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PAGE: 691

Pages: 2



2010/10/29 10:24:27 AM

KATHLEEN HILL, REGISTER OF DEEDS
LINCOLN COUNTY, SOUTH DAKOTA

Recording Fee: \$ 12.00
Return To: DUNHAM COMPANY

**AMENDMENT NO. 1
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PLATINUM RIDGE TOWNHOMES ASSOCIATION, INC.**

THIS AMENDMENT NO. 1 TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made effective this 27 day of October, 2010, by Platinum Valley, L.L.P., of 230 S. Phillips Avenue, Suite 202, Sioux Falls, a South Dakota limited liability partnership (hereinafter referred to as "Declarant").

Whereas, the Declarant filed that certain Declaration of Covenants, Conditions and Restrictions dated October 26, 2005 and recorded November 16, 2005, at 9:40 a.m. o'clock, recorded with the Lincoln County Register of Deeds in Book 15, page 1055 ("Declaration") with respect to the following real estate:

Lots 1-15, Block 6; Lots 29-70, Block 8; Lots 1-30, Block 9 and Block 25 Platinum Valley III Addition to the City of Sioux Falls, Lincoln County, South Dakota according to the recorded plat thereof.

Whereas, pursuant to an August 31, 2010 ballot executed by all of the Unit Owners of Platinum Ridge Townhomes Association, Inc. (the "Association"), in which the below amendment was passed unanimously, the Unit Owners and the Declarant desire to extend the date on which the Unit Owners will take control of the Association.

NOW THEREFORE, the Declarant hereby declares:

1. **Amendment.** Article IV, Section 2.b. "Voting" is hereby amended and restated in its entirety to read as follows:

b. On December 31, 2015;

IN WITNESS WHEREOF, the undersigned Declarant has executed this Amendment No. 1 to Declaration the date and year first above written.

PLATINUM VALLEY, L.L.P.

By [Signature]
Its Managing Partner

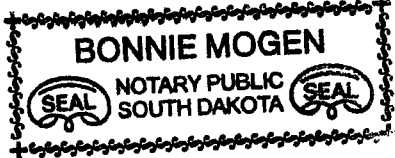
STATE OF SOUTH DAKOTA)

: SS

COUNTY OF MINNEHAHA)

On the 27 day of October, 2010, before me, the undersigned officer, personally appeared Donald R. Durham, Jr. who acknowledged himself to be the Managing Partner of Platinum Valley, L.L.P., a limited liability partnership, and that as such Managing Partner, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability partnership by himself as Managing Partner.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



[Signature]
Notary Public - South Dakota
My Commission Expires: 10/19/12


**AMENDMENT NO. 1 TO BY-LAWS
OF
PLATINUM RIDGE TOWNHOMES ASSOCIATION, INC.**

THIS AMENDMENT NO. 1 TO BY-LAWS OF PLATINUM RIDGE TOWNHOMES ASSOCIATION, INC., is made and entered into this 27 day of October, 2010, pursuant to approval by the unit owners of Platinum Ridge Townhomes Association, Inc., in accordance with the Declaration of Covenants, Conditions and Restrictions dated October 26, 2005.

Article III, Section 2.(b) "Directors During Class B Control Period" is hereby amended and restated in its entirety to read as follows:

b. On December 31, 2015;

Dated this 27 day of October, 2010.



Attest—Secretary

DECLARANT:

PLATINUM VALLEY, L.L.P.

By 
Its _____



Prepared By:
Hagen, Wilka & Archer, LLP
PO Box 964
Sioux Falls, SD 57101-0964
605.334.0005

2011/04/28 10:43:19 AM

REBECCA MATHIESEN, REGISTER OF DEEDS
LINCOLN COUNTY, SOUTH DAKOTA

Recording Fee: \$ 12.00
Return To: DUNHAM COMPANY

**AMENDMENT NO. 2
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PLATINUM RIDGE TOWNHOMES ASSOCIATION, INC.**

THIS AMENDMENT NO. 2 TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made effective this 25 day of April, 2011, by Platinum Valley, L.L.P., of 230 S. Phillips Avenue, Suite 202, Sioux Falls, South Dakota, a South Dakota limited liability partnership (hereinafter referred to as "Declarant").

Whereas, the Declarant filed that certain Declaration of Covenants, Conditions and Restrictions dated October 26, 2005, and recorded November 16, 2005, at 9:40 a.m. o'clock, recorded with the Lincoln County Register of Deeds in Book 15, page 1055, and amended pursuant to the Amendment No. 1 to Declaration of Covenants, Conditions and Restrictions dated October 27, 2010, and recorded October 29, 2010, at 10:24:27 a.m. o'clock, recorded with the Lincoln County Register of Deeds in Book 20 Miscellaneous, page 691 (together "Declaration") with respect to the following real estate:

Lots 1-15, Block 6; Lots 29-70, Block 8; Lots 1-30, Block 9 and Block 25 Platinum Valley III Addition to the City of Sioux Falls, Lincoln County, South Dakota, according to the recorded plats thereof.

Whereas, the Board of Directors of Platinum Ridge Townhomes Association, Inc. (the "Association"), approved allowing three (3) vehicles with respect to Units with 3-car garages.

