

**BY-LAWS OF  
THE PINES AT ELKHORN RIDGE HOMEOWNERS ASSOCIATION, INC.**

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**ARTICLE I  
NAME AND LOCATION**

The name of the corporation is: The Pines at Elkhorn Ridge Homeowners Association, Inc. (the "Association"). The principal office of the corporation shall be located at 432 5<sup>th</sup> Street, Brookings, SD 57006, but meetings of members and directors may be held at such places within the State of South Dakota, as may be designated by the Board of Directors.

**ARTICLE II  
DEFINITIONS**

All terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Declaration of Covenants, Conditions, and Restrictions for the Pines at Elkhorn Ridge (the "Declaration"). In the event of an inconsistency between these Bylaws and the Declaration, the terms of the Declaration shall govern and control.

**ARTICLE III  
MEMBERSHIP**

Section 1. Membership. Every Owner, by accepting title to a Lot, shall automatically become a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

Section 2. Suspension of Membership Rights. During any period in which a Member shall be in default in the payment of any annual or special assessment levied by the Association, the voting rights and right to use of the recreational facilities of such Member may be suspended by the Board of Directors until such delinquent assessment has been paid. Such rights of a Member may also be suspended, after written notice, for a period not to exceed thirty (30) days, for violation of any rules and regulations established by the Board of Directors governing the use of the Common Areas and facilities.

**ARTICLE IV  
PROPERTY RIGHTS; RIGHTS OF ENJOYMENT**

Section 1. Each Member shall be entitled to the use and enjoyment of the Common Areas and facilities as provided in the Declaration. Any Member may delegate his rights of enjoyment of the Common Areas and facilities to the members of his family, or contract purchasers who reside on the property. Such Member shall notify the secretary in writing of the name of any such delegee. The rights and privileges of such delegee are subject to suspension to the same extent as those of the Member.

## **ARTICLE V BOARD OF DIRECTORS**

Section 1. Board of Directors Before Turnover Date. Until the Class B membership ceases to exist pursuant to Article Three of the Declaration (the "Turnover Date"):

- (a) the Declarant shall appoint the directors and officers of the Association; and
- (b) the Declarant shall have the sole power to remove any director or officer in the Declarant's discretion at any time, for any reason.

As of the date of these Bylaws, the initial directors and their officer titles are: Kirk Simet (President), Steve Burian (Vice President), Tyler Burian (Treasurer), and Lane Warzecha (Secretary).

Section 2. Board of Directors After Turnover Date. At the first annual meeting after the Class B Membership ceases to exist, the Members shall thereafter be entitled to appoint the directors and officers as provided for herein.

Section 3. Number of Directors. At all times, the affairs of this Association shall be managed by a Board of three (3) to seven (7) directors.

Section 4. Qualification for Directors. After the Turnover Date, Directors shall be Owners or spouses to Owners of Lots, or, in the case of Owners who are entities or trusts, shall be partners, members or employees of such entity or trust, or in case of corporate owners or mortgagees, shall be officers, stockholders, or employees of such corporation or mortgagee. Prior to the Turnover Date, the Declarant can appoint any person it so chooses to serve as director or officer.

Section 5. Election. At the first annual meeting after the Turnover Date, the Members shall establish the number of directors to be appointed and shall elect directors for terms of one (1) year, two (2) years, and three (3) years. At each annual meeting thereafter, the Members shall elect so many directors as terms have expired for a term of three years. The terms of the directors shall be staggered so that the terms of no more than two shall expire in any one year.

Section 6. Removal. After the Turnover Date, any director may be removed from the Board, with or without cause, by a majority vote of Members of the Association. In the event of death, resignation or removal of a director, a successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his or her predecessor.

Section 7. Compensation. No director shall receive compensation for any service rendered to the Association. Any director may be reimbursed for actual expenses incurred in the performance of his or her duties.

