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## **DECLARATION OF COVENANTS, EASEMENTS, AND RESTRICTIONS FOR [NAME OF PROPERTY OWNERS ASSOCIATION]**

This Declaration of Covenants, Conditions, Restrictions, and Easements (this “Declaration”) is made effective this \_\_\_ day of \_\_\_\_\_, 2024, by **TROJAN VILLAGE, LLC**, a South Dakota limited liability company (hereinafter referred to as “Declarant”), and the Owners (as defined below). At the time of the execution of this Declaration, Declarant is the only Owner.

Declarant is the owner of the real property described in **Exhibit A** and the Plat attached as **Exhibit B**, attached hereto and incorporated herein by reference (“Trojan Village Addition”). Declarant and the Owners intend by this Declaration to impose upon the Property (as defined herein) mutually beneficial restrictions as provided herein and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Property 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, of *Trojan Village Homeowner’s Association* a South Dakota non-profit corporation (the “Association”) for the purpose of exercising the functions aforesaid.

Declarant hereby declares that Trojan Village Addition and the Property and any additional property which is hereafter subjected to this Declaration or a 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 Property or any part thereof, their heirs, successors, 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 11-5-1, et seq.

### **ARTICLE I DEFINITIONS**

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

“Articles of Incorporation” or “Articles” shall mean the Articles of Incorporation of *Trojan Village*

*Homeowner's Association* as filed with the Secretary of the State of South Dakota.

“Association” shall mean *Trojan Village Homeowner's Association* a South Dakota non-profit corporation, and its successors or assigns.

“Board of Directors” shall mean the Board of Directors of the Association, having its normal meaning under South Dakota law. Each individual director of the Board of Directors is referred to herein as a “Director.”

“Bylaws” shall mean the Bylaws, and any amendments, which governing the conduct of the Association. The Bylaws will specifically reference this Declaration by book and page number after this Declaration is recorded with the Lake County Register of Deeds.

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

“Common Expenses” or, individually, “Common Expense” shall mean the actual and estimated expenses incurred by the Association for the general benefit of all Owners, including any reasonable reserve found to be necessary, but not including any expenses incurred during the Class B Control Period for initial development, original construction, or installation of infrastructure, original capital improvements, or other original construction costs, unless approved by Voting Members representing a majority of the total Class A vote of the Association. Common Expenses shall be funded by assessments levied against all Tracts in the Property, except as set forth in Section 7.11.

“Common Areas” or, individually “Common Area” shall mean the properties owned and maintained by the Association for the common benefit and enjoyment by the Members of the Association.

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

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

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

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

“Persons” or, individually, “Person” shall mean natural persons, corporations, partnerships, limited liability companies, trusts, or other legal entities capable of holding title to real property.

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

“Replacement and Repair Reserve” shall mean a reasonable reserve account the Board of Directors builds and maintains for repairs and replacements to the Common Areas.

“Rules and Regulations” shall mean rules, regulations, design guidelines, and use restrictions for the safety, care, security, good order, design, or cleanliness of the Property and Tracts that the Board of Directors, in their sole discretion, may prepare and promulgate for the Association.

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

“Tract” or, individually, “Tracts” shall mean each separately platted real property shown in Exhibit B, with each tract containing a separately divisible lot of Trojan Village Addition.

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

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

## ARTICLE II GENERAL DESCRIPTION

2.1 **The Real Estate.** Each Owner will own the real estate beneath the Tract and within the Tract as platted and shown on **Exhibit B.**

2.2 **Single Family Residential Use Only.** No Tract shall be used except for single family, residential purposes. No building shall be exceed two (2) stories in height from the street level. All single family homes must be a minimum of one thousand square feet (1,000) of above grade living space (excluding garage).

2.3 **Time to Build.** An Owner must commence construction of their single family residential unit no later than 12 months after the closing of Owner’s acquisition of a Tract. The Owner shall be assessed a fee of \$500 per month for each month past 12 months after the closing of Owner’s acquisition of a Tract until construction is commenced. Construction must be completed within twelve (12) months after construction is commenced. The Owner shall be assessed a fee of \$500 per month for each month past 12 months after the commencement of construction until construction is completed.

