the Association, or any individual Member of the Association, if the Board of Directors, Committee, or Association approval is necessary for such action. This right may be exercised by the Class B Member, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any Committee, or the Board of Directors or the Association. The Class B Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

(d) Number of Directors. The number of Directors in the Association shall be not less than three (3), nor more than nine (9), as provided in Section 4.1(f) below. The initial Board of Directors shall consist of three (3) members as identified in the Articles.

(e) Nomination of Directors. Except with respect to Directors selected by the Class B Member and Class C Member, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association (the "Nominating Committee"). The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Voting Members to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such meeting. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Voting Members and to solicit votes.

(f) Election and Term. Notwithstanding any other provision contained herein:

(i) Within thirty (30) days after the time Class A Members, other than the Declarant or a builder holding title solely for purposes of development and sale, own twenty-five percent (25%) of the Lots permitted by the Site Plan for the property described in Exhibit B of the Declaration or whenever the Class B Member earlier determines, the Association shall call a special meeting at which Voting Members representing Class A shall elect one (1) of the three (3) Directors, who shall be an at-large director. The remaining two (2) Directors shall be appointees of the Class B Member and Class C Member, respectively. The Director elected by the Voting Members shall be elected for a term of two (2) years or until the happening of the event described in Section 4.1(f)(ii) below, whichever is shorter. If such Director's term expires prior to the happening of the event described in Section 4.1(f)(ii) below, a successor shall be elected for a like term.

(ii) Within thirty (30) days after the time Class A Members, other than the Declarant or a builder holding title solely for purposes of development and sale, own fifty percent (50%) of the Lots permitted by the Site Plan for the property described in Exhibit B of the Declaration or whenever the Class B Member earlier determines, the Board of Directors shall be increased to five (5) Directors. The Association shall call a special meeting at which Voting Members representing Class A shall elect two (2) of the five (5) Directors, who shall serve as at-large Directors. The Class B Member shall appoint two (2) Directors. The remaining Director shall be appointed by the Class C Member. The Directors elected by the Voting Members shall be elected for a term of two (2) years or until the happening of the event described in Section 4.1(f)(iii) below, whichever is shorter. If such Directors' terms expire prior to the happening of the event described in Section 4.1(f)(iii) below, a successor shall be elected for a like term.

(iii) Within thirty (30) days after termination of the Class B Control Period, the Association shall call a special meeting at which Voting Members representing Class A shall elect three (3) of the five (5) Directors, who shall serve as at-large Directors. The remaining two (2) Directors shall be appointees of the Class B Member and Class C Member, respectively. The Directors elected by the Voting Members shall serve until the first annual meeting following the termination of the Class B Control Period. If such annual meeting occurs within thirty (30) days after termination of the Class B Control Period, this Section 4.1(f)(iii) shall not apply and Directors shall be elected in accordance with Section 4.1(f)(iv) below.

(iv) At the first annual meeting of the Members after the termination of the Class B Control Period, the Directors shall be selected as follows: Voting Members representing Class A shall elect four (4) of the five (5) Directors, who shall serve as at-large Directors. Three (3) Directors shall be elected for a term of two (2) years and one (1) Director shall be elected for a term of one (1) year. The remaining Director shall be appointed by the Class C Member for a term of one (1) year. Setting the initial term of each Director shall be at the sole discretion of the Nominating Committee. At the expiration of the initial term of office of each member of the Board of Directors and at each annual meeting thereafter, a successor shall be elected or appointed to serve for a term of two (2) years.

(v) Each Voting Member shall be entitled to cast one (1) vote with respect to each vacancy to be filled from each slate on which such Voting Member is entitled to vote. There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected. The Directors elected by the Voting Members shall hold office until their respective successors have been elected by the Association. Directors may be elected or appointed to serve any number of consecutive terms.

(g) Removal of Directors and Vacancies.

(i) Any Director elected by the Voting Members may be removed, with or without cause, by the vote of Voting Members holding a majority of the votes entitled to be cast for the election of such Director. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. A Director who was elected at large solely by the votes of Voting Members other than the Declarant may be removed from office prior to the expiration of his or her term only by the votes of a majority of Voting Members other than the Declarant. Upon removal of a Director, a successor shall then and there be elected by the Voting Members entitled to elect and the Director so removed to fill the vacancy for the remainder of the term of such Director.