Section 8. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## **ARTICLE VI MEETINGS OF DIRECTORS**

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least annually, at such place and hour as may be fixed from time to time by resolution of the Board. Notice of regular meetings of the Board of Directors shall be given to each Director by mail, email, or telephone at least three business days prior to the date specified for such meeting.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than ten (10) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

## **ARTICLE VII NOMINATION AND ELECTION OF DIRECTORS**

Section 1. Nomination. Nomination for election to the Board of Directors may be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, one other member of the Board of Directors, and one or more members of the Association, who may be members of the Board of Directors. The Nominating Committee shall be appointed by the Board of Directors at each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as is the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot unless waived by the membership. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE VIII POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 1. Powers. The Board of Directors shall have power:

- (a) To adopt and publish rules and regulations governing the use of the Common Areas and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

- (b) To exercise for the Association all powers, duties and authority vested in or delegated to this Association not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;
- (c) To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- (d) To employ a manager, an independent contractor, or such other employees as they may deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors:

- (a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the Members or at any special meeting, when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote;
- (b) To determine the amount of funds required for the operation, maintenance, and other repairs of the Development, including operation, repair, and maintenance of the Common Areas;
- (c) To determine the amount of funds required to establish a capital account for the eventual repair or capital improvement of the Common Areas;
- (d) Billing for and the collection of assessments and fees (including annual, initial, and special assessments) from the Lot Owners;
- (e) Incurring indebtedness in the name of the Association and opening of bank accounts on behalf of the Association and designating the signatories required for the execution of any documents or instruments in connection therewith;
- (f) The placement of a lien on any Lot for which assessments (including annual, initial, or special assessments) have not been paid;
- (g) To supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (h) As more fully provided herein and in the Declaration:
  - (1) To fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, as provided in the Declaration, and
  - (2) To send written notice of each assessment to every Owner subject thereto as least thirty (30) days in advance of each annual assessment period;
  - (3) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of any assessment

therein stated to have been paid.

- (i) To procure and maintain adequate liability insurance, and to procure adequate hazard insurance on property owned by the Association;
- (j) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (k) To cause the Common Areas to be maintained;
- (l) To administer and enforce the Covenants, easement, uses, limitations, obligations and all other provisions which may be set forth in the Articles of Incorporation of the Association, the Bylaws of the Association and the Declaration;
- (m) To establish, amend, and enforce compliance with reasonable rules and regulations necessary for the operation, use and occupancy of the Development;
- (n) To keep in good order, condition, improve and repair any common roadways or other common elements serving the Development; and
- (o) To appoint committees including appointment of the Architectural Committee to approve specifications of improvements and construction on the Property and all other approvals as required by this Declaration.

## **ARTICLE IX COMMITTEES**

Section 1. The Board of Directors shall appoint an Architectural Committee as provided in the Declaration and a Nominating Committee as provided in these Bylaws. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes, such as:

- 1. A Maintenance Committee which shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the properties, and shall perform such other functions as the Board in its discretion, determines;
- 2. A Publicity Committee which shall inform the members of all activities and functions of the Association and shall, after consulting with the Board of Directors, make such public releases and announcements as are in the best interests of the Association; and
- 3. An Audit Committee which shall supervise the annual audit of the Association's books and approve the annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting as provided in Article XI, Section 8 (d). The Treasurer shall be an ex-officio member of the Committee.

Section 2. It shall be the duty of each committee to receive complaints from Members on any matter involving Association functions, duties, and activities within its field of responsibility. It shall dispose

of such complaints as it deems appropriate or refer them to such other committee, director or officer of the Association as is further concerned with the matter presented.

Section 3. The membership of each committee shall consist of a Chairman and two or more Members and shall include a member of the Board of Directors.

Section 4. Each committee shall keep records of proceedings and shall report all activities at the next quarterly meeting of the Board of Directors and at the annual meeting of the membership.

Section 5. Notice of any committee meeting may be sent by electronic mail.

## **ARTICLE X MEETINGS OF MEMBERS**

Section 1. Annual Meeting. The annual meeting of the Members shall be held in September or October of each year at the call of the Board of Directors.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the president or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes of the entire membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association, for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting. Upon approval of any Member, Notice may be sent to such Member by electronic mail. Approval shall be assumed if any Member supplies their email address to the Association.

