

Prepared by:
Gregory J. Erlandson
Bangs McCullen Law Firm
333 W. Boulevard
Suite 400, PO Box 2670
Rapid City, SD 57709 (605) 343-1040

**RESTATED DECLARATION OF RESERVATIONS AND
RESTRICTIVE COVENANTS AND CONDITIONS FOR
THE TOWN HOMES AT RED ROCK MEADOWS**

THIS DECLARATION is made on this 25th day of September, 2012, by the fee owners of at least seventy-five percent (75%) of the below described property, hereinafter referred to collectively as "Declarant."

WHEREAS, Declarant is the fee owner of at least seventy-five percent (75%) of the below-described property in the city of Rapid City, County of Pennington, state of South Dakota, more particularly described as:

Lots 1A, 1B, 4, 5 and 6, in Block 5 of Red Rock Meadows Subdivision in the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 32, Page 179, and as corrected by Affidavit of Correction recorded April 13, 2005, in Book 143, Page 7591;

Lots 7AR and 7BR in Block 5 of Red Rock Meadows Subdivision in the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 33, Page 51;

Lots 8R-A and 8R-B in Block 5 of Red Rock Meadows Subdivision in the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 33, Page 133;

Lots 2AR, 2BR, 3A and 3B in Block 5 of Red Rock Meadows Subdivision in the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 33, Page 134; and

Lots 1A through 12B, both inclusive, in Block 11, and Lots 11 A through 19B, both inclusive, in Block 5, all in Red Rock Meadows Subdivision in the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 33, Page 144.

WHEREAS, Declarant wishes to specifically set forth a specific Restated Declaration of Reservations and Restrictive Covenants and Conditions for the Town Homes at Red Rock Meadows and to recognize The Town Homes at Red Rock Meadows Homeowners Association, Inc. (a South Dakota Non-Profit Corporation); and

WHEREAS, Declarant acknowledges that certain lots and tracts within the development will be adjacent to portions of the golf course; and

WHEREAS, owners purchasing lots and tracts lying in proximity to the golf course will undertake and pursuant to these Reservations and Restrictive Covenants and Conditions, assume certain risk which will be set forth more particularly in this document; and

WHEREAS, the Developer has previously reserved for itself, its successors and assigns, easements for public utilities, drainage, storm and sewer, landscaping, and for constructing improvements thereon, which are identified or will be identified and shown on the plats) and/or replat(s) of the Development to be filed by Declarant to assure the harmonious and systematic development of the property;

WHEREAS, Declarant wishes to replace or restate any and all other applicable covenants, including but not limited to the Declaration of Reservations and Restrictive Covenants and Conditions for the Town Homes at Red Rock Meadows, dated February 10, 2006, and filed with the Pennington County Register of Deeds at Book 154, Page 3695, et seq., on February 10, 2006; and the Restated Declaration of Reservations and Restrictive Covenants and Conditions for the Town Homes at Red Rock Meadows, dated August 30, 2010, and filed with the Pennington County Register of Deeds at Book 201, Page 9329, et seq., on August 31, 2010.

NOW, THEREFORE, these Reservations and Restrictive Covenants and Conditions are made for the purpose of protecting the value and desirability of and which run with the real property and be binding on all parties having any right, title or

interest in the described properties or any benefit thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof (it is understood and agreed that this Declaration applies to any Lot or parcel of property described herein or subsequently added that must be split into a separate Townhome lot); and

NOW THEREFORE, the following specific declarations shall apply to the above described real property:

ARTICLE I TOWNHOME DEFINITIONS

Section 1: "Townhome Association" or "Association" shall mean and refer to The Town Homes at Red Rock Meadows Homeowners Association, Inc. (a South Dakota Non-Profit Corporation), its successors and assigns.

Section 2: "Common Area" shall mean all real property (including the improvements thereto) subsequently owned by the Association for the common use and enjoyment of the owners. If any Common Area is platted, within a designated Townhome area, it will be conveyed or dedicated to the Association at such time as it is appropriate. The Common Area is intended for use by the Owners for recreation and other related activities. Such areas are not dedicated hereby for use by the general public but are dedicated to the common use and enjoyment of the Owners.