NOW THEREFORE, the Declarant hereby declares:

1. **Amendment.** Article VIII, Section 42 "Architectural Standards and Use Restrictions" in the Declaration is hereby amended and restated in its entirety to read as follows:

42. **Parking and Prohibited Vehicles.** Unless otherwise approved by the Board in accordance with the Design Guidelines, no more than two (2) vehicles will be allowed for Units with a 2-car garage and no more than three (3) vehicles will be allowed for Units with a 3-car garage. All vehicles must be kept in garages at all times with garage doors closed.


**AMENDMENT NO. 2 TO BY-LAWS
OF
PLATINUM RIDGE TOWNHOMES ASSOCIATION, INC.**

THIS AMENDMENT NO. 2 TO BY-LAWS OF PLATINUM RIDGE TOWNHOMES ASSOCIATION, INC., is made effective this 25 day of April, 2011, by the Declarant pursuant to the Bylaws of the Platinum Ridge Townhomes Association, Inc. ("Bylaws").

Article II, Section 2, of the Bylaws is hereby amended and restated in its entirety to read as follows:

Annual Meetings: The annual meeting of Members shall be held on the third Tuesday in March 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.

Dated this 25 day of April, 2011.


Attest—Secretary

DECLARANT:

PLATINUM VALLEY, L.L.P.

By 
Its Alan J. Parter

Prepared By:
Hagen, Wilka & Archer, PC
PO Box 964
Sioux Falls, SD 57101-0964
605.334.0005

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PLATINUM RIDGE TOWNHOMES ASSOCIATION, INC.**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 20th day of October, 2005, by Platinum Valley, L.L.P., of Sioux Falls, a South Dakota corporation (hereinafter referred to as "Declarant").

The Declarant is the owner of the real property described in Exhibit A attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions as provided herein and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration.

Declarant has or will cause the incorporation, under the laws of the State of South Dakota, as a non-profit corporation, Platinum Ridge Townhomes Association, Inc., for the purpose of exercising the functions aforesaid.

Declarant hereby declares that all of the property described in Exhibit A and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof.

This Declaration is made pursuant to the provisions and authority of S.D.C.L. Chapter 43-12 entitled Real Property Covenants. This Declaration does not and is not intended to create a condominium within the meaning of the South Dakota Condominium Act, S.D.C.L. Chapter 43-15A.

**ARTICLE I
DEFINITIONS**

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

1. **“Articles of Incorporation” or “Articles”**. The Articles of Incorporation of Platinum Ridge Townhomes Association, Inc., as filed with the Secretary of the State of South Dakota.
2. **Association**. The Platinum Ridge Townhomes Association, Inc., a non-profit corporation, incorporated under S.D.C.L. Chapter 47-22, a South Dakota corporation, its successors or assigns.
3. **Board of Directors**. The Board of Directors of Platinum Ridge Townhomes Association, Inc., having its normal meaning under South Dakota corporate law.
4. **By-Laws**. The By-Laws governing the conduct of Platinum Ridge Townhomes Association, Inc., attached hereto as Exhibit B and incorporated herein by reference, as they may be amended from time to time.
5. **Class “B” Control Period**. 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 By-Laws.
6. **Common Expenses**. The actual and estimated expenses incurred by the Association for the general benefit of all Unit 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.
7. **Common Areas and Facilities**. Except as provided herein, Common Areas and Facilities shall mean and refer to the green areas, common areas, and personal properties incident thereto and any other properties owned and maintained by the Association, including the Community Building, for the common benefit and enjoyment by the residents of the Association.
8. **Declarant**. This term shall mean and refer to Platinum Valley, L.L.P., a South Dakota limited liability partnership, its successors and assigns.
9. **First Mortgagee**. A person owning a mortgage on any unit, which mortgage is first in priority upon foreclosure to other mortgages which may affect such unit.
10. **Member**. A person entitled to membership in the Association as provided herein.

11. **Person.** A natural person, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

12. **Properties.** The real property described in Exhibit A attached hereto together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

13. **Site Plan.** The conceptual land use plan attached hereto marked Exhibit C. The Site Plan is subject to amendment by the Declarant. The Site Plan shows development of the Properties.

14. **Supplemental Declaration.** 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.

15. **Unit.** 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 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.

16. **“Unit Owner” or “Owners”.** The person or persons whose estates or interests, individually or collectively, aggregate fee simple and absolute ownership of a Unit.

17. **Voting Member.** The Member registered to cast the vote for the Unit as provided in the By-Laws.

ARTICLE II GENERAL DESCRIPTION

1. **The Real Estate.** The Properties legally described in Exhibit A will include 43 townhouse buildings, consisting of 86 Units described in Exhibit C. Each Unit Owner will own the real estate beneath the Unit and surrounding the Unit as platted and shown on Exhibit C.

2. **The Building.** The townhouses are either one or two story, without basements. The buildings are constructed of concrete, wood frame with brick veneer and wood siding

combination. All Units have an exterior patio or deck with direct access from the building. The individual buildings have living room, dining area, two or more baths and two or more bedrooms. Each Unit has individual forced air heating, and air conditioning and a separate water meter.

3. **Right-of-Ways.** The streets and right-of-ways within the Properties will be owned by the Association. The Association will provide repair and maintenance of all streets, utilities and other areas within the platted right-of-way.