Section 4. Quorum. The presence at the meeting of the members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by Member of his lot.

## **ARTICLE XI OFFICERS AND THEIR DUTIES**

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. After the Turnover Date, the election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he/she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by the president. The officer selected to such vacancy shall serve for the remainder of the term of the officer replaced.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

- (a) **President.** The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.
- (b) **Vice-President.** The vice-president shall act in the place and stead of the president in the event of his/her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.
- (c) **Secretary.** The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.
- (d) **Treasurer.** The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall, along with the President, sign all checks and promissory notes of the Association; keep proper books of account; cause an annual

audit of the Association books to be made by a public accountant at the completion of each fiscal year; shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

## **ARTICLE XII ASSESSMENTS**

Section 1: Creation of Lien and Personal Obligation of Assessment. Until such time as the same has been changed by the Board of Directors, each Owner of any Lot shall be assessed as follows (collectively, the “Assessments”):

- A. **Annual Assessments.** Annual assessments to be established and collected as hereinafter provided (“Annual Assessments”); and
- B. **Special Assessments.** Special assessments for capital improvements and services to be established and collected as hereinafter provided, and other special assessments provided for throughout these Bylaws (“Special Assessments”).

The Assessments, together with interest, costs, and reasonable attorney’s fees shall be a charge on the land against each Lot to the extent it is not paid and should be a continuing lien upon such Lot until it has been paid. Any such lien shall be subordinate to any first mortgage upon the Lot. Such lien shall be a personal obligation of the person who was the Owner at the time of the assessment. Personal obligations of the Assessments shall not pass to the successor in interest to such Lot unless it is expressly assumed by them.

Section 2: Purpose of the Assessments. The Assessments levied by the Association shall be used for the improvement and maintenance of the Common Areas, road maintenance for the Property, snow removal for the Development, the enforcement of the Covenants, and any other purpose incidental thereto.

Section 3: Annual Assessments.

- A. **Permitted Expenditures.** The Annual Assessment to the Owners of the Lots may include any regular expenditure needed for the purposes described in Section 2, including, but not limited to:
  - 1. All operating expenses of the Association including, but not limited to services contracted by the Association for the benefit of the Property, such as snow removal, road maintenance, and maintenance of the Common Areas;
  - 2. The cost of necessary management and administration, including fees paid to any management agent by the Association; and
  - 3. Any amounts needed to establish a reserve account in an amount determined to be necessary by the Association, including, a general operating reserve account and/or a reserve account for replacements.



**B. Amount of Annual Assessment.**

1. **Annual Assessment Period.** The Annual Assessment period shall run from January 1 through December 31 of each year (each, an "Assessment Year").
2. **Initial Annual Assessment.** The initial Annual Assessment amount has been set by the Declarant at \$600 per Lot for an Owner who has opted out of lawncare and snow removal and \$1,250 per Lot for an Owner who has not opted out of lawncare and snow removal.
3. **Subsequent Annual Assessments.** For each Annual Assessment Period hereafter, the amount of the Annual Assessment to be levied shall be set by the Board of Directors at their annual meeting in an amount determined sufficient to meet the regular expenses detailed in Section 3 above. The Board of Directors shall fix the amount of the Annual Assessment at the Annual Meeting and shall provide written notice of the Annual Assessment to every Owner subject thereto following the meeting.
4. **Date of Commencement of Annual Assessment.** The Declarant shall not be levied any type of Assessment for any Lot while under development or construction or while unoccupied. The Annual Assessment shall be first levied on each Lot after the Declarant conveys such Lot to a third party (not including an affiliate of Declarant). The Annual Assessment shall be prorated to the date of the conveyance.

**C. Payment of Annual Assessment.** The Annual Assessment shall be payable in one (1) annual payment, which shall be due and payable within thirty (30) days of the receipt of the notice of the annual assessment amount, which is anticipated to be on or before January 1 of each year.

**D. No Limitation.** Annual Assessments shall not be limited by the provisions of this Article III, Section 3, but shall be established based upon budgeted costs for services provided herein.