(ii) Any Director elected by the Voting Members who has three (3) consecutive unexcused absences from Board of Directors meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than thirty (30) days may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board of Directors to fill the vacancy for the remainder of the term. In the event of the death, disability or resignation of a Director, a vacancy may be declared by the Board of Directors, and it may appoint a successor for the unexpired portion of the term.

(iii) Any Director elected by the Voting Members representing Class A shall not be subject to removal by either the Class B Member or Class C Member.

(iv) This Section shall not apply to the Directors appointed by the Class B Member or Class C Member. In the event of the death, disability, or resignation of a Director appointed by the Class B Member or Class C Member, the respective Member shall be entitled to appoint a successor to fill any such vacancy on the Board.

4.2 Meetings of the Board of Directors.

(a) Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the Members shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board of Directors.

(b) Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of the time and place of the meeting shall be communicated to Directors not less than seven (7) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding the meeting.

(c) Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President of the Association, or by any three (3) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (i) by personal delivery; (ii) written notice by first class mail, postage prepaid; (iii) by telephone communication, either directly to the director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (iv) by electronic mail, if previously authorized by such Director. All such notices shall be given at the Director's telephone number or sent to the Director's address or e-mail as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least eight (8) days before the time set for the meeting. Notices given by personal delivery, telephone or email shall be delivered, telephoned or emailed at least seven (7) days before the time set for the meeting.

(d) Waiver of Notice. The transactions of any meeting of the Board of Directors, however, called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if: (i) a quorum is present, and (ii) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

(e) Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board of Directors cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

(f) Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total Class A vote of the Association at a regular or special meeting of the Association; provided any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors.

(g) Conduct of Meeting. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording

therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

(h) Open Meetings. Subject to the provisions of Section 4.2(i), all meetings of the Board of Directors shall be open to all Voting Members, but Voting Members other than Directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a Director. In such case, the President may limit the time any Voting Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding Voting Members, to discuss matters of a sensitive nature such as pending or threatened litigation, personnel matters, etc.

(i) Action Without a Formal Meeting. Any action to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

4.3 Powers and Duties.

(a) Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are not by the Declaration, Articles or these Bylaws directed to be done and exercised exclusively by the Voting Members of the membership generally.

(b) Delegation. The Board of Directors shall delegate to one of its Directors the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

(c) Policies. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to establish policies relating to the Property, Common Areas, and the Lots, and shall be responsible for performing or causing to be performed, the following, in way of explanation, but not limitation:

(i) preparation and adoption, in accordance with Article VII of the Declaration, of annual budgets in which there shall be established the contribution of each Owner to the Common Expenses;

(ii) making assessments to defray the Common Expenses establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Lot's proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;

(iii) providing for the operation, care, upkeep, and maintenance of all of the Common Areas;

(iv) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair, and replacement of its property and the Common Areas, and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties;

(v) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(vi) making and amending the Rules and Regulations;

(vii) opening of bank accounts on behalf of the Association and designating the signatories required;

(viii) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Areas in accordance with the other provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;

(ix) enforcing by legal means the provisions of the Declaration, these Bylaws, and the Rules and Regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(x) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(xi) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(xii) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(xiii) making available to any prospective purchaser of a Lot, any Owner of a Lot, any First Mortgagee, and the holders, insurers, and guarantors of a first mortgage on any Lot, current copies of the Declaration, the Articles, the Bylaws, rules governing the Lot and all other books, records, and financial statements of the Association; and

(xiv) permitting utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Properties.

(d) Management. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board of Directors' supervision, all of the powers granted to the Board of Directors by these Bylaws, other than the powers set forth in Section 4.3(c)(i), (ii), (vi), (vii), and (ix). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

(e) Accounts and Reports. The following management standards of performance will be followed unless the Board of Directors, by resolution, specifically determines otherwise:

(i) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(ii) accounting and controls should conform to generally accepted accounting principles;

(iii) cash accounts of the Association shall not be commingled with any other

accounts;

(iv) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finding's fees, service fees, prizes, gifts or otherwise; any thing of value received shall benefit the Association;

(v) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(vi) an annual report consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (A) a balance sheet; (B) an operating (income) statement; and (C) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited or reviewed basis, as determined by the Board of Directors, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first mortgage on a Lot, the Association shall provide an audited financial statement.