ARTICLE III PROPERTY RIGHTS

1. **Real Estate.** Each Owner shall have fee title ownership of the Unit purchased by the Owner, subject to all restrictive covenants.

2. **Common Areas and Facilities.** Every Owner shall have a right and non-exclusive easement of use, access and enjoyment in the Common Areas and Facilities which shall be appurtenant to and pass with the title to his Unit, subject to:

a. this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association.

b. the right of the Association to adopt rules regulating the use and enjoyment of the Common Area.

c. the rights of the Board to suspend the rights of the Owner to use any facilities, or the right of the Board to permit non-member's use of any facilities situated upon the Common Area upon payment of use fees established by the Board, and the right of the Board to impose reasonable membership requirements and charge reasonable admission or other fees to members for use of any facility situated upon the Common Areas.

d. the right of the Association acting through its Board to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in the By-Laws.

e. the right of the Association, acting through its Board to dedicate or transfer all or any part of the Common Area pursuant to Article V hereof; provided however, the dedication or transfer of any streets or roads which are necessary for ingress and egress to and from any Unit shall be subject to the Unit Owner's non-exclusive easement.

3. **Community Building.** The Association will provide as a Common Area to its Members a Community Building which will be located on Lot 15, Block 6, Platinum Valley III Addition to the City of Sioux Falls, Lincoln County, South Dakota. This Community Building, together with all facilities located within, and the land on which the building stands, will be

shared with all the Members. Each Member shall have the right to use the Community Building under the terms and conditions established by the Board. Failure to comply with the rules and regulations promulgated by the Board shall result in the Member's loss of use of the Community Building.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

1. **Membership.** Unit 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 members 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 corporation or partnership shall be exercised by the individual designated from time to time by the Unit Owner in a written instrument provided to the Secretary of the Association, subject to the provisions of this Declaration and the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Unit. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

2. **Voting.** The Association shall have two (2) classes of membership, Class A and Class B, as follows:

CLASS A: Class A Members shall be entitled to one equal vote for each Unit in which they hold the interest required for membership under Section 1 hereof. 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 By-Laws.

The Unit's vote shall be suspended if more than one person seeks to exercise it.

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 By-Laws, are specified elsewhere in this Declaration or the By-Laws. The Class B member shall be entitled to one vote per Unit owned and in addition, shall be entitled to appoint a majority of the members of the Board of Directors during the Class B control period as specified in Article III, Section 2 of the By-Laws. After termination of the Class B control period, the Class B member shall have the right to disapprove actions of the Board of Directors and any committee as provided in Article III, Section 3 of the By-Laws.

The Class B Membership shall cease and terminate upon the happening of either of the following events, whichever first occurs:

- a. When 100% of the Units within Platinum Ridge Townhomes Association are sold; or
- b. On December 31, 2010.
- c. When in its discretion, the Class B Member so determines.

ARTICLE V MAINTENANCE

1. **By the Owner.** Except to the extent provided in paragraph 2 below, each Owner shall have the obligation to maintain, replace and keep in good repair all portions of his Unit. This includes, but is not limited to, glass surfaces, windows, window frames, interior and exterior doors, doorways, frames, hardware, walls, patios, 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. All exterior structural repair or replacement shall be made by the Association. The Owner shall perform his responsibilities in such manner so as to not unreasonably disturb other persons residing in adjacent Units. Unit Owners shall not make any interior or exterior alterations that will have a substantial or detrimental effect on any other Unit. Each 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 Unit 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 Unit 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.

2. **By the Association.** 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 and Facilities. 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 Unit Owner or the Association shall bear the responsibility. The Association shall maintain, replace and repair, as a Common Expense, the Common Areas and Facilities. The Association shall also maintain, replace and repair as a Common Expense some portions of the individually owned property, such as roof shingles, or other roof coverings, exterior trim, exterior siding, sidewalks, all surface parking areas, landscaping and other flora and irrigation. The Association shall maintain the exterior paint of all exterior doors. The maintenance provided by the Association shall include painting, garbage service, snow removal from the paved driveways, sidewalks, and streets, mowing and other landscape maintenance, excluding gardens or flower beds planted by the Unit Owner or Occupant. The Association will provide repair and maintenance of all streets, utilities, and other areas within the platted right-of-way. Maintenance provided by the Association shall not include routine cleaning.

3. **Failure to Maintain.** If the Board of Directors determines that (i) any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair or replacement of items of which he or she is responsible hereunder; or (ii) that the need for maintenance, repair, or replacement in the Common Areas or Facilities is caused through the willful or negligent act of any Owner, his or her 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 (i) above, when the Owner has not discharged his or her 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 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 or Facility as in (ii) 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.

4. **Rights of the Association.** The Board shall have, by a two-thirds vote, the power to dedicate portions of the Common Areas and Facilities to any local, state, or federal governmental entity including, but not limited to, Lincoln County, South Dakota, subject to easement rights of Unit 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 Facilities and in accordance with the Articles of Incorporation and By-Laws 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 of all Directors of the Association.