Section 4. Special Assessments. In addition to the Annual Assessments authorized above, the Board of Directors may levy one or more Special Assessments, in any year, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Property and to defray the cost of the services normally covered by the Annual Assessment that exceed the amount of Annual Assessments collected for the Annual Assessment Period. Additionally, the Board of Directors have the authority to levy Special Assessments in connection with an Owner's failure to abide by the terms of the Covenants. Except as otherwise provided herein, the need for and amount of any Special Assessment shall be determined by the Board of Directors at a special meeting of the Board of Directors called for that purpose. Any Special Assessment approved by the Board of Directors requires the approval by two-thirds (2/3) of the vote of the Members who are voting in person or by proxy at a meeting called for such purpose at which a quorum is present. Written notice of such meeting shall be sent by first class mail at least thirty (30) days in advance. For the avoidance of doubt, a quorum for any meeting for the purpose of approving a Special Assessment shall be as follows:

- A. At the first meeting called for such purpose, the presence of Members or proxies entitled to cast more than fifty percent (50%) of all the votes of the membership shall constitute a quorum.
- B. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Section 4 and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than forty-five (45) days following the preceding meeting.

The Special Assessments shall be due immediately upon approval by the requisite number of Members. Notwithstanding anything herein to the contrary, the Declarant shall not be levied any Special Assessment.

Section 5: Uniform Rate of Assessment. All Assessments must be fixed at a uniform rate for all Lots of similar type, unless otherwise specifically provided herein (i.e. in relation to a Special Assessment for an Owner's failure to abide by the terms of the Covenants). For the avoidance of doubt, the Assessments need not be uniform between lots of differing uses (i.e. Lots with multi-family dwellings may be assessed at a different rate than Lots with Town House Units).

Section 6: Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall be charged interest at a rate of 1.5% per annum until paid in full. The Association may bring an action at law against the Owner personally obligated to pay the same or place a lien against the Lot. No Owner may waive or otherwise escape liability for the Assessments provided for above by the abandonment of his or her Lot.

### **ARTICLE XIII BOOKS AND RECORDS**

The books, records, and papers of the Association shall at all times during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, or copies may be purchased at reasonable cost.

### **ARTICLE XIV AMENDMENTS**

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and the Bylaws, the Declaration shall control.

### **ARTICLE XV MISCELLANEOUS**

The Association shall indemnify and hold harmless each officer and director, to the full

extent permitted under South Dakota law.

The fiscal year of the Association shall begin on the 1<sup>st</sup> day of January and end on the 31<sup>st</sup> day of December of every year. Notwithstanding the preceding, the Assessment Year shall run from June 1 of each year through May 31 of the following year.

The undersigned officers do hereby certify that the foregoing Bylaws were duly adopted as the Bylaws of The Pines at Elkhorn Ridge Homeowners Association, Inc. on the 20<sup>th</sup> day of April, 2025, and the same do now constitute the Bylaws of the Corporation.

  
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Kirk Simet, President

ATTEST:

  
\_\_\_\_\_  
Lane Warzecha, Secretary

Prepared By:  
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Nooney & Solay, LLP  
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**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR THE PINES AT ELKHORN RIDGE**

This Declaration of Covenants, Conditions, and Restrictions (this "Declaration") is made this 20<sup>th</sup> day of April, 2025, by SLH Holdings, LLC, a South Dakota limited liability company, and Steve Burian, an individual (hereinafter collectively referred to as "Declarant"), who are the fee owners of the real property described on the attached Exhibit A (the "Property").