2.4 **Roofline Minimum.** Each home constructed must contain a minimum of three (3) discrete rooflines.

## ARTICLE III PROPERTY RIGHTS

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

3.2 **Common Areas.** Every Owner shall have a right and non-exclusive easement of use, access and enjoyment in the Common Areas which shall be appurtenant to and pass with the title to their Tract, 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 Areas.

(c) the right of the Association acting through its Board of Directors 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 Bylaws.

(d) the right of the Association, acting through its Board of Directors 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 Tract shall be subject to the Owner's non-exclusive easement.

#### **ARTICLE IV MEMBERSHIP AND VOTING RIGHTS**

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

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

(a) **Class A.** Class A Members shall be entitled to one (1) equal vote for each Tract in which they hold the interest required for membership under Section 4.1. There shall only be one (1) vote per Tract. The vote for each Tract shall be exercised by the registered voter for the Tract, or a proxy, as provided for in the Bylaws. The Tract's vote shall be suspended if more than one Person seeks to exercise it. The Association shall not be considered a Class A Member due to ownership of one (1) or more Tracts used for the administration of the Association.

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

- (i) When fifty percent (50%) of the Tracts within the Association are sold; or
- (ii) When in its discretion, the Class B Member so determines.

#### **ARTICLE V MAINTENANCE**

5.1 **By the Owners.** Each Owner shall have the obligation to maintain, replace, and keep in good repair all portions of their Tract. This includes, but is not limited to, structural portions, glass surfaces, windows, window frames, interior and exterior doors, doorways, frames, hardware, walls, patios (if any), 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, pipes, lines, ducts, conduits or other apparatus serving only the Tract. The Owner shall perform their responsibilities in such manner so as to not unreasonably disturb other Owners of adjacent Tracts. Owners shall not make any interior or exterior alterations that will have a substantial or detrimental effect on any other Tract.

5.2 **By the Association.**

(a) **Required Obligations.** The Association's obligation extends only to maintenance and repair of items as is necessary to create a uniform exterior appearance of the Tracts. The Association shall maintain, replace and repair, as a Common Expense, the Common Area.

(b) **Optional Obligations.** If agreed to by the Board of Directors, the maintenance provided by the Association may include painting, garbage service, lawncare and landscape maintenance, snow removal, or other work. An Owner shall be required to opt-in to such optional services described in this Section 5.2(b). The cost shall be assessed to each Owner individually shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Tract as hereinafter provided.

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

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

the consent of two-thirds (2/3rds) of all Directors of the Association in accordance with the Bylaws.

## **ARTICLE VI INSURANCE AND CASUALTY LOSSES**

6.1 **Association Insurance.** The Association shall obtain and maintain at all times, only in connection with the maintenance obligations of the Common Area, as a Common Expense, insurance as required herein, including a casualty insurance policy and a liability insurance policy or policies in such amounts as the Board of Directors may deem advisable from time to time. The Association shall obtain and maintain, as a Common Expense, additional insurance covering the Association, the Board of Directors, officers and all agents, and employees of the Association.

6.2 **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.

6.3 **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.

6.4 **Owner Responsibility to Insure.** The insurance of a Tract and all appurtenances thereto, including the exterior and roof, personal liability, personal property and improvements and betterment of the Tracts, including any finishing, shall be the individual responsibility and cost of the Owners thereof. Every Owner shall be obligated to obtain and maintain insurance covering consequential damages to any other Tract due to occurrences originating within the Owner's Tract caused by negligence of the Owner, Owner's employees, visitors, guests, or the failure of the Owner to maintain the Tract, or any other casualty within the Tract that causes damage to the Tracts.