Section 3: "Declarant" shall mean and refer to the fee owners of at least seventy-five percent (75%) of the property described herein who have executed these Restated Covenants, and each of their successors and assigns.

Section 4: "Developer" shall mean and refer to DKEA, LLC, its successors and assigns.

Section 5: "Dwelling Unit" means any Townhome unit.

Section 6: "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the Common Area.

Section 7: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or Dwelling Unit which is a part of the Properties, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

Section 8: "Properties" shall mean and refer to that certain real property herein described and known as the Town Homes at Red Rock Meadows.

Section 9: "Townhome Lot" shall mean any plot of land shown upon any recorded subdivision map or the properties as a Townhome Lot.

Section 10: "Townhome Unit" or "Townhome" shall mean any building or a portion of a building attached to another building or portion of a building situated upon the property and designated and intended for use and occupancy as a residence by a single family.

ARTICLE II PROPERTY RIGHTS AND RESTRICTIVE COVENANTS

Section 1: **Use of Lot.** Each Lot shall be used for residential purposes only and not for any business, trade, commercial or industrial purpose whatsoever except that individuals may conduct non-nuisance, inoffensive businesses from their homes.

Section 2: **Construction.** The minimum size of any Townhome constructed on the above property shall be 950 square feet for finished living areas (excluding basements, garages, and open or screened porches). All construction shall be original, in that no previously constructed used dwelling, trailer house or mobile home shall be permitted on any such property.

Section 3: **Roofing.** In order to maintain the high quality of Townhome sites, no dwelling house or structure shall be erected on the property without fire retardant concrete tile shingles or fire retardant shade shingles, dimensional composition shingles, or an approved equal that meets Architectural Standard 80 (thirty year shingle).

Section 4: **Exterior Appearance.** The exterior of every Townhome shall be substantially uniform in appearance, kind and quality of materials, and color. Substantial uniformity shall be determined and approved by the Architectural Control Committee).

Section 5: **Approval by Architectural Control Committee.** No building shall be erected, placed or altered on any lot until the construction, plans and specifications, and the plan showing the location of the structure have been approved by the Architectural Control Committee ("ACC") as to quality of workmanship and material, harmony of external design with existing structures and as to location with respective topography and finished grade elevation.

Section 6: **Architectural Control Committee.** The Architectural Control Committee shall consist of three members appointed by the Association Board of Directors and shall have such authority as provided for by a resolution of the Board of Directors and/or set forth in the Association Bylaws, as may be amended.

Section 7: **Completion of Construction.** Any building commenced on any lot shall be prosecuted diligently to completion and shall be completed within nine (9) months from the commencement of the construction unless such completion is prohibited by inclement weather or disaster.

Section 8: **Appearance and Improvement of Lot.** All improvements on each lot must be maintained by lot owner to a state of good repair, neat and well kept. It is Owner's responsibility to ensure that any improvements that have been placed on his/her lot are maintained in a neat and orderly condition. Firewood or other combustible material must be stacked neatly against the rear of the house or garage, or in such other places as are not visible from the street.

Section 9: **Landscaping.** All natural surface areas disturbed by construction shall be returned promptly and as neatly as possible to their natural state. Landscaping, including the installation of an underground sprinkler system, shall be completed by the builder around each occupied Townhome within 270 days following the initial closing of the Townhome and shall at all times be maintained by the Owner in good condition and repair. A minimum of three medium-sized trees (as described in the Rapid City Planning Department Landscaping Manual) shall be planted. However, if the lot already has a minimum of three trees the requirement will be waived. The Architectural Control Committee may adopt additional rules and regulations with regard to preservation of natural resources, grasses, trees and wildlife within the subdivision as it may consider appropriate.

Section 10: **On Street Parking.** On street parking is restricted to emergencies, deliveries and guests. No automobiles(s) shall be visible unless they are in good operating condition with current license plates. The outdoor repair of automobiles is prohibited upon any portion of the property as well as any other activities which may be or become an annoyance or nuisance to the neighborhood. No recreational vehicles or boats shall be permitted on a street for more than 24 hours. It is the intention of this specific residential area covenant to eliminate any outdoor vehicle storage which will contribute to the annoyance or create a nuisance in the development.