(f) Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Common Areas without the approval of the Voting Members of the Association. The Board of Directors shall also have the power to borrow money for other purposes; provided, the Board of Directors shall obtain Voting Member approval in the same manner provided in Section 7.3 of the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or would exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these Bylaws, or the Articles, during the Class B Control Period, no mortgage lien shall be placed on any portion of the Common Areas without the affirmative vote or written consent, or any combination thereof, of Voting Members representing at least fifty-one percent (51%) of the Members other than the Declarant and the Declaration's nominees.

(g) Rights of the Association. With respect to the Common Areas and in accordance with the Articles and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, and other Owners, both within and without the Properties. Such agreements shall require the consent of two-thirds (2/3) of all Directors of the Association.

(h) Indemnification. The Association shall have power to indemnify every Officer, Director, employee, agent and Committee member of the Association in such manner and in such amounts as may be permitted pursuant to South Dakota laws, Section 47-22-65.1 to 47-22-65.8, inclusive, as such statutes may be amended from time to time, provided, however, no such indemnification by the Association shall exceed the amounts authorized by such statutes. To the extent permissible under South Dakota law, the Officers, Directors, employees, agents, and Committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. To the extent permissible under South Dakota law, the Officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such Officers or directors may also be Members of the Association), and to the extent permissible under South Dakota law, the Association shall indemnify and forever hold each such Officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Officer, Director, employee, agent or Committee member, or

former Officer, Director, employee, agent, or Committee member, may be entitled. The Association shall, as a Common Expense, maintain adequate insurance to fund this obligation, if such insurance is reasonably available.

(i) Enforcement. The Board of Directors shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or any person's right to use the Common Areas for violation of any duty imposed under the Declaration, these Bylaws, or any Rules and Regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any occupant, guest or invitee of a Lot violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association. The failure of the Board of Directors to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board of Directors to do so thereafter.

(j) Notice. Prior to imposition of any sanction hereunder, the Board of Directors or its delegation shall serve the alleged violator with written notice describing: (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that a proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(a) Hearing. If a hearing is requested within the allotted ten (10) day-period, the hearing shall be held in executive session affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the Officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged 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. The Board of Directors or the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these Bylaws, or the Rules and Regulations of the Association by self-help (specifically including, but not limited to, the towing of the vehicles that are in violation of parking Rules and Regulations) or by suit at law or in equity to enjoin any violation as to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

ARTICLE V OFFICERS

5.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary and Treasurer, to be elected from among the members of the Board of Directors (the "Officer(s)"). The Board of Directors may appoint such other Officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such Officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

5.2 **Election, Term of Office and Vacancies.** The Officers of the Association shall be elected annually by the Board of Directors at the Directors' first meeting, as herein set forth in Article IV. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

5.3 **Removal.** Any Officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

5.4 **Powers and Duties.** The Officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board of Directors. The president shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

5.5 **Resignation.** Any Officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

5.6 **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by one (1) Officer or by such other person or persons as may be designated by resolution of the Board of Directors.

ARTICLE VI COMMITTEES

6.1 **General.** Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting of the Board of Directors at which a quorum is present (each a "Committee"). Each Committee shall operate in accordance with the terms of the resolution of the Board of Directors.

6.2 **Covenants Committee.** In addition to any other Committees which may be established by the Board of Directors pursuant to Section 6.1, the Board of Directors may appoint a "Covenants Committee" consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these Bylaws, and resolutions the Board of Directors may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 4.3(j) of these Bylaws.

6.3 **Lake Committee.** In addition to any other Committees which may be established by the Board of Directors pursuant to Section 6.1, the Board of Directors shall appoint a “Lake Committee” consisting of at least five (5) and no more than seven (7) members. The Lake Committee members shall be the owners of Lake Lots. The Lake Committee shall be responsible for creating a budget for the Property and all decisions regarding maintenance, repair, replacement, and upkeep of the Property and the equipment necessary to operate and maintain the Property. All capitalized terms used in this Section 6.3 not otherwise defined in these Bylaws shall have the meanings set forth in the Declaration.