## **ARTICLE VII ASSESSMENTS BY ASSOCIATION**

7.1 **Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Tract, 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: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Tract which are established pursuant to the terms of this Declaration or the Bylaws. 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 Tract, shall be a continuing lien upon the Tract 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 Tract at the time when the assessment fell due. Each Owner shall be liable for their portion of each assessment coming due while they are the Owner of any Tract and their grantees shall be jointly and severally liable for a portion thereof as may be due and payable at the time of any conveyance. 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 of Directors, the annual assessments shall be paid in either monthly, quarterly, or annual installments, as determined by the Board of Directors, with such installment payments due as provided by the Board of Directors.

7.2 **Annual Assessments and Charges.**

(a) **Computation of Operating Budget and Assessment.** 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 of Directors shall cause a copy of the budget and notice of assessments to be levied against each Tract 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 Bylaws, the budget and assessment may take effect without a meeting of the Members. Notwithstanding the foregoing, however, in the event that the Class A Members representing eighty (80%) of the Tracts entitled to vote disapproves the proposed budget or the Board of Directors 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 of Directors 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 of Directors 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 of Directors 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.

7.3 Special or Specific Assessments. In addition to the annual assessment the Board of Directors may, at any time, levy a special assessment against all Owners for expenses determined by the Board of Directors 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 (2/3rds) 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, if such Class B Member exists, shall be required before the Association may levy a special assessment. The Association may levy a specific assessment against any Member individually or against such Member's Tract 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 their Tract into compliance with the provisions of this Declaration, any amendments hereto, the Articles, the Bylaws or the Association Rules. The assessment may be levied upon the vote of the Board of Directors after notice to the Member and opportunity for hearing in the manner set forth in the Bylaws.

7.4 Reserve for Contingencies and Replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against the Replacement and Repair Reserve. If the Replacement and Repair Reserve proves inadequate for any reason, including nonpayment of any Owner's assessment, the Board of Directors may, at any time, levy a further assessment which shall be assessed to the owners in accordance with the assessment procedures set out in the Bylaws. The Board of Directors shall serve notice of such further assessment on all owners by a statement, in writing, giving the amount and reasons therefor, and such further assessment shall become effective with the next assessment payment which is due not sooner than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted amount. At the time each Tract is first occupied or thereafter occupied

pursuant to a transfer of the ownership of the Tract, the current Owner shall pay the first assessment to the manager or managing agent, or as otherwise directed by the Board of Directors.

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

(a) If any installment of an assessment or charge is not received by the tenth (10th) day of the month or if any other charge is not received within ten (10) 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 (10) days from the date of notice of delinquency, then 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 (provided, however, the Board of Directors may not restrict ingress or egress to or from a Tract), whether or not a notice of delinquency has been sent as provided above.

7.6 **Date of Commencement of Annual Assessments.** The annual assessments provided for herein, as to each Tract, shall commence upon the sale of such Tract by the Association to an Owner. 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 Tract.

7.7 **Class B Control Period.** Until termination of the Class B Control Period, in lieu of paying regular assessments on its unsold Tracts, the Declarant shall be obligated for the difference between the amount of the assessments levied on all Tracts 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.

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

7.9 **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 themselves 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 Tract.

7.10 **Lien for Assessments.**

(a) Upon recording of a notice of lien on any Tract, 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.

(b) The Association acting on behalf of the Owner shall have the power to bid for the Tract at foreclosure sale and to acquire, hold, lease, mortgage and convey the same. After foreclosure, the Association, as Owner, shall not have the right to vote, no assessment shall be levied on the Tract, and said assessment for the foreclosed Tract shall instead charged equally to each other Tract in addition to its usual assessment.

(c) 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 Tract 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 Tracts including such acquirer, its successors, and its and assigns.

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

(a) all Common Areas; and

(b) all Property dedicated to or accepted by any governmental authority or public utility.

**ARTICLE VIII  
ARCHITECTURAL STANDARDS AND USE RESTRICTIONS**

The Property and all Tracts thereon are subject to the architectural standards and use restrictions set forth in this Article, its Bylaws, and Rules and Regulations, if any. The Property shall be governed by the following provisions:

8.1 **Residential Use.** The Tracts shall be used for single family residential purposes only, which purposes, and such other purposes by the Owners and their families, guests and tenants, as may be permitted by the Bylaws or by the Association, through its Board of Directors. Notwithstanding the foregoing, the Declarant may maintain a business and sales office and/or model Tracts on the Property so long as the Declarant owns any real property subject to this Declaration and may display signs offering the same for sale.