Section 11: **Pets.** No animals, livestock, or poultry of any kind shall be raised, fed or kept on any lot except dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. All pets must be confined upon the owner's property. No barking or vicious dogs are to be kept on the property. Owners shall be responsible to promptly clean up pet waste in all exterior areas.

Section 12: **Trees.** No dead trees, either standing or cut, are to be allowed on any lot (unless neatly stacked as firewood).

Section 13: **Fences.** No fences shall be erected on any Lot. Two exceptions shall exist: A.) Privacy Fence. A cedar fence may be erected between adjoining Town Homes if each Owner of the adjoining Town Homes consents and receives approval from the ACC. A cedar fence not to extend beyond the patio/deck may be erected between adjoining Town Homes if each owner consents and the ACC approves. B.) Fence Concealing Garbage Container. A cedar fence may be erected upon a concrete pad only if approved by the ACC. In both instances the ACC shall have the authority to determine the specific standards applicable for the installation, materials, and maintenance of any fence. In the event the ACC determines any fence is not being maintained it may, after giving the Owner(s) thirty (30) days notice and opportunity to cure, either elect to remedy the problem or have said fence removed at Owners' cost.

Section 14: **Towers and Antennas.** There shall be no satellite dishes (small 18" dishes of the Direct TV type are approved), towers or antennas located on any lot unless specifically approved by the Architectural Control Committee.

Section 15: **Trash.** None of the property shall be used or maintained as a dumping ground for old cars, rubbish or trash. All garbage or other waste shall be kept in sanitary containers and other equipment for the disposal of garbage and shall be kept in a clean, sanitary, and fire safe condition. All garbage containers shall be stored in the garage or behind a fence (see above). While being stored, no garbage cans should be visible from any public street. No abandoned, junked, or non-used vehicles or trailers shall be kept or stored on any lot within the subdivision.

Section 16: **Recreational Vehicle, Boat or Utility Trailer.** No Owner shall or permit the parking of any recreational vehicle, boat, or trailer to be parked on any street or driveway. Brief, but in no event overnight, parking of the same shall be allowed for loading or unloading or while necessary for construction and/or maintenance of any Townhome.

Section 17: **Prohibited Activities/Structures.** The following activities and structures are negative covenants and shall not be permitted on any lot in the subdivision:

- a. Modular homes, mobile homes, tents, shacks, barns, temporary buildings, manufactured houses, structures of a temporary character, free standing sheds or storage buildings and non-attached garage. Temporary sales offices to be used by the Declarants shall be permitted.

- b. Animals, livestock, or poultry of any kind, raised, bred, or kept on any lot, except that dogs or cats may be kept provided that they are kept, bred or maintained for no reason other than as household pets for the owner of the lot and the total number of dogs and/or cats kept on any lot shall not exceed two (2).
- c. Business enterprises, including self-employed businesses, where the public is invited. No profession or home industry shall be conducted in or on any lot without the specific approval of the Declarants.
- d. The operation of motorized road and recreational vehicles including, but not limited to, three wheelers, four wheelers, go-carts, or any other motorized vehicle are not allowed on any vacant lot or common area, but an owner of his/her own property may operate the above on his/her own lot.
- e. Illegal, noxious, or offensive trade or activity, as defined by law, and anything done which may become an annoyance or a nuisance as defined by law.
- f. Window or wall heating units and window or wall air conditioning units.
- g. Wind turbines or solar panels.
- h. Mining activities and private water wells (except those owned by the Declarants).
- i. Spot lights, flood lights, or other lighting that interferes with the enjoyment of adjoining or neighboring lots.
- j. Swimming pools.
- k. Moving or relocating existing Townhomes.
- l. Signs. No signs shall be permitted except: one sign measuring four (4) total square feet may be displayed for a total of 2 weeks; or one sign of not more than six square feet advertising a Townhome for sale or rent; signs used by an Owner or approved contractors to advertise the property during the construction and sales period; or permanent identification signs, markers, or monuments may be constructed. The ACC, in all events, may order the removal for modification of any sign it deems not harmonious with the character of the Association.