ARTICLE VII MISCELLANEOUS

7.1 **Fiscal Year.** The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution of the Board of Directors, the fiscal year shall be the calendar year.

7.2 **Parliamentary Rules.** Except as may be modified by a Board of Directors resolution, Robert’s Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with South Dakota law, the Articles, the Declaration, or these Bylaws.

7.3 **Conflicts.** If there are any conflicts between the provisions of South Dakota law, the Declaration, the Articles, the Bylaws, and/or Rules and Regulations of the Association, they shall prevail in the following order: (a) South Dakota law; (b) the Declaration; (c) the Articles; (d) the Bylaws; and (e) the Rules and Regulations promulgated by the Board of Directors.

7.4 **Books and Records.**

(a) **Inspection by Members and Mortgagees.** The Declaration, Bylaws, and Articles, any amendments to the foregoing, the Rules and Regulations of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board of Directors, and Committees shall be made available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Lot, Member of the Association, or by the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in the Lot at the office of the Association or at such other place as the Board of Directors shall prescribe.

(b) **Rules for Inspection.** The Board of Directors shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) **Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

7.5 **Notices.** Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid;

(a) if to a Member or a Voting Member, at the address which the member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member or Voting Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

7.6 **Amendment.**

(a) Prior to the conveyance of the first Lot, Declarant may unilaterally amend these Bylaws. After such conveyance, the Declarant may unilaterally amend these Bylaws at any time and from time to time if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; or (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. So long as it still owns property described in Exhibit A of the Declaration for Development as part of the Properties, the Declarant may unilaterally amend these Bylaws for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) Thereafter and otherwise, these Bylaws may be amended only by the affirmative vote or written consent or any combination thereof, of Voting Members representing seventy-five percent (75%) of the total Class A votes in the Association, including seventy-five percent (75%) of the Class A votes held by Members other than the Declarant, and the consent of the Class B Member, so long as such membership exists. In addition, the approval requirements set forth in Article IX of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records for Lincoln County, South Dakota.

(c) If an Owner consents to any amendment to the Declaration or these Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

7.7 **Governing Law.** These Bylaws shall be governed exclusively by the laws of the State of South Dakota (exclusive of its laws governing conflicts of law).

7.8 **Headings.** Headings in these Bylaws are for convenience only and shall be deemed irrelevant in construing the provisions of these Bylaws.

7.9 **Severability.** If any court finds any provision of these Bylaws to be invalid or unenforceable, then such court shall enforce the provision to the maximum lawful extent, and such court's finding of invalidity or unenforceability shall not affect the validity or enforceability of any other provision of these Bylaws.

7.10 **Construction and Interpretation.**

(a) **Gender and Number.** Whenever the context so requires, the gender of all words

used in these Bylaws includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely.

(b) Invalidity. If any portion of these Bylaws shall be invalid or inoperative, then, so far as is reasonable and possible: (1) the remainder of these Bylaws shall be considered valid and operative; and (2) effect shall be given to the intent manifested by the portion held invalid or inoperative.

(c) Headings. The headings used in these Bylaws have been inserted for convenience only and do not constitute matter to be construed in interpretation.

(d) Conformity to Applicable Laws. If any section of the Internal Revenue Code of 1986, as may be amended from time to time (the “Code”) or any proposed, temporary, and final regulations promulgated under the Code, as such regulations may be amended from time to time (the “Treasury Regulations”), specifically mentioned in these Bylaws is amended or repealed such that continued reference to it in these Bylaws or adherence to it by the Members would change or jeopardize the tax status of the Association or materially and adversely alter the effect on the Members of compliance with those specific provisions, then these Bylaws shall be deemed amended to eliminate reference to those Code or Treasury Regulation sections. Nevertheless, it is the declared intent of the Members that these Bylaws be interpreted and implemented in conformity with applicable requirements of the Code and Treasury Regulations where such requirements cannot, without penalty, be varied by agreement.

7.11 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any person in the performance by that person of its obligations with respect to the Association is not a consent or waiver to or of any other breach or default in the performance by that person of the same or any other obligations of that person with respect to the Association. Failure on the part of a person to complain of any act of any person or to declare any person in default with respect to the Association, irrespective of how long that failure continues, does not constitute a waiver by that person of its rights with respect to that default until the applicable statute-of-limitations period has run.