8.2 **Approval.** No building shall be commenced or erected until the plans and specifications showing the nature, kind, shape, height, materials, exterior color, floor plans, location, site plan and approximate cost of such structure and any allowed exterior structures, including fences, shall have been submitted to and approved in writing by the Declarant and/or the Board of Directors.

8.3 **Siding.** All siding shall be steel, LP hardboard, cement, cedar, brick and/or masonry/stucco, and shall include a minimum of One Hundred (100) square feet of brick, stone, or

comparable material, and must be approved by Declarant. All buildings shall be approved by Declarant prior to start of dwelling construction.

8.4 **Garages**. All lots shall have, at a minimum, a two-car attached garage which shall be permanently constructed on a concrete foundation. The exterior design shall be in conformance with the principal residence.

8.5 **Prefabricated Homes**. No mobile home shall be permitted within the Property, and all homes shall be stick-built. No prefabricated home shall be permitted within the Property. However, the pre-panelized wall systems are allowed.

8.6 **Shouse**. No Shouse, barndominium, barndo, or similar structure shall be permitted on a Tract.

8.7 **Driveways**. All driveways and parking areas shall be concrete.

8.8 **Temporary Structures**. No structures of temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

8.9 **Other Structures**. Except as permitted herein, each lot shall have only one (1) structure. No lean-to, carport, vehicle storage building, pre-built storage shed or building, or structure detached from the residence of any kind shall be permitted on any lot, EXCEPT each lot may have one (1) storage shed not to exceed one hundred forty-four (144) square feet. Storage sheds must be enclosed and must match house exterior color and shingle color.

8.10 **Gas**. No liquid, propane gas or container of any type shall be allowed on a lot exposed to view.

8.11 **Trees**. No box elder, poplar, cottonwood, ash, or elm shall be planted on any lot within the Property. Owners are required to plant at least Two (2) trees minimum 1.5" diameter within Two (2) years of taking ownership of the lot.

8.12 **Fences**. Height, style, and location of all fences must be shown on plans (including dog kennels). All fences, including patio privacy fences, landscape fences or small enclosures to contain children or pets and property line fences shall either be cedar or redwood, or of a maintenance-free composite material, or other with expressed written consent of Declarant, and shall be placed with smooth edging facing out and posts facing the interior of the lot. No fence shall be higher than six (6) feet and must comply with all local laws and ordinances.

8.13 **Pets, Livestock, Poultry**. No animals, birds, reptiles, livestock, or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. No animal shall run loose. Vicious dog breeds such as Pitbulls, Doberman Pinschers, Rottweilers, Wolf Hybrids, and the like shall not be permitted. No person shall knowingly keep or harbor any vicious dog of any breed or any other animal, bird, reptile, etc. which may have a tendency to attack or harm any person walking or riding on streets through the Property.

8.14 **Outside Storage**. Permanent outside storage of semi-tractors, trailers, campers, boats, mobile home, motor homes, recreational vehicles, garbage, or large commercial truck is prohibited. For purposes hereof "permanent" shall mean twenty-one (21) days or more, whether continuous or not, in any

one twelve (12) month period. No vehicle shall be parked on the lot other than in the driveway or garage. Any motor vehicle placed or parked on the driveway must be operative and capable of self-locomotion.

8.15 **Machinery and Equipment**. All machinery, equipment, snow blowers, lawn mowers, woodpiles or storage area shall be kept screened or concealed from neighboring properties and streets.

8.16 **Sidewalks**. Sidewalks shall be concrete and constructed prior to occupancy of any dwelling on the lot, weather permitting, but in any event no later than six (6) months following occupancy of the dwelling, unless an earlier time is required under Lake County ordinance.