ARTICLE III

THE TOWN HOMES AT RED ROCK MEADOWS

HOMEOWNERS ASSOCIATION

Section 1: It is hereby recognized that the Association has the power and authority to establish and amend rules, regulations, as well as these covenants so as

to carry out all functions necessary to operate a town home owners' association and to promote and advance the aesthetic appeal of the community, protect property values, and develop the enjoyment of the community, including rules for any insurance program of the Association.

Section 2: The Association reserves the authority to set and issue fines upon a Lot and/or Owner for noncompliance with these Covenants.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1: Every owner of a Lot or Dwelling Unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling Unit which is subject to assessment.

Section 2: The Townhome Association shall have one class of voting membership. Each owner of each Lot shall be entitled to one vote for each Lot or Dwelling Unit owned. If more than one person holds an interest in any one Lot or Dwelling Unit, all such persons shall be members, but the vote for said Lot or Dwelling Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot or Dwelling Unit. (In the event there are two owners and they cannot agree, there shall be no vote for that Lot or Dwelling Unit). Voting shall be in person or by proxy.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot or Dwelling Unit owned within the Properties, hereby covenants, and each Owner of any Lot or Dwelling 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: (1) annual assessments or charges, and (2) special assessments for capital improvements and services to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2: Annual Assessments.

- a. Townhome Unit Lot assessments shall be used for the improvement and maintenance of the Townhome properties, services and facilities devoted to this purpose and related to the use and enjoyment of the property and to the extent herein provided, of the dwellings situated on the property, as well as to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and of the Townhomes situated upon the properties, including, but not limited to:
 - (1) All operating expenses of the Association including services furnished, including but not limited to: turning sprinkler system on/off; snow removal; mowing and the fertilizing of lawn areas only (individual Townhome owners gardens and plantings to include sod, trees and shrubs shall be the responsibility of the Owner and NOT the Association) and other services the Association may determine to furnish; and
 - (2) The cost of necessary management and administration, including fees paid to any Management Agent by the Association; and
 - (3) Taxes and assessments levied against the Association or upon any property which it may ultimately come to own or otherwise is required to pay; and
 - (4) The cost of Directors & Officers Liability insurance, General Liability insurance, and the cost of such other insurance as the Association may procure; and
 - (5) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve.
- b. Annual Townhome Unit Assessments for the year shall be set upon recommendation of the Board of Directors, and passed by the Owners as provided herein.
- c. The Association shall collect from each Owner the amount of Association Annual, special assessments, and all other costs, fees, and expenses provided herein.

Section 3: Special Assessments.

- a. Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year,

a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, provided that any such assessment shall have the assent of a majority of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

- b. Services. In addition to the annual assessments authorized above, the Association may levy special assessments to defray the cost of providing services. In the event the Association's Board of Directors, in its sole discretion, shall determine that such are necessary to meet the costs for such services as, mowing, snow removal, or similar items, the same shall be due immediately upon levy by the Board of Directors; provided the same shall not exceed the actual cost incurred by the Association.

Section 4: Notice and Quorum for Any Action Authorized Under Section 2C or Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 2C or Section 3 shall be sent to all members not less than ten (10) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of members as defined in Article IV, Section II shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 5: Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots of a similar type.

Section 6: Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following transfer of the first Townhome Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 7: Effect of Non-payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall

be charged interest at the annual percentage rate specified by law upon unpaid judgments. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape the liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 8: Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or form the lien thereof.

ARTICLE VI INSURANCE

Section 1: Homeowner's Insurance. Each Owner shall purchase liability coverage, in such forms and amounts as the Association shall reasonably direct, for each unit owned by said Owner and provide proof of the same to the Association. Homeowners may elect to purchase any personal property insurance needed by said Homeowner.

Section 2: Reconstruction or Repair Standards. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original buildings, or if not, then according to the plans and specifications approved by the Board of Directors, as provided in this Declaration, which reconstruction or repair shall be diligently pursued and completed within 180 days or within such period of time as reasonably necessary.

