

**BY-LAWS  
OF  
DIAMOND VALLEY TOWNHOMES ASSOCIATION, INC.**

The following are the By-Laws of Diamond Valley Townhomes Association, Inc., a South Dakota non-profit corporation (the "Association") and are subject to and made a part of the Declaration of Covenants, Conditions and Restrictions (the "Declaration") for Diamond Valley Townhomes Association, Inc., Lincoln County, South Dakota. The terms used in these By-Laws shall have the same meaning as they have in the Declaration, except as otherwise specified herein.

**ARTICLE I  
MEMBERSHIP**

1. **Membership Defined:** As specified in the Declaration, the person or persons defined as "Unit Owners" or "Owners," whose estates or interests in a Unit individually or collectively aggregate a fee simple absolute ownership, shall, by virtue of such interest or estate, be Members of the Association. When one or more persons own such an interest or estate in a Unit, all such persons shall be Members. A person shall cease to be a Member at such time as that person has transferred such interest or estate.

2. **Registration of Owner and Occupant:** It shall be the duty of each Owner and Occupant to register with the Secretary of the Association in writing (i) the name and address of such Owner or Occupant, (ii) the nature and satisfactory evidence of such Owner's or Occupant's interest or estate in a Unit, (iii) the addresses at which such Owner or Occupant desires to receive notice, if entitled to such notice, of any duly called meeting of the Members, and (iv) the name of the Owner or Occupant, if there is more than one Owner or Occupant with respect to a Unit, who shall be authorized to cast the vote. If all of the registered Owners and Occupants of a Unit do not agree as to the Owner or Occupant authorized to cast the vote when more than one vote is cast for their Unit, then the vote associated with the Unit shall not be recognized. If an Owner or Occupant does not register as provided in this paragraph, 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 By-Laws. If there is more than one Owner or Occupant of a Unit, each must execute the registration as provided in this paragraph.

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 Unit.

**ARTICLE II  
ASSOCIATION MEETINGS OF MEMBERS**

1. **Place:** All meetings of the Members of the Association shall be held at the office of the Association or at such other 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.

2. **Annual Meetings:** The annual meeting of Members shall be held on the second Tuesday in September in 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. **Special Meetings:** Special meetings of the Members may be called by the President. Special meetings of the Members must be called and scheduled to be held by the President or Secretary within 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.

4. **Notice of Meetings:** At least 15, but no more than 30, days in advance of any annual or regularly scheduled meeting of the Members, and at least 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 Units 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 Article I, paragraph 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 35 days prior to the date of an annual meeting or more than 20 days prior to the date of a special meeting.

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.

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.

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

8. **Voting Register:** At the beginning of each meeting of the Members, the Secretary shall present to the meeting a written list of the Units, 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 Unit.

9. **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 paragraph 4 of this Section.
- 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.

10. **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 One Thousand Dollars (\$1,000.00), whichever is greater, anticipated by the Association during the current year or succeeding two 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 Units, identifying the Unit and the amount of the unpaid assessment.
- g. A statement as to real estate taxes and assessments paid for the Common Areas and Facilities 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 Units 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.

11. **Voting Rights:** The voting rights of the Members and Declarant are set forth in Article IV of the Declaration.

12. **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.

13. **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 of Incorporation, the Declaration, these By-Laws or the laws of South Dakota.

14. **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 Unit, 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 III BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

#### A. **Composition and Selection:**

Section 1. **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 of Incorporation, the Declaration of Covenants, Conditions and Restrictions, and these By-Laws, the directors shall be Members or spouses of such Members; provided, however no person and his or her spouse may serve on the Board at the same time. In the case of an Owner which is a corporation or partnership, the person designated in writing to the Secretary of the Association as the representative of such corporation or partnership shall be eligible to serve as a director.

Section 2. Directors During Class B Control Period. Subject to the provisions of Section 6 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:

- (a) when one hundred percent (100%) of the Units contemplated by the Site Plan for the property described on Exhibit A of the Declaration have certificates of occupancy issued thereon and have been conveyed to persons other than the Declarant or builders holding title solely for purposes of development and sale;
- (b) December 31, 2012;
- (c) When, in its discretion, the Class B Member so determines.

Section 3. Right to Disapprove Actions. This Section 3 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 and any committee, as is more fully provided in this Section. 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:

- (a) The Class B Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board 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 Article III, Sections 8, 9, and 10, of these By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, 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
- (b) 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, 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. 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, such committee, the Association, or any individual member of the Association, if Board, 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 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.

Section 4. Number of Directors. The number of Directors in the Association shall be not less than three (3), nor more than seven (7), as provided in Section 6 below. The initial Board shall consist of three (3) members as identified in the Articles of Incorporation.

Section 5. Nomination of Directors. Except with respect to Directors selected by the Class B 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, with at least one (1) representative from each class of Member. 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.

Section 6. Election and Term of Office. Notwithstanding any other provision contained herein:

(a) 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 Units permitted by the Site Plan for the property described in Exhibit A or whenever the Class B Member earlier determines, the Association shall call a special meeting at which Voting Members representing the Class A Members 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. The director elected by the Voting Members shall not be subject to removal by the Class B Member acting alone and shall be elected for a term of two (2) years or until the happening of the event described in

subsection (b) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) 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 Units permitted by the Site Plan for the property described in Exhibit A or whenever the Class B Member earlier determines, the Board shall be increased to five (5) Directors. The Association shall call a special meeting at which Voting Members representing the Class A Members shall elect two (2) of the five (5) directors, who shall serve as at-large directors. The remaining three (3) directors shall be appointees of the Class B member. The directors elected by the Voting Members shall not be subject to removal by the Class B Member acting alone and shall be elected for a term of two (2) years or until the happening the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, a successor shall be elected for a like term.