ARTICLE VI INSURANCE AND CASUALTY LOSSES

1. **Association Insurance.** The Association shall obtain and maintain at all times as a Common Expense, insurance as required herein, including a casualty insurance policy or policies affording fire and extended coverage in an amount that at least equals the full replacement value of all structures within the Common Areas and Facilities and a liability insurance policy or policies in an amount not less than \$2,000,000 general aggregate; \$1,000,000 for injury or injuries, including death, arising out of each occurrence, and in addition a \$1,000,000 umbrella policy, or such additional amounts as the Board may deem advisable from time to time covering the Association, the Board of Directors, Officers and all agents, and employees of the Association. Insurance policies upon the property covering the items described in this Article shall be purchased by the Association as Trustee for the benefit of the Association

and the Owners and their mortgagees, as their interests may appear. Provisions shall be made for the issuance of certificates of insurance endorsements to the mortgagees of the Owners.

The policies may contain reasonable deductibles and the amount thereof shall be added to the face amount of the policies in determining whether the insurance equals at least full replacement cost.

In addition to the insurance required hereinabove, the Board shall obtain, at its discretion, as a Common Expense:

a. Workmen's compensation insurance if and to the extent necessary to meet the requirements of applicable law.

b. Public liability and officers and directors liability insurance in such amounts as the Board may determine, but in no event less than \$1,000,000 per occurrence (such insurance shall obtain a cross-liability endorsement).

c. At the option of the Association, fidelity bonds covering officers, directors, employees and other persons who handle or are responsible for handling Association funds. If reasonably available, such amounts shall be in an amount at least equal to no less than six months operating expenses plus reserves on hand as of the beginning of the fiscal year and shall contain waivers of any defense based upon the exclusion of persons serving without compensation.

d. Flood insurance, if required.

e. Fire insurance with extended coverage, vandalism, and malicious mischief endorsements, insuring the Community Building (including all of the fixtures initially installed therein by the Sponsors, together with air conditioning equipment and other service machinery contained therein. Such insurance shall cover the Community Building in an amount equal to the 100% replacement value of the building. The name of the insured under all policies must be set forth therein substantially for the use and benefit of the individual owners.

f. Other insurance as the Board of Directors may determine to be necessary.

2. **Premium Payment and Assessment.** Premiums on insurance policies purchased by the Association shall be paid by the Association as a Common Expense of the Association.

3. **Association Appointed Agent.** The Association is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

4. **Owner Responsibility to Insure.** The insurance of personal liability, personal property and improvements and betterment of the Units, including any finishing, excluding any interest in the Common Elements, shall be the individual responsibility and cost of the Owners thereof.

Every Unit Owner shall be obligated to obtain and maintain insurance covering consequential damages to any other Unit due to occurrences originating within the Owner's Unit caused by negligence of the Owner, Owner's family, guests of Owner or the failure of the Owner to maintain the Unit, or any other casualty within the Unit that causes damage to the Units.

5. **Insurance Deductibles.** If maintenance is required under Article V as a result of an insured loss, the amount of the deductible shall be considered a maintenance expense to be paid by the person or persons (including the Association) who would be responsible for such repair in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Areas and Facilities, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in accordance with the total cost of repair. Each Owner shall be responsible for any deductible applicable to his Unit, should the Association obtain a per Unit/per occurrence deductible.

6. **Damage and Destruction.**

a. Any damage or destruction to the Common Areas and/or Facilities in excess of \$25,000 shall be repaired and reconstructed unless the members representing at least seventy-five percent (75%) of the total vote of the Association shall decide within sixty days after the casualty not to repair and reconstruct. If, for any reason, either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such funds or information shall be made available.

b. If the damage or destruction to the Common Area or Facilities for which insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without necessity of a vote of the Members, levy a special assessment against all Owners.

c. The Board of Directors shall determine in its sole discretion, whether to repair and reconstruct Common Areas and Facilities where the estimated cost is \$25,000 or less.

**ARTICLE VII
ASSESSMENTS BY ASSOCIATION**

1. **Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Unit which are established pursuant to the terms of this Declaration or the By-Laws. All such assessments, together with charges, interest, costs and reasonable attorneys fees actually incurred, in the maximum amount permitted by law, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment is made, and shall become a lien on the date due, if unpaid.

Such amounts shall also be the personal obligation of the person or persons who owned the Unit at the time when the assessment fell due. Each Owner shall be liable for his or her portion of each assessment coming due while he or she is the Owner of the Unit and his or her grantees shall be jointly and severally liable for a portion thereof as may be due and payable at the time of any conveyance. At all times said assessments shall be a continuing lien upon the Unit. Assessments shall be paid in such manner and on such dates as shall be fixed by the Board of Directors. Unless otherwise provided by the Board, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month.

2. **Annual Assessments and Charges.**

a. **Computation of Operating Budget and Assessment.** The Board of Directors shall, at the beginning of the Association's Fiscal Year, prepare a budget covering the estimated cost to operate the Association during the coming year. It shall be the duty of the Board of Directors at least thirty (30) days prior to beginning of the Association's fiscal year, to prepare a budget covering the estimated cost of operating the Association during the coming year. The Board shall cause a copy of the budget and notice of assessments to be levied against each Unit for the following year to be delivered to each Member at least thirty (30) days prior to the beginning of the Association's Fiscal Year. The budget and the assessment shall become effective unless disapproved at a duly called and constituted meeting of the Association by a vote representing a majority of the total Class A vote and by the Class B member if such exists; provided, unless a meeting is requested by the Members, as provided in the By-Laws, the budget and assessment may take effect without a meeting of the Members. Notwithstanding the foregoing, however, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year and the Board may propose a new budget at any time during the year by causing the proposed budget and assessment to be delivered to the Members at least thirty (30) days prior to the proposed effective date thereof. The budget shall allow for any reserves which the Board of Directors deem necessary.