7.12 Binding Effect. These Bylaws are binding on and for the benefit of the Owners and their respective heirs, legal representatives, successors, and assigns.

7.13 Counterparts. These Bylaws may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

7.14 Electronic Methods. These Bylaws, as well as any written consent of the Members or Directors, may be signed by electronic signature, and a photographic, scanned, facsimile, or other similar reproduction of a writing signed by a Member or Director shall be regarded as signed by the Member or Director for purposes of these Bylaws.


[Signatures on following page]

KNOW ALL MEN BY THESE PRESENTS: That the undersigned Board of Directors of the Association hereby certify that the foregoing Bylaws were duly adopted as the Bylaws of said Association effective this 28th day of August, 2023, and that the same do now constitute the Bylaws of said Association.

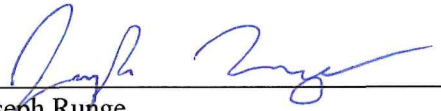
BOARD OF DIRECTORS:



Michael Runge



Mary Runge



Joseph Runge

CERTIFICATION

I, the undersigned, do hereby certify, that I am the duly elected and acting Secretary of Nine Mile Lake Development Homeowners Association, Inc., a South Dakota non-profit corporation.

That the foregoing Bylaws constitute the original Bylaws of said Association as duly adopted at a meeting of the Board of Directors thereof held on the 28th day of August, 2023.



Joseph Runge, Secretary



Instrument No. 543612 Pages: 93
Book: 34 MISCELLANEOUS Pg: 608

Prepared By:

Brian K. Kirby
Boyce Law Firm, L.L.P
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P.O. Box 5015
Sioux Falls, SD 57117
605-336-2424

10/25/2024 2:43:27 PM
Rebecca Vander Broek, Register of Deeds
Lincoln County, South Dakota

Rebecca Vander Broek

Recording Fee: \$116.00
Return To: HERITAGE DEVELOPMENT LLC



**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS AND BYLAWS
FOR
NINE MILE LAKE DEVELOPMENT HOMEOWNERS ASSOCIATION, INC.**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND BYLAWS FOR NINE MILE LAKE DEVELOPMENT HOMEOWNERS ASSOCIATION, INC. (this "Second Amendment") is made this 25th day of October, 2024, by Heritage Development LLC, a South Dakota limited liability company (hereinafter referred to as "Declarant"), and by Nine Mile Lake Development Homeowners Association, Inc. (hereinafter referred to as "Association"), and those undersigned Owners of record.

RECITALS

WHEREAS, the Association desires to again amend through a Second Amendment its Declaration of Covenants, Conditions, Restrictions, Easements and Bylaws ("Declaration") for its own benefit and for the mutual benefit of all future Owners of Units of the property described herein, or any part thereof; and

WHEREAS, Article IX of the Declaration permits the Association to amend the Declaration by an affirmative vote or written consent or any combination thereof of Members representing seventy-five percent (75%) of the total Class A votes in the Association and the consent of the Class B Members; and

WHEREAS, on August 29, 2023, a First Amendment To Declaration Of Covenants, Conditions, Restrictions, Easements And Bylaws For Nine Mile Lake Development Homeowners Association, Inc. was filed with the Lincoln County Register of Deeds ("First Amendment"); and

WHEREAS, the Association has agreed to a Second Amendment and reaffirmation of the Declaration and First Amendment; and

WHEREAS, the Association desires that the Declaration and First Amendment remain unchanged and binding except as written herein;

NOW THEREFORE, the Declaration and First Amendment are hereby amended as follows:

**ARTICLE I
DEFINITIONS**

For purposes of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

"Articles of Incorporation" or "Articles" shall mean the Articles of Incorporation of Nine Mile Lake Development Homeowners Association, Inc., as filed with the Secretary of the State of South Dakota.

“**Association**” shall mean the Nine Mile Lake Development Homeowners Association, Inc., a non-profit corporation, incorporated under S.D.C.L. Chapter 47-22, and its successors or assigns.

“**Board of Directors**” shall mean the Board of Directors of the Association, having its normal meaning under South Dakota corporate law.