(c) Within thirty (30) days after termination of the Class B Control Period, the Association shall call a special meeting at which Voting Members representing the Class A Members 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. The directors elected by the Voting Members shall not be subject to removal by the Class B Member acting alone and 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 subsection shall not apply and directors shall be elected in accordance with subsection (d) below.

(d) At the first annual meeting of the membership after the termination of the Class B Control Period, the directors shall be selected as follows: All directors shall be elected by the Voting Members representing the Class A Members. Three (3) directors shall be elected for a term of two (2) years and two (2) directors shall be elected 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 to serve for a term of two (2) years.

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 to serve any number of consecutive terms.

Section 7. Removal of Directors and Vacancies. 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.

Any director elected by the Voting Members who has three (3) consecutive unexcused absences from Board 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 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, and it may appoint a successor.

**B. Meetings:**

Section 8. Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 9. 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 four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to directors not less than four (4) 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.

Section 10. 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: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) 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 (c) by telefax prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone or telefax shall be delivered, telephoned or faxed at least seventy-two (72) hours before the time set for the meeting.

Section 11. 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 (a) a quorum is present, and (b) 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.

Section 12. 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 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.

Section 13. 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.

Section 14. 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.

Section 15. Open Meetings. Subject to the provisions of Section 16 of this Article, all meetings of the Board 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.

Section 16. Action Without a Formal Meeting. Any action to be taken at a meeting of the 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.

**C. Powers and Duties:**

Section 17. 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 By-Laws directed to be done and exercised exclusively by the Voting Members of the membership generally.

The Board of Directors shall delegate to one of its members 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.

In addition to the duties imposed by these By-Laws 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, and shall be responsible for performing or causing to be performed, the following, in way of explanation, but not limitation.

(a) 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;

(b) 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 Unit'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;

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

(d) 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 Facilities 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;

(e) 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;

(f) making and amending rules and regulations;

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

(h) 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 By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, 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;

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

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

(l) 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;

(m) making available to any prospective purchaser of a Unit, any Owner of a Unit, any First Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Unit and all other books, records, and financial statements of the Association; and

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

Section 18. 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's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 17 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

Section 19. Accounts and Reports. The following management standards of performance will be followed unless the Board, by resolution, specifically determines otherwise:

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

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

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

(d) 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.

(e) 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;

(f) 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; (1) a balance sheet; (2) an operating (income) statement; and (3) 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, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement.

Section 20. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Common Areas and Facilities without the approval of the Voting Members of the Association. The Board shall also have the power to borrow money for other purposes; provided, the Board shall obtain Voting Member approval in the same manner provided in Article VII, Section 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 By-Laws, or the Article of Incorporation, during the Class B Control Period, no Mortgage lien shall be placed on any portion of the Common Area 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.

Section 21. Rights of the Association. With respect to the Common Areas and Facilities and in accordance with the Articles of Incorporation 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.

Section 22. 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.

Section 23. Enforcement. The Board 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 Area for violation of any duty imposed under the Declaration, these By-Laws, 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 Unit. In the event that any occupant, guest or invitee of a Unit violates the Declaration, By-Laws, 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, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, the Board 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.

(b) 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.

(c) 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.

(d) 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 By-Laws, 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.

Section 24. Unless and until the Board and no less than 75% of the Voting Members vote otherwise, there shall exist the Reserve Fund for Contingencies and Replacements as set forth in the Declaration of Restrictive Covenants.

#### **ARTICLE IV OFFICERS**

Section 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. 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.

Section 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 III. 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.

Section 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.

Section 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.

Section 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.

Section 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 V COMMITTEES**

Section 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 at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors.

Section 2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, 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 By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article III, Section 23 of these By-Laws.

## **ARTICLE VI MISCELLANEOUS**

Section 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.

Section 2. Parliamentary Rules. Except as may be modified by Board 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 of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are any conflicts between the provisions of South Dakota law, the Declaration, the Articles of Incorporation and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration, By-Laws, and Articles of Incorporation, 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, and committees shall be made available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, 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 Unit at the office of the Association or at such other place as the Board shall prescribe.

(b) Rules for Inspection. The board 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.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws 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 Unit 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.

Section 6. Amendment. Prior to the conveyance of the first Unit, Declarant may unilaterally amend these By-Laws. After such conveyance, the Declarant may unilaterally amend these By-Laws 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) 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 Units; or (d) 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. 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 By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

Thereafter and otherwise, these By-Laws 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 X 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. The Veterans Administration (VA), so long as the VA is guaranteeing any Mortgage on a Unit within the Properties, or the Department of Housing and Urban Development (HUD), so long as HUD is insuring any Mortgage on a Unit within the Properties, shall have the right to approve amendments to these By-Laws for so long as there is a Class B membership. Any amendment to be effective must be recorded in the public records for Minnehaha County, South Dakota.


If an Owner consents to any amendment to the Declaration or these By-Laws, 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.

**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Diamond Valley Townhomes Association, Inc., a South Dakota non-profit corporation.

That the foregoing By-Laws constitute the original By-Laws of said Association as duly adopted at a meeting of the Board of Directors thereof held on the 15<sup>th</sup> day of December, 2004.

  
Secretary

**EXHIBIT A**  
**Site Plan**