**RECITALS**

WHEREAS, Declarant desires for a uniform scheme of development for the preservation and enhancement of the Development (as that term is defined herein); and

WHEREAS, Declarant desire to provide a governance structure for the maintenance of the Development;

WHEREAS, pursuant to this Declaration, a South Dakota non-profit corporation known as "The Pines at Elkhorn Ridge Homeowners Association, Inc." (the "HOA") been formed which has the power of enforcing the covenants, conditions and restrictions herein created the (collectively, the "Covenants") and has the power to assess the Owners (as defined herein) in connection with the maintenance of the Development; and

NOW THEREFORE, the Declarant does hereby declare that from and after the recording of this Declaration, the Property shall be held, sold, administered, maintained, transferred, occupied and conveyed subject to the easements, restrictions, covenants, conditions, and liens herein set forth, which covenants are designed for the purpose of keeping the Property uniform and to ensure the highest and best residential development of the Property. This Declaration and the covenants, conditions, and restrictions contained herein shall constitute covenants to run with the land and shall be binding upon all parties having a right, title, or interest in Property, their heirs, successors, and assigns and shall ensure to the benefit of each owner thereof.

**ARTICLE ONE  
DEFINITIONS**

Captions, titles, and headings in this Declaration are for convenience only and do not expand or limit the meaning of the provisions herein. Whenever the context permits, the singular shall include the plural, and the plural shall include the singular. The following terms shall have the meanings in this Declaration:

1. "Common Areas" shall mean any Lot or other area within the Property that is dedicated for the common use of the Owners, whether such Common Areas are owned by the Declarant, the HOA, or publicly dedicated.
2. "Declarant" shall mean and refer to SLH Holdings, LLC, a South Dakota limited liability company, and Steve Burian, an individual, and shall include each of their successors and assigns, if such successors or assigns should acquire the balance of the undeveloped portion of the Property from its predecessor for purpose of development. For the avoidance of doubt, the Declarant may assign its rights and duties as Declarant to a successor who purchased the balance of the undeveloped portion of the Property for purposes of development by a writing recorded with the Lawrence County Register of Deeds. No Owner consent shall be needed to such assignment.
3. "Development" shall mean and refer to the residential development known as "The Pines at Elkhorn Ridge."
4. "Living Unit" shall mean and refer to a structure or portion of a structure constructed upon the Property designated and intended for use and occupancy as a residence. As of the date of this Declaration, the only Living Units which have been developed are Town House Units, however other types of Living Units, including single family homes, multi-family homes, and/or apartments may be developed in the future.
5. "Lot" shall mean and refer to any plat of land shown upon any recorded plat or subdivisions map of the Property. As to any unplatted area, "Lot" shall mean a contiguous parcel of real property on the Property owned by an Owner. Upon conclusion of the development of the Property by Declarant, it is not anticipated that any of the Lots will be unplatted.
6. "Owner" shall mean and refer to the record owner, whether one or more persons, trusts, or entities, of a fee or undivided fee interest to any Lot, including contract sellers. The term "Owner" shall not mean a mortgagee unless and until the mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
7. "Property" shall have the meaning ascribed to it in the initial paragraph of this Declaration, as that property description is modified from time to time pursuant to the provisions of this Agreement (i.e. annexation of additional property, release of portions of the Property).
8. "Town House Unit" shall mean any building or a portion of a building attached to another building or portion of a building situated upon the Property commonly identified as a

townhome and designated and intended for use and occupancy as a residence by a single family.

## **ARTICLE TWO GENERAL PLAN OF DEVELOPMENT**

1. Addition or Removal of Property from Covenants. The Declarant reserves the right to annex additional property within this Declaration and reserves the right to remove portions of the Property owned by the Declarant from this Declaration, without the consent of any other party. If the Declarant annexes additional property within this Declaration, the Declarant shall file a document with the Register of Deeds Office in Lawrence County entitled "Notice of Annexation of Property Into Declaration of Covenants, Conditions and Restrictions" which document shall provide that certain described additional real property shall also be subject to this Declaration the same as if said real property had been included the initial Property subject to this Declaration. Provided, however, nothing herein shall prevent the Declarant from modifying in total or in part any of the Declaration of Covenants, Conditions and Restrictions pertaining to such additional property so annexed. If Declarant removes portions of the Property owned by the Declarant from this Declaration, the Declarant shall file a document with the Register of Deeds Office in Lawrence County entitled "Notice of Removal of Property from Declaration of Covenants, Conditions, and Restrictions," which document shall provide that certain described real property is no longer subject to this Declaration.
2. Modification of Covenants for Portions of Property. The Declarant reserves the right to modify this Declaration and the Covenants herein as it pertains to any portion of the Property, without the consent of any other party. If the Declarant desires to make such a modification, the Declaration shall file a document with the Register of Deeds office in Lawrence County entitled "Notice of Modification of Declaration" which document shall identify the portion of the Property so affected and the modification to this Declaration and/or the Covenants herein.
3. Mergers. Upon merger or consolidation of the HOA with another homeowners association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively the properties, rights and obligations of another association may by operation of law, be added to the properties, rights and obligations of the association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the premises together with the covenants and restrictions established on any other properties as one scheme. No such merger or consolidation however, shall effect any revocation, change or additions to the covenants established by this Declaration within the premises as they then exist, except as hereinafter provided.