“**Bylaws**” shall mean the Bylaws governing the conduct of the Association as they may be amended from time to time and which are attached as **Exhibit C** to the original Declaration.

“**Class “B” Control Period**” shall mean the period of time during which the Class “B” Member is entitled to appoint a majority of the members of the Board of Directors, as provided in the Association’s Bylaws.

“**Common Expenses**” shall mean the actual and estimated expenses incurred by the Association for the general benefit of all Owners, including any reasonable reserve found to be necessary, but not including any expenses incurred during the Class “B” Control Period for initial development, original construction or installation of infrastructure, original capital improvements, or other original construction costs, unless approved by Voting Members representing a majority of the total Class “A” vote of the Association. Common Expenses shall be funded by assessments levied against all Units in the Properties.

“**Common Areas**” shall mean the neighborhood beach, the lake shore and adjacent sidewalk on Thompson Avenue between Poinsett Circle and Nine Mile Court, the green areas, mailbox easements and concrete pads located on east Madison Street and north Thompson Avenue, Block 11, Lots 1A-16A (A lots only), tree berm on the south property line of the development, and personal properties incident thereto and any other properties owned and maintained by the Association for the common and exclusive benefit and enjoyment by the residents of the Association.

“**Declarant**” shall mean Heritage Development LLC, a South Dakota limited liability company, its successors and assigns.

“**First Mortgage**” shall mean a person owning a mortgage on any Unit, which mortgage is first in priority upon foreclosure to other mortgages which may affect such Unit.

“**Member**” shall mean a person entitled to membership in the Association as provided herein.

“**Outbuildings**” shall mean any freestanding shed, gazebo, pool house, pavilion and any other enclosed or partially enclosed structures.

“**Owner**” shall mean the Person or Persons whose estates or interests, individually or collectively, aggregate fee simple and absolute ownership of a Unit.

“**Person**” shall mean a natural person, corporation, partnership, limited liability company, trust, or other legal entity capable of holding title to real property.

“**Properties**” shall mean the real property described in **Exhibit A** (See also **Exhibit B** of the original Declaration) attached hereto together with such additional property as is hereafter subjected to this Declaration or by a Supplemental Declaration.

“**Site Plan**” shall mean the land use plan attached hereto marked **Exhibit D** in the original Declaration. The Site Plan shows development of the Properties.

“Supplemental Declaration” shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which, by way of example and not limitation, subjects additional property to this Declaration, or imposes, expressly or by reference additional restrictions and obligations on the land described therein, by recorded instrument.

“Unit” shall mean that part of the Properties intended for development, use and occupancy as an attached residence for a single family on separately described real estate, as well as vacant land intended for development as such. The terms shall include all portions of the real estate owned as well as any structure thereon. Although the structures contemplated may contain multiple dwellings, each dwelling shall be deemed a separate Unit. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Site Plan approved by the Declarant, until such time as a certificate of occupancy is issued on all or a portion thereof by the local governmental entity having jurisdiction. After issuance of a certificate of occupancy on any portion thereof, the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

“Voting Member” shall mean the Member registered to cast the vote for the Unit as provided in the Bylaws.

Terms capitalized but not defined herein shall have the definitions ascribed to them in the Bylaws.

ARTICLE IV ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

The Properties and all Units thereon are subject to the architectural standards and use restrictions set forth in this Article, its Bylaws, and Rules and Regulations (as defined below). The Properties shall be governed by the following provisions:

4.1 Residential Use. The Properties shall be used for single family residential purposes only, which purposes shall include parking and recreation, and such other purposes by the Owners and their families, guests and tenants, as may be permitted by the Bylaws or by the Association, through its Board of Directors. No Unit may be subdivided into smaller Units unless agreed to by the Board of Directors. Notwithstanding the foregoing, the Declarant may maintain a business and sales office and/or model units on the Properties so long as the Declarant owns any properties subject to this Declaration, and may display signs offering the same for sale.

4.1.1 Single Family Dwellings. Each Single-Family Dwelling, or Building if it is a multiplex housing, shall be subject to the approval of the Developer. Specifically, each Owner shall provide any and all plans, roof pitch, exterior colors, materials, specifications of the building, fence, walls, and any other structures to the Developer and the Developer shall approve or decline the same in writing.