b. **Capital Budget and Contribution.** The Board of Directors shall annually prepare a capital budget that shall take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget with respect both to the amount and timing by equal annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment as provided in this Article. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

3. **Special Assessment.** In addition to the annual assessment the Board may, at any time, levy a special assessment against all Owners for expenses determined by the Board to be for the benefit of the Association as a whole; provided, however, prior to becoming effective any special assessments shall be approved by the affirmative vote of at least two-thirds of the votes represented in person or by proxy at a special or annual meeting of the Members duly called for

the purpose. The affirmative vote or consent of the Class B Member shall be required before the Association may levy a special assessment, if such membership exists.

4. **Specific Assessment.** The Association may levy a specific assessment against any Member individually or against such Member's Unit for whose benefit an expense was incurred which benefited less than the Association as a whole, and for the purpose of reimbursing the Association for the costs incurred in bringing a Member and his Unit into compliance with the provisions of this Declaration, any amendments hereto, the Articles, the By-Laws or the Association Rules. The assessment may be levied upon the vote of the Board after notice to the Member and opportunity for hearing in the manner set forth in the By-Laws in Article III, Section 23.

5. **Delinquent Assessments.** All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner of the Unit against which such assessment is made shall be in default.

a. If any installment of an assessment or charge is not received by the 10th day of the month or if any other charge is not received within ten days of its due date, a late charge equal to the greater of \$10.00 or 10% of the amount not received or such higher amount as may be authorized by law may be imposed without further notice or warning to the delinquent Owner and interest not to exceed the maximum rate afforded by law shall accrue from the due date.

b. If assessment or other charges or any part thereof due from an Owner remain delinquent for a period greater than fifteen (15) days from the date due, a notice of delinquency may be given to that Owner stating that if the assessment or charge is not received within ten days from the date of notice of delinquency, the Board of Directors may accelerate and declare immediately due all of the Owner's unpaid installments of the annual assessment for that fiscal year.

c. If assessments or other charges or any part thereof remain outstanding for more than thirty (30) days after first becoming delinquent, the Association, acting through its Board of Directors, may institute suit to collect all amounts due and suspend the Owner's right to use the Common Areas and Facilities (provided, however, the Board may not restrict ingress or egress to or from a Unit), whether or not a notice of delinquency has been sent as provided above.

6. **Date of Commencement of Annual Assessments.** The annual assessments provided for herein shall commence as to each Unit on the earlier to occur of (i) one hundred eighty (180) days after the date on which a building permit is issued for the Unit; (ii) upon completion of the Unit; or (iii) at the time the Certificate of Occupancy is issued for the Unit by the appropriate governmental authority. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commenced on the Unit.

7. **Class B Control Period.** Until termination of the Class B control period, in lieu of paying regular assessments on its unsold units, the Declarant shall be obligated for the

difference between the amount of the assessments levied on all units subject to the assessment and the amount of actual expenditures required to operate the Association during the fiscal year. This obligation may be satisfied in the form of a cash subsidy, or by contribution of needed services or materials or a combination of these. The Association is specifically authorized to enter into subsidy contracts or contracts of in-kind contribution of services or materials, or a combination of services or materials with Declarant or other entities for the payment of some portion of the Common Expenses.

8. **Statement of Account.** Any Owner, Unit Purchaser, Mortgagee, or interested person or lender considering a loan to be secured by a Unit shall be entitled upon written request to a statement from the Association setting forth the amount of assessments due and unpaid including any alter charges, interest, fines or other charges against a Unit. The Association may require the payment of a fee not to exceed \$50.00 as a prerequisite to the issuance of such a statement.

9. **Covenant to Pay Assessment.** The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No Owner may waive or otherwise exempt himself from liability for the assessments provided herein including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Unit.

10. **Lien for Assessments.** Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens except (i) all taxes, bonds, assessments or other levies which by law would be superior thereto and (ii) the lien or charge of any first mortgage of record made in good faith and for value. Such lien when delinquent may be enforced by suit, judgment, and foreclosure.

The Association acting on behalf of the Owner shall have the power to bid for the Unit at foreclosure sale and to acquire, hold, lease, mortgage and convey the same. After foreclosure, the Association as Owner shall have no right to vote, and no assessment shall be levied on the Unit, said assessment to be charged equally to each other Unit in addition to its usual assessment.

Where a First Mortgagee obtains title, pursuant to judicial or non-judicial foreclosure of the mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition and title. Such unpaid share of Common Expenses or assessments shall be deemed to be a Common Expense collectible from the Owners of all the Units including such acquirer, its successors and assigns.

11. **Exempt Property.** Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of assessments:

- a. all Common Areas and Facilities; and
- b. all Property dedicated to or accepted by any governmental authority or public utility.

ARTICLE VIII
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 By-Laws, and Rules and Regulations. The Properties shall be governed by the following provisions:

1. **Residential Use.** The property 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 By-Laws or by the Association, through its Board of Directors. No Unit may be subdivided into smaller Units. 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. The Association may also maintain an office on the property for management purposes.