8.17 **Signs**. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising a residence for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

8.18 **Vacant Lots**. Owners of vacant lots must keep them neat and clean in appearance and must maintain them by mowing per ordinances of the City of Madison. Upon failure to do this, and after Three (3) days' notice is given, Declarant or Association may perform such maintenance as necessary and bill the lot owner for the expense incurred.

8.19 **Removal of Soil/Drainage Plan**. No soil may be removed from this addition resulting from an excavation without the prior approval of the Declarant. The purchase of a lot hereby acknowledges the existence of a drainage plan that has been prepared by the Declarant and is on file at the Engineer's Office for the City of Madison, South Dakota. Prior to construction on a Tract, the Owner, or the Owner's contractor, shall review said drainage plan and shall comply with all soil elevation requirements indicated thereon. In the event an Owner does not comply with said drainage plan, said Owner shall be personally responsible for any costs associated with bringing said lot into compliance with the drainage plan and shall indemnify Declarant therefore.

8.20 **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 of Directors, except as hereinafter expressly provided. Each Owner or employee, visitor, guest, lessees, or invitee of such Owner shall be obligated to maintain and keep in good order and repair their own Tract as set forth in Article V herein.

8.21 **Hazardous Uses and Waste**. Nothing shall be done or kept in any Tract 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 of Directors. No Owner or employee, visitor, guest, lessee, or invitee of such Owner shall permit anything to be done or kept in their Tract or in the common areas which will result in the cancellation of insurance on such Property or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Areas.

8.22 **Nuisances**. No unlawful, immoral, noxious, or offensive activity shall be carried on in any Tract 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 of Directors, an annoyance or nuisance to the other Owners or employees, visitors, guests, lessees, or invitees of such Owner.

8.23 **Laundry or Rubbish**. The Common Areas and all Tracts 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.

8.24 **Replatting**. No person except the Declarant shall at any time ever replat, subdivide, or re-subdivide any lot into a smaller lot, or in any other manner change this plat as it is now shown on the recorded plat of this tract.

8.25 **Fixtures**. No antenna, tower, satellite dish or similar device shall be erected, constructed or placed outside of any building located on a Tract without the prior approval of the Board of Directors. To the extent feasible, any antenna, tower, satellite dish or similar device should be installed in a manner that is shielded from public view from the street.

8.26 **Negligence by Owner**. If, due to the negligent act or omission of an Owner of a Tract, or any employee, visitor, guest, lessee, or invitee of such Owner, damage shall be caused to the Common Areas, or to a Tract or Tracts owned by others or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs, and replacements as may be determined by the Board of Directors, subject to the Rules and Regulations and Bylaws.

8.27 **Uniformity Intended**. The Board of Directors may impose Rules and Regulations intended to ensure that the Tracts maintain a uniform appearance, including without limitation, Rules and Regulations governing paint colors, roof materials, and other matters pertaining to the appearance of the exterior of all Tracts.

8.28 **Rules and Regulations**. Copies of the Rules and Regulations, if any, shall be available from the Board of Directors for review. The Rules and Regulations shall be those of the Association, and the Board of Directors shall have sole and full authority to prepare and to amend the Rules and Regulations. The Board of Directors shall make the Rules and Regulations available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Property and such Owners, builders, and developers shall conduct their operations strictly in accordance therewith. In the event that the Board of Directors 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. The Owners agree to comply with the Rules and Regulations, if any, and any reasonable and nondiscriminatory amendments, modifications, and/or additions as may be adopted and published by the Board of Directors.

8.29 **Persons Utilizing Tracts Bound**. All provisions of the Declaration, Bylaws, and the Rules and Regulations which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all of Owner's employees, visitors, guests, lessees, and invitees. Every Owner shall cause all Persons utilizing their Tract to comply with the Declaration, Bylaws, and the Rules and Regulations, and shall be responsible for all violations and losses to the Common Areas caused by such employees, visitors, guests, lessees, and invitees, notwithstanding the fact that such Owner's employees, visitors, guests, lessees and invitees are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and the Rules and Regulations.