4.1.2 Additional Structures. Additions to the primary structure must be approved by the Board of Directors prior to construction commencement. Additional structures must maintain the same exterior appearance.

4.1.3 Outbuildings. Outbuildings must be permanently constructed on concrete foundations and the exterior design shall be in conformance with the principal residence. Outbuildings must be approved by the Board of Directors prior to construction commencement. Approval of outbuildings may be denied for any reason. Outbuildings are not to be approved if the proposed location significantly affects the view of the lake of an adjacent lake lot. No living space may be contained in an approved outbuilding.

4.1.4 Fences. Fences must be constructed of approved material only. Fencing material and proposed location must be approved by the Board of Directors prior to installation. Fences must be installed by a licensed, bonded contractor. Lake Lots (lots that are purposefully and directly adjoined to the lake) may have fencing only constructed of 4 feet tall, iron rod material. Non-Lake Lots (all lots in the development that are not purposefully or directly adjoined to the lake) may have fencing constructed of 4 feet tall, iron rod material OR 6 feet tall, privacy vinyl of neutral color (white, tan, or grey). Absolutely no fences constructed of wood, chain link or any other non-approved material are allowed on any lot.

4.1.5 Landscaping. No box elder, Siberian elm, Chinese elm, American elm, native cottonwood, columnar poplar, or other such noxious tree shall be planted on any Lot or within the Property. Lake Lots must obtain approval from the Board of Directors prior to tree placement in the backyards of the lots. Trees shall not be approved if the tree placement will significantly block the view of any adjacent lake lots.

4.1.5.1 Lake Lots. Lake Lots have dedicated beach areas specifically adjoined to their property line. These beach areas must be seeded with fescue grass at a minimum. Homeowners must leave 10 feet of fescue grass from the property line. In between the fescue grass sections, homeowners may place sand, boulders, landscaping rock, concrete pads, paver patios, or similar landscaping materials, or the entire area may remain fescue grass. The Homeowner is responsible for installing the landscaping per the specifications of the covenants. Homeowners must maintain the beach area Maintenance includes but is not limited to mowing the fescue areas, weeding, and replacing any landscape materials lost to erosion.

4.1.6 Docks. All docks must be floating docks. Docks cannot extend more than 15 feet beyond the shoreline and must be placed at a minimum of 10 feet inside the property lines. All docks must be branded. Candock or an equivalent brand is acceptable.

4.1.7 Temporary Structures. No trailer, tent (other than children's sleepover/play tents, blow up children's items such as slides and the like), camper, mobile, home, shack or any other outbuilding or structure of temporary character shall be used on any Lot at any time as a residence, either temporarily or permanently. Trampolines, basketball hoops, hockey nets, soccer nets and the like are acceptable if they do not obstruct or encroach on neighbors' properties.

4.1.8 Businesses. No business activities shall be carried out in any Single Family Dwelling unless it is carried out in a home office where clients and customers do not visit. Door-to-door sales activities are prohibited on the Property.

4.1.9 Signs. All signs, except "For Sale" signs, must be approved by the Board of Directors prior to being displayed.

4.1.10 Vehicles, Machinery, Equipment. No trucks, buses, trailers, boats, mobile homes, campers, snowmobiles, motorcycles, snow blowers, lawn mowers or other similar equipment or vehicles are permitted on the Property unless maintained in an enclosed garage.

4.1.11 Fixtures. No non-residential type antenna, tower, satellite dish, or similar device may be erected or constructed on the lot without prior approval of the Board of Directors. Regardless of the type of fixtures, attention must be made to not unreasonably obstruct the views of other properties. Any and all utility lines or structures shall be constructed underground.

4.1.12 Mailboxes. The developer hereby reserves an easement for itself and for the Associations for the maintenance, access, and repair of a community mailbox. After installation, the

developer is not responsible for any repairs or maintenance of the community mailboxes. Any such repairs are the responsibility of the individual homeowner or the Association. Any maintenance or repairs should conform to the quality and aesthetics as the originally installed mailboxes.