2. **Purpose.** No part of the property shall be used for other than housing and related common purposes for which the property was designed. Each unit or any two or more adjoining units used together shall be used as a residence for a single family or such other uses permitted by this Declaration and for no other purpose.

3. **Obstruction of Common Areas.** There shall be no obstruction of the common areas, nor shall anything be stored in the common areas without the prior consent of the Board, except as hereinafter expressly provided. Each Unit Owner or Occupant shall be obligated to maintain and keep in good order and repair his or her own Unit as set forth in Article V herein.

4. **Hazardous Uses and Waste.** Nothing shall be done or kept in any unit or in the common areas which will increase the rate of insurance on the property or contents thereof, without the prior written consent of the Board. No Unit Owner or Occupant shall permit anything to be done or kept in his or her Unit or in the common areas which will result in the cancellation of insurance on the property or contents thereof, or which would be in violation of any law. No waste shall be committed in the common areas.

5. **Exterior Exposure of Building.** Unit Owners and Occupants shall not cause nor permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the building, and no sign, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Board. Awnings will be permitted to be hung on the back of Units. The awning must be Sand Graduated Stripe, Style 4936 as approved by the Board. If any damage is sustained to the outside of your unit as a result of affixing an awning, it will be the responsibility of the homeowner to pay for any damages.

6. **Animals and Pets.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common household pets weighing less than twenty (20) pounds and not to exceed a total of two (2) may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the sole

discretion of the Board, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the Owner of any portion of the Properties shall be removed upon request of the Board; if the Owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall at all times whenever they are outside a Unit be confined on a leash held by a responsible person.

7. **Nuisances.** No unlawful, immoral, noxious or offensive activity shall be carried on in any unit or in the common areas, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become, in the judgment of the Board, an annoyance or nuisance to the other Unit Owners or Occupants.

8. **Impairment of Structural Integrity of Building.** Nothing shall be done in any unit, or in, on or to the common areas which will impair the structural integrity of the buildings or which would structurally change the building except as is otherwise provided herein. No Unit Owner nor Occupant shall overload the electric wiring in the building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.

9. **Laundry or Rubbish.** No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the common areas. The common areas shall be kept free and clear of rubbish, debris and other unsightly materials. Trash, garbage and other wastes shall be kept only in enclosed sanitary containers, and shall be disposed of in a clean, sightly, healthy and sanitary manner, and as may be prescribed, from time to time, by the rules and regulations of the Board.

10. **Storage in Common Areas.** There shall be no parking of baby carriages or playpens, bicycles, wagons, vehicles, toys, benches or chairs on any part of the common areas except that baby carriages, bicycles and other personal property may be stored in a storage area designated for that purpose.

11. **Prohibited Signs.** Except with the consent of the Board, no "For Sale" or "For Rent" signs or other window displays or advertising may be maintained or permitted by any owner on any part of the property. The right is reserved by the Board, to place "For Sale" or "For Rent" signs on any unsold or unoccupied units and to place such other signs on the property as may be required to facilitate the sale of unsold units, or to facilitate the disposal of units by any owner.

12. **Alterations of Common Areas.** Nothing shall be altered or constructed in or removed from the common areas except upon the written consent of the Board.

13. **Display of Model Units.** During the period of construction of the buildings on the property, the Declarant and its contractors, subcontractors and their respective agents and employees shall be entitled to access, ingress and egress to said building and property as may be required in connection with said construction. During the period in which sales of units by the Declarant are in progress, but in no event for any period extending beyond thirty (30) months

from the recordation of this Declaration, the Declarant's beneficiaries may occupy or grant permission to any person or entity to occupy, with or without rental, as determined by the Declarant or said beneficiaries, one or more units for business or promotional purposes, including clerical activities, sales offices, model units for display and the like; provided that the activities in the units so occupied do not interfere with the quiet enjoyment of any other Unit Owner or Occupant.

14. **Certain Personal Professional Activities Permitted.** The unit restrictions in paragraphs (i) and (x) of this Section shall not, however, be construed in such manner as to prohibit an owner from (1) maintaining his or her personal business or professional records or accounts therein; or (2) maintaining his or her personal, professional library therein; or (3) handling his or her personal, business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of paragraphs (i) and (x) of this Declaration.

15. **Ingress and Egress.** No provision contained herein shall be construed to limit unit owners right of ingress to and egress from such unit, and such right shall remain perpetual and appurtenant the unit ownership.

16. **Use of Common Areas and Facilities.** A Unit Owner or Occupant shall not place any furniture, packages or objects in the common areas, or common facilities, except in an area to which he or she has sole access, or in an area designated as a storage area.

17. **Additions, Alterations or Improvements by Board.** Whenever, in the judgment of the Board, the common areas shall require additions, alterations or improvements costing in excess of \$500.00 and the making of such additions, alterations or improvements shall have been approved by vote of a majority of Unit Owners, the Board shall proceed with such additions, alterations or improvements, and shall assess all unit owners for the cost thereof as a common charge. Any additions, alterations or improvements costing \$500.00 or less may be made by the Board without approval of the Unit Owners and the cost thereof shall constitute a common charge. In all cases, it is understood that the first mortgage lien is superior to common charges for additions, alterations, etc. in excess of \$500.00. Any restoration or repair of a unit hereunder, including exterior color and décor, shall be substantially in accordance with the Declaration and the original décor, plans and specifications. The Board shall cooperate and confer fully with any neighboring units in the coordination of exterior color and décor.