8.30 **Variance**. The Board of Directors may authorize variances from compliance with any design guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with the Rules and Regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall be effective unless in writing. For purposes of this Section 8.30, 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.

8.31 **Compliance with Guidelines.** Any contractor, subcontractor, agent, lessee, employee, visitor, guest, or other invitee of an Owner who fails to comply with the terms and provisions of any design guidelines promulgated by the Board of Directors or with the standards and procedures of the Association may be excluded by the Board of Directors from the Property without liability to any person.

8.32 **No Liability.** Review and approval of any modifications pursuant to the Rules and Regulations, if any, is made on the basis of aesthetic considerations only and neither the Declarant, Association, Board of Directors, or any member of the foregoing 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. Additionally, neither the Declarant, the Association, the Board of Directors, 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 on or modifications to any Tract.

## **ARTICLE IX AMENDMENT**

9.1 **By the Declarant.** So long as Declarant owns all the Property subject to this Declaration, the Declarant may unilaterally amend this Declaration at any 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 Tracts; or
- (c) Necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Tracts; provided, however, any such amendment shall not adversely affect the title to any Tract unless the Owner shall consent thereto in writing.

9.2 **By the Association.** After Declarant no longer owns all the Property, this Declaration may be amended only by the affirmative vote or written consent or any combination thereof of Members holding sixty-seven percent (67%) of the total Class A votes in the Association and the consent of the Class B Member so long as such membership exists. In the event the Class B Member no longer exists but the Declarant still owns Tracts in the Property, the Declarant must consent to any proposed Amendment to this Declaration. Any amendment to be effective must be recorded in the public records of Lake County, South Dakota.

## **ARTICLE X TERM**

The covenants and restrictions of this Declaration shall run with and bind the Property 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 forty (40) years from the date this Declaration is recorded.

## **ARTICLE XI PROPERTY TAXES**

11.1 **By the Association.** The Association shall pay the property taxes and special assessments on the Common Areas. The taxes and special assessments shall be a Common Expense included in the

computation of the annual operating budget and assessments.

11.2 **By the Owner.** Each Owner shall pay all property taxes and special assessments on their Tract.

## **ARTICLE XII MISCELLANEOUS**

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

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

12.3 **Notices.** In order to be effective, all notices required or permitted under this Declaration shall be in writing and: (1) personally delivered, (2) sent by a nationally recognized overnight courier, (3) sent by registered or certified mail with the postage prepaid, or (4) delivered in any manner permitted by the laws of the State of South Dakota for giving notice. Notices personally delivered shall be deemed delivered on the date of delivery. Notices sent via overnight courier guaranteeing next day delivery (with receipt) shall be deemed delivered on the date following deposit with such courier. Notices sent via certified or registered mail shall be deemed delivered three (3) business days after deposit with the U.S. Mail. Notices sent via any other method of delivery shall be deemed delivered as provided by law.

12.4 **Recording.** This Declaration shall be filed for recording with the Register of Deeds in and for Lake County, South Dakota.

12.5 **No Public Dedication.** No public dedication of the easement areas, nor any other part of any Tract, is being made by this Declaration.

12.6 **Relationship of the Parties.** This Declaration does not make any Owner a general or special agent, legal representative, subsidiary, joint venture, partner or employee of any other Owner(s) for any purpose.

12.7 **Governing Law; Forum Selection; Attorneys' Fees.** This Declaration shall be governed by the laws of the State of South Dakota without regard to its conflict of laws rules. Any legal action arising from or relating to this Declaration shall be venued exclusively in a state court situated in Lake County, South Dakota.

12.8 **Severability.** The invalidity or unenforceability of any term or provision of this Declaration, or the application of such term or provision to any person or circumstances, shall not impair or affect the remainder of this Declaration nor its application to other persons and circumstances, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

12.9 **Pronouns and Titles.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, or neuter, or the singular or plural, as the identity of the person, persons, entity, or entities and context may require. Titles of articles, sections and subsections of this Declaration



Exhibit A

[INSERT LEGAL DESCRIPTION]

Exhibit B

Plat