ARTICLE VI MAINTENANCE

6.1 **By the Owners.** Except to the extent provided in Section 6.2 below, each Owner shall have the obligation to maintain, replace and keep in good repair all portions of their Unit. This includes, but is not limited to, structural portions, glass surfaces, windows, window frames, interior and exterior doors, doorways, frames, hardware, walls, patios, lawns, landscaping, fences – as hereinbefore set forth in Section 4.1.4 (Permitted: Vinyl fences in neutral colors, iron rod fence. Prohibited: wood fences of any type, chain link fences of any type. Installation of fences must receive pre-approval from the Association), heating and cooling systems and components thereof, plumbing and related systems and components thereof, electrical and related systems and components thereof including appliances, fixtures and lights, all gas, water, or sewer systems, fireplaces, pipes, lines, ducts, conduits or other apparatus serving only the Unit. The Owner shall perform their responsibilities in such manner so as to not unreasonably disturb other Persons residing in adjacent Units. Owners are responsible for immediately picking up after their pet(s) on a continuous basis. Owners shall not make any interior or exterior alterations that will have a substantial or detrimental effect on any other Unit.

6.2 **Multiplex.** If a Unit is part of a multiplex, each such Unit is owned subject to, and together with the mutual easements of support and shelter over and to the party walls provided for party walls by law. In the event, by virtue of reconstruction, repair or removal of structures, affecting elements supported or sheltered by the party wall, the removing Owner shall share, reconstruct and weather proof such party wall so it can perform its function of support and shelter, and if such reconstruction, repair or removal is to be permanent, finish all surfaces exposed to weather in an architecturally finished manner consistent with the rest of the building. The Owner shall have an easement upon or into adjoining Units and/or a right-of-entry as is necessary to perform such work and shall not be liable for trespass for such entry or work.

6.3 **By the Association.**

(a) **Required Obligations.** The Association's obligation extends only to maintenance and repair of the Common Areas. In the event a maintenance responsibility is not clearly shown by this Declaration, the Board of Directors shall have the authority to determine whether the Owner or the Association shall bear the responsibility. The Association is responsible for maintenance, security, repairs, and improvements of all Common Areas, including snow removal from the sidewalks of Common Areas and from areas in front of the mailbox easements. The Association is responsible for mowing and maintenance of Block 11, A lots to comply with City of Tea residential lot standards, as well as mowing and maintenance of the tree berm located on the south property line of the development, including replanting trees as the Association sees fit.

(b) **Optional Obligations.** If agreed to by the Board of Directors, the maintenance provided by the Association may include painting, garbage service, other work, snow removal from the paved driveways, sidewalks, and streets, mowing and other landscape maintenance, excluding gardens or flower beds planted by the Owner or occupant of such Unit. An Owner shall be required to opt-in to such maintenance, repair, or replacement, and shall not be required to participate. The cost shall be assessed to each Owner individually shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Unit as hereinafter provided.

6.4 **Failure to Maintain.** If the Board of Directors determines that (a) any Owner has failed or refused to discharge properly their obligation with regard to the maintenance, repair or replacement of

items of which they are responsible hereunder; or (b) that the need for maintenance, repair, or replacement in the Common Areas is caused through the willful or negligent act of any Owner, their family, guests, lessees or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense. Such cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Unit as hereinafter provided. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary by the Board of Directors. In the case of (a) above, when the Owner has not discharged their responsibility, unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten days. If the Board of Directors determines that an emergency exists, that an Owner has not complied with the demand given by the Association as herein provided, or that the need for maintenance or repair is in a Common Area as in (b) above, then the Association may, but is not obligated to, provide any such maintenance, repair or replacement in the manner described above. The Association or its agents or employees shall have a right of entry upon or into the Unit as necessary to perform such work and shall not be liable for trespass for such entry or work.

6.5 **Rights of the Association.** The Board of Directors shall have, by a two-thirds (2/3rds) vote, the power to dedicate portions of the Common Areas to any local, state, or federal governmental entity including, but not limited to, Lincoln County, South Dakota, subject to easement rights of Owners set forth in Article III. The Association may maintain other property which it does not own including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable. With respect to the Common Areas and in accordance with the Articles of Incorporation and Bylaws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational or other agreements with trusts, condominiums, cooperatives or neighborhood and other owners or residents associations. Such agreements shall require the consent of two-thirds (2/3rds) of all Directors of the Association. See Section 4.3 of the Bylaws.

[Signatures on following pages]