## **ARTICLE THREE**

## **HOMEOWNERS ASSOCIATION**

1. Membership in HOA. As of the date of this Declaration, the HOA has been formed by the Declarant. Each Owner, by accepting title to a Lot, agrees to become a member of the HOA. The membership shall be appurtenant to and may not be separated from ownership of any Lot.
2. Voting Rights. The HOA shall have two (2) classes of voting membership:
  - A. Class A Members. Class A Members shall be all Owners as defined in Article One, with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned by them. When more than one person holds an ownership interest in a Lot, all such persons shall be considered Members, but in no event shall more than one (1) vote be cast with respect to such Lot. The vote for such Lot shall be exercised as they, among themselves, determine.
  - B. Class B Members. Declarant shall be the sole Class B Member. The Class B Member shall be entitled to one (1) vote for each Lot owned by the Declarant, plus three (3) votes for each vote entitled to be cast at any time by the Class A Members. For the avoidance of doubt, if there are eight (8) votes entitled to be cast at any time by the Class A Members, the Declarant shall have twenty-four (24) votes plus one (1) vote for each Lot owned by the Declarant. . The Class B membership shall cease and terminate no later than six (6) months after the Declarant has conveyed title to all of the Property.
3. Board of Directors. Until such time as the Class B Member ceases to exist, the Board of Directors of the HOA shall consist of individuals appointed by the Declarant. Thereafter, the Class A Members shall appoint the Board of Directors as provided in the Bylaws.
4. Duties of the HOA. The HOA shall be responsible for the maintenance, operation, and repair of all Common Areas. Any repair or reconstruction of the Common Areas shall be permitted, or if modified, as approved by the appropriate governmental entity having authority over such systems.
5. Determination of Quorum. Except as otherwise provided for herein, a quorum shall be defined as the presence of Members, absentee ballots received, or proxies entitled to cast more than ten percent (10%) of all the votes of the membership. If the required quorum is not forthcoming at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.
6. Absentee Voting. Absentee voting is allowed for all matters coming before the entire membership of the HOA. As to any matters that require action by the entire HOA, the Board of Directors shall give written notice of the proposed action at least fourteen (14)

days prior to the time a vote on the matter is to be taken. The notice to the Members shall tell each Member that they can request an absentee ballot from the Secretary of the HOA and that absentee ballot must be returned at least three (3) business days prior to the vote actually being taken. Any ballots received less than three (3) business days before the vote is taken will not be counted. The absentee ballot will state the proposed measure and if necessary, will give an explanation to each voter as to what the effect of the vote will mean as to the HOA. The Board of Directors prior to sending out the absentee ballot will agree by majority vote what explanation will be given in the notice to each of the Members. The notice will also state what number of votes by the membership will be necessary in order to pass the proposed action.