18. **Additions, Alterations or Improvements by Unit Owners.** No Unit Owner shall make any structural additions, alterations or improvements in or to his or her unit, without the prior written consent thereto of the Board. The Board shall have the obligation to answer any written request by a unit owner for approval of a proposed structural addition, alteration or improvement in such unit owner's unit, within thirty (30) days after such request. Failure to do so within the stipulated time shall constitute consent by the Board to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any unit shall be executed by the Board. The Board shall not be liable to any contractor, subcontractor, materialman or to any person

sustaining personal injury or property damage for any claim arising in connection with such addition, alteration or improvement.

- (i) **Pools**. No swimming pool, Jacuzzi's, hot tubs, spas or other similar apparatus may be constructed, erected or installed by any Unit Owner.
- (ii) **Patios and Decks**. The erection, construction, installation or modification of any patio or deck adjacent to a Unit may be permitted if in accordance with this Declaration and upon approval by the Board.

19. **Right of Access**. A Unit Owner shall grant a right of access to his or her unit to the manager, the managing agent and any other person authorized by the Board, the managing agent or the manager to make inspections, to effect emergency repairs, to correct any condition originating in his or her unit and threatening another unit, or a common area; and to correct any condition which violates the provisions of any mortgage covering, another unit. Requests for such entry shall be made in advance and such entry shall be immediate, whether the unit owner is present at the time or not.

20. **Utilities**. Each Unit Owner shall pay for his or her own telephone, electricity and other utilities which are separately metered or billed to each user by the respective utility company. Utilities which are not separately metered or billed shall be treated as part of the common expenses.

21. **Negligence by Owner**. If, due to the negligent act or omission of a Unit Owner or Occupant, of a member of his or her family or household pet, of a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the common areas, or to a unit or units owned by others or maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board, subject to the rules, regulations and By-Laws of the Board.

22. **Joint Facilities**. To the extent that equipment, facilities and fixtures within any unit or units shall be connected to equipment, facilities or fixtures affecting or serving other units or the common areas, then the use thereof by the individual Unit Owners shall be subject to the rules and regulations of the Board. The authorized representative of the Board, or the manager or managing agent for the building, shall be entitled to reasonable access to the individual units as may be required in connection with maintenance, repairs or replacements of or to the common areas or any equipment, facilities or fixtures.

23. **Leasing**. The lease or rental of a Unit shall not be deemed a violation of this restriction. All leases must be reviewed by the Board prior to leasing. In addition, every lease on every unit is subject to the following rules and regulations regardless of whether in the written lease.

- a. The lease must be in writing.
- b. The lease must be for the entire Unit.

c. The lease must be for a minimum period of not less than six months. Renewal can be for any length.

d. The use of the premises is subject to this Declaration, the Association By-Laws and the Association Rules and Regulations.

e. Within ten days of occupancy by the Tenant (Occupant), the name and telephone number of the Tenant, together with a complete copy of the Lease must be furnished to the Secretary of the Association, along with the registration form required for voting as set forth in the By-Laws.

f. The Unit cannot be used as a motel or hotel or otherwise for transient tenants.

g. If any Owner (Landlord) or Tenant (Occupant) is in violation of any of the provisions of this Association's Declarations, By-Laws, or Rules and Regulations, the Association may bring an action in its own name or in the name of the Owner or both to have the Tenant evicted or to recover damages or both. If the Court finds that the Tenant is or has violated any provisions of the Declaration, the By-Laws, or the rules and Regulations, the Court may find the Tenant guilty of forcible detainer, despite the fact that the Owner is not a part to the action and/or that the Tenant is not otherwise in violation of the Tenant's Lease or other rental agreement with Owner. For purposes of granting the forcible entry detainer, pursuant to S.D.C.L. Chapter 21-16, against the Tenant, the Court may consider the Owner a person in whose name a contract (the Lease or Rental Agreement) was made for the benefit of another (the Association). This remedy is in addition to any other remedies available at law. If permitted by law, the Association may recover all of its costs, including court costs and reasonable attorney's fees, and these costs shall be a continuing lien on the Unit, the Unit Owner and the Unit Owner's successor and assigns. The Association shall serve the Tenant and the Owner written notice of the nature of the violation and allow thirty (30) days to cure the violation before the Association may file for eviction. The time period after service of a notice to quit may run concurrently with the 30-day period to cure, if allowed by law.

h. By becoming a Tenant, each Tenant agrees to be bound by the Declaration, the By-Laws and other Rules and Regulations of the Association and accepts the right and powers of the Association to evict the Tenant for any violation.

i. To protect first mortgage lenders, only subsections (d) and (e) of Section 2 shall apply to a first mortgage lender who has title to the Unit through foreclosure or deed in lieu of foreclosure.

24. **Design Guidelines.** The Board may prepare and promulgate Design Guidelines. Copies shall be available from the Board for review. The Design Guidelines shall be those of the Association, and the Board shall have sole and full authority to prepare and to amend the Design Guidelines. The Board shall make the Design Guidelines available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and such Owners, builders and developers shall conduct their operations strictly in

accordance therewith. In the event that the Board fails to approve or disapprove plans submitted to it, or to request additional information reasonably required, within forty-five (45) days after submission thereof, the plans shall be deemed approved.