ARTICLE VII TOWNHOME PARTY WALLS

Section 1: General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhomes upon the properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2: **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3: **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4: **Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or will full act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5: **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6: **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII EXTERIOR MAINTENANCE

Each Owner shall be responsible for the maintenance of the exterior of their Townhome (i.e. paint and stain of exterior, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, grass, walks, driveways and other exterior improvements-collectively "Exterior Maintenance"). However, the Association may provide Exterior Maintenance upon each Townhome Unit through an assessment or establishment of reserves. Said assessment or reserve shall be in addition to the regular Owner assessment. The Association shall determine the additional assessment amount through a vote by the Association. In the event the Owner of any Lot or Townhome Unit in the properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE IX EASEMENTS

Section 1: **Public Utilities.** Easements for public utilities over and across the Lots shall be those shown upon the recorded plat and any additions or annexations thereto. There shall also be sewer and power easements over and across the Lots for purposes of serving each Lot with such utilities. There shall also be utility easements through the walls, floors and ceilings of the individual units for the benefit of all other units on the property.

Section 2: **Access.** There is hereby created an easement in favor of the middle units of each building across the Lots of the end two units of each building for purposes of reaching the back yards of the middle units. However, there shall be no vehicular traffic use of those easements without the express permission of the Owner of the Lot across which such use is proposed.

Section 3: **Joint Driveways.**

- a. **Creation.** Any driveway which is built or installed as part of the original construction upon the property and which is situated on the dividing line between Lots or partly on one Lot and partly on another Lot or other Lots, shall constitute a joint driveway for the equal and common use and benefit of the Owners of any Lots or other portions of the property which it is reasonably designed to serve, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding joint driveways and of liability for property damage due to negligent or willful acts or omissions regarding the same shall apply thereto.
- b. **Easement.** There shall be a perpetual and non-exclusive easement, in, through, and over any such joint driveway reserved to the Owners of any Lot or Lots upon which the same has been built or installed or which the same has reasonably been designed to serve and no person shall in any way interfered with the free and unobstructed use thereof by said Owners.

ARTICLE X GOLF CLUB FACILITIES

Section 1: **General.** The Golf Club Facilities are not Common Areas and are not subject to this Declaration, and no provision of this Declaration gives, or shall be deemed to give, any Owner or occupant of any Lot the right to use the Golf Club

Facilities. Rights to use the Golf Club Facilities will be granted only to those persons, and on these terms and conditions, as may be determined from time-to-time by the Golf Club Owner. By way of example, but not limitation, the Golf Club Owner shall have the right to approve users and determine eligibility for use, to reserve use rights, to transfer any or all of the Golf Club Facilities or operation thereof to anyone and on any terms, to limit availability of use privileges, and to require the payment of a purchase price, a membership contribution, an initiation fee, a membership deposit, dues, and/or use charges. Each Owner and occupant of any Lot hereby acknowledges that no right to the use or enjoyment of the Golf Club Facilities arises from ownership or occupancy of a Lot but arises, if at all, only from a membership agreement or other similar agreement with the Golf Club Owner. The Golf Club Owner shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Golf Club Facilities including, but not limited to, eligibility for and duration of use rights, categories of use, extent of use privileges, and number of users. The Golf Club Owner shall also have the right, in its sole and absolute discretion and without notice, to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

Section 2: **Reservation.** Declarant hereby reserves unto itself and its successors and assigns, together with the right to grant and transfer the same to the Owner of the Golf Club, a non-exclusive easement over those portions of the Properties adjacent to the Golf Club's Facilities for the flight of golf balls, and for the maintenance and encroachment of golf course irrigation systems, water mains, water pumps and golf cart paths.

Section 3: **Golf Course Liabilities.** By accepting the deed to a Lot, each Owner, for himself and his invitees, personal representatives, assigns, and heirs (collectively, the Owner's Related Parties") hereby acknowledges, accepts and assumes the risk of any of the items set forth in subsections (a) through (h) below (collectively the "Golf Course Hazards"). Each Owner of a Lot (and the Owner's Related Parties) assumes the risk of any property damage, personal injury, creation or maintenance of a trespass or nuisance created by or arising in connection with the Golf Course Hazards (collectively the "Assumed Risks"); and (iii) releases, waives, discharges, covenants not to sue, indemnifies and agrees to hold harmless Declarant (and its partners and affiliates), the Association, the Board of the Association, the sponsor, developer, architect, designer, and contractor for the Golf Club Facilities, the members or authorized users and guests of the Golf Club Facilities, the owner of the Golf Club Facilities, and each of their respective officers, directors, shareholders, affiliates, successors and assigns (collectively, the "Released Parties"), and each of them, from any and all liability to the Owner or Owner's Related Parties for any losses, costs (including, without limitation, attorneys' fees), claims, demands, suits, judgments or other obligations arising out of or connected with any of the Assumed Risks. Notwithstanding the foregoing, however, in no event shall this Section 2 relieve any golfer from any claims or liability under South Dakota

law for any Golf Course Hazard caused by such golfer. The Golf Course Hazards shall include the following:

- a. Errant Golf Balls. Owners of Lots, particularly Lots abutting the Golf Course, acknowledge the inherent risk of errant golf balls and assume and accept such risk. Owners acknowledge and accept the risk that golfers may walk upon their property to retrieve errant golf balls from Lots and each Owner agrees to release and waive any claims Owners may have as a result of such retrieval.
- b. View Impairment/Privacy. Owners of Lots, including Owners of Lots abutting the Golf Club Facilities, have no guarantee that their view over and across the Golf Club Facilities will be forever preserved without impairment or that the view from the Golf Club Facilities will not be impaired. The developer or owner of the Golf Club Facilities has no obligation to prune or not prune trees or other landscaping and such owner has reserved the right, at its sole discretion, to add, change or reconfigure the golf course and other related facilities, including any trees, landscapes, tees, bunkers, fairways and greens.
- c. Treated Wastewater. The Owner of the Golf Club Facilities may use reclaimed and treated wastewater to irrigate the Golf Course and related landscaping and the Owners of Lots acknowledge, accept the use and assume the risk of such reclaimed and treated wastewater.
- d. Pesticides and Fertilizers. Pesticides, fertilizers and other chemicals will be utilized in connection with the operation of the Golf Course and related landscaping and the Owners of Lots acknowledge, accept the use and assume the risk of such pesticides, fertilizers and chemicals.
- e. Over-spray. Owners of Lots, particularly Owners of Lots abutting the Golf Course, may experience "over-spray" from the Golf Course irrigation system, and such Owners acknowledge, accept and assume the risk of such "over- spray".
- f. Noise and Light: Tournaments. Owners of Lots, particularly Owners of Lots in proximity to the clubhouse of the Golf Club Facilities may be exposed to lights, noise or activities resulting from use of the golf course for tournaments, from use of the clubhouse for dining and entertainment and use of the parking lot, and such Owners acknowledge, accept and assume the risk of such light, noise or activities. Declarant shall also have the right to sponsor and conduct golf tournaments at the Golf Club

Facilities and in connection therewith in erect temporary tents and other structures necessary or convenient to stage and operate such tournaments, and such Owners acknowledge, accept and assume the risk of any noise, inconvenience or other impact of any such golf tournaments.

- g. No access. The Owner of each Lot abutting any portion of the Golf Club Facilities, by accepting a deed to his Lot, acknowledges that the Owner of the Golf Club Facilities does not permit access to any portion of the Golf Club Facilities directly from any other Lot. Such access is permitted only through the clubhouse and such other entry points as the Owner of the Golf Club Facilities may from time to time specifically designate. Accordingly, each Owner of a Lot abutting any portion of the Golf Club Facilities agrees not to access the Golf Club Facilities directly from his Lot and shall not permit any of his family, guests, invitees or any other person to do so. The Association shall have the right to enforce this access restriction directly against any Owner who violates it by any and all means authorized in this Declaration.
- h. Maintenance. The Golf Club Facilities, including without limitation, the Golf Course require daily maintenance, including mowing, irrigation and grooming, during early morning and evening hours, including without limitation the use of tractors, blowers, pumps, compressors and utility vehicles. Owners of Lots, particularly Owners of Lots in proximity to the Golf Course, will be exposed to the noise and other effects of such maintenance, and such Owners acknowledge, accept and assume the risk of such noise and other effects.

ARTICLE XI

Section 1: **Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2: **Severability.** Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no ways affect any other provisions which shall remain in full force and effect.

Section 3: **Amendment.** The covenant and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is

recorded, after which time they shall be automatically extended for successive periods often (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and thereafter by an instrument signed by not less than sixty-six and two-thirds percent ($66 \frac{2}{3} \%$) of the Lot Owners. Any amendment must be recorded.