25. **Prohibited Vehicles.** Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages serving the Units, or in screened or fenced areas on the Unit so as to be concealed from view of neighboring Units, streets or adjacent property, or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas.

26. **Occupants Bound.** All provisions of the Declaration, By-Laws, and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

27. **Quiet Enjoyment.** No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties.

28. **Unsightly or Unkept Conditions.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkept condition on his or her Unit. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other

mechanical devices, which might tend to cause disorderly, unsightly, or unkept conditions, shall not be pursued or undertaken on any part of the Properties.

29. **Antennas.** No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Unit, without the prior written consent of the Board. Notwithstanding, satellite dishes of standard size, not to exceed 24", shall be permitted to be installed on any Unit, but placement of the satellite dish needs to be approved by the Board before installation. The Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

30. **Firearms.** The discharge of firearms within the Properties is prohibited. The term "firearms" includes B-B guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Board shall not be obligated to take action to enforce this Section.

31. **Irrigation.** No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties unless prior written approval has been received from the Board. All sprinkler and irrigation systems shall be subject to approval by the Board. Private irrigation wells are prohibited on the Properties.

32. **Tents, Trailers, and Temporary Structures.** Except as may be permitted in accordance with the Design Guidelines promulgated for the Properties, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Unit or any part of the Properties.

33. **Drainage and Septic Systems.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. Septic tanks and drain fields are prohibited on the Properties.

34. **Tree Removal.** No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved by the Board. In the event of an intentional or unintentional violation of this Section, the violator may be required, by the Board, to replace the removed tree with one (1) or more trees of such size and number, and in such locations, as such committee may determine in its sole discretion.

35. **Air Conditioning Units.** Except as may be permitted by the Board or its designee, no window air conditioning units may be installed in any Unit.

36. **Artificial Vegetation, Exterior Sculpture, Flags and Similar Items.** No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, and similar items must be approved by the Board. American flags and recreational flags of generally accepted good taste will be allowed at a Unit, provided any American flags shall be the standard size of 3' x 5'.

37. **Playground.** Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any person for any claim, damage, or injury occurring thereon or related to use thereof. No playground equipment will be allowed to be installed on individual Units.

38. **Business Use.** No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. No garage sale, moving sale, rummage sale or similar activity may be conducted without the prior written consent of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

39. **Variance.** The Board may authorize variances from compliance with the Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to the restrictions set forth in the body of this Declaration; or (c) estop the Board from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

40. **Compliance with Guidelines.** Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Design Guidelines promulgated by the Board or with the standards and procedures of the Association may be excluded by the Board from the Properties without liability to any person.

41. **No Liability.** Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither committee shall bear any responsibility of ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, land use regulations or any other governmental regulations and requirements. Neither the Declarant, the Association, the Board of Directors, any committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Unit.

42. **Parking and Prohibited Vehicles.** Unless otherwise approved by the Board in accordance with the Design Guidelines, no more than two (2) vehicles per Unit may be kept on the Properties at any one time. All vehicles must be kept in garages at all times with garage doors closed.

ARTICLE IX AMENDMENT

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. Required by any institutional or governmental lender or purchaser of mortgage loans including, but not limited to, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation to enable such lender or purchaser to make or purchase mortgage loans on the Unit;

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; or

e. The Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material, adverse effect upon any right of any Owner.

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.

ARTICLE X TERM

The covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing signed by the majority of the then Owners has been recorded within the year preceding the beginning of each successive period of ten years agreeing to change said covenants and restrictions in whole or in part or to terminate the same in which case this Declaration shall be modified or terminated as specified therein.

ARTICLE XI EASEMENTS

1. **Easements of Encroachment.** There shall be reciprocal, appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Areas and Facilities adjacent thereto, or as between adjacent Units due to unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet as measured from any point on the common boundary between each Unit and the adjacent portion of the Common Area or Facility or as between said adjacent units as the case may be, along a line perpendicular to such boundary at such point; provided, however, no easement for encroachment shall exist if the encroachment occurred due to a willful or knowing conduct.

2. **Easements for Utilities, etc.** There is hereby reserved unto Declarant, so long as the Declarant owns any property subject to this Declaration, to the Association and to the Assignees of each, a non-exclusive easement upon, across, over and under all of the Common Areas and Facilities and the Units, for ingress, egress, installation, replacement, repair and maintenance of improvements, utilities and related services, including but not limited to, cable television systems, roads, walkways, bike paths, drainage systems, street lights, security systems, signage, water, sewer, meter boxes, telephones, gas and electricity.

ARTICLE XII PROPERTY TAXES

1. **By the Association.** The Association shall pay the property taxes and special assessments on the Common Areas and Facilities. The taxes and special assessments shall be a Common Expense included in the computation of the annual Operating Budget and Assessment.

EXHIBIT A

Legal Description

Lots 1-15, Block 6; Lots 29-70, Block 8; Lots 1-30, Block 9 and Block 25
Platinum Valley III Addition to the City of Sioux Falls, Lincoln County, South
Dakota according to the recorded plat thereof.

EXHIBIT B

By-Laws

EXHIBIT C

Site Plan