7. Bylaws. The Declarant, or the Owners, as the case may be, shall adopt a set of Bylaws applicable to the HOA which shall, at a minimum, grant the HOA the following authority:
  - A. To administer and enforce the Covenants, easements, uses, limitations, obligations and all other provisions which may be set forth in the Articles of Incorporation of the HOA, the Bylaws of the HOA, and/or this Declaration.
  - B. To establish, amend, and enforce compliance with reasonable rules and regulations necessary for the operation, use and occupancy of the Development.
  - C. To keep in good order, condition, improve and repair any common roadways or other common elements serving the Development.
  - D. To fix, determine, levy and collect the annual assessments to be paid by each of the Owners towards the administration, maintenance, and enforcements requirements of the HOA.
  - E. To collect special assessments whenever necessary to do so, to meet increased operating or maintenance expenses or additional capital expenses.
  - F. To collect delinquent assessments by suit or otherwise and to seek damages from an Owner as provided in this Declaration and the Bylaws of the HOA and exercise other remedies for delinquent assessments as allowed and set forth in the Articles of Incorporation, Bylaws, Covenants, and any applicable state laws.
  - G. To carry on the administration of the HOA necessary to carry out the purposes and intent in the Articles of Incorporation, the Bylaws, these Covenants, and the requirements of the laws of the state of South Dakota.
  - H. To elect officers as is necessary and required.
  - I. To appoint committees including appointment of the Architectural Committee to approve specifications of improvements and construction on the Property



and all other approvals as required by this Declaration.

- J. To enforce the Covenants set forth in this Declaration and all rules and regulations as set forth by the HOA including collection of dues. Said power and authority shall include the authority to provide in the Bylaws that any annual or special assessment and any applicable interest and late fees shall be a lien against the lot of any member of the HOA. Such provision may provide that any lien may follow the Property.

In the event of an inconsistency between the Bylaws and this Declaration, the terms of this Declaration shall govern and prevail.

#### **ARTICLE FOUR PROPERTY RIGHTS IN THE COMMON AREAS**

1. Members Easement of Enjoyment. Subject to the provisions of this Article Four, every Member shall have a right and easement of enjoyment in and to the Common Areas, if any, when deeded to the HOA, and such easement shall be appurtenant to and shall pass with the title to every Lot. The Common Areas are not for the use of the general public, but are for the common use of the Members and their guests.
2. Title to Common Area. Declarant may retain legal title to all or any portion of the Common Areas until the Declarant decides to transfer title to the HOA. Notwithstanding the Declarant's ownership of all or any portion of the Common Areas, the HOA shall provide for the maintenance of all of the Common Areas and shall indemnify and hold Declarant harmless from any and all claims or actions relating to the HOA or the Members' use of such property. The Declarant shall be permitted to lease the Common Areas to the HOA, as agreed to between the Declarant and the HOA.
3. Extent of Members' Easements. The rights and easements of enjoyment created hereby and the title of the HOA to the Common Areas shall be subject to the following:
  - A. The right of the HOA, in accordance with its Bylaws, to borrow money for the purpose of improving the Common Areas, and in aid thereof to mortgage said properties, and the rights of such mortgagee in such property shall be subordinate to the rights of the Members hereunder;
  - B. The right of the HOA to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;
  - C. The right of the HOA to enact rules and regulations governing the use and enjoyment of the Common Areas;

- D. The right of the HOA to suspend the enjoyment rights of any Member for any period during which any assessment or other fee remains unpaid, and to suspend the enjoyment rights for any period not to exceed thirty (30) days for any infraction of the rules and regulations pertaining to the Common Areas, and to assess a fine not to exceed \$100.00 for each infraction of its rules and regulations; provided however, that nothing herein shall be construed to deny an Owner access to and from his or her Lot;
- E. The rights of the Declarant and/or HOA to charge reasonable admission and other fees for the use of the Common Areas; and
- F. The right of the HOA to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, and no determination as to the purposes or as to the conditions hereof, shall be effective unless approved by Members entitled to cast sixty percent (60%) of all of the votes of the membership at a meeting called for that purpose.

## **ARTICLE FIVE ASSESSMENTS**

1. Creation of Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be and hereby is deemed to covenant and agree to pay to the HOA: (a) annual assessments or charges; (b) special assessments for capital improvements; and (c) special assessments for repairs and maintenance, all such assessments to be fixed, established and collected from time to time as hereinafter provided (collectively, the "Assessments"). The Assessments, together with such interest thereon and the costs of collection thereof, shall be the personal obligation of the person who was the Owner of each Lot at the time when the Assessments became due and shall be a lien against each Lot.
2. Purpose of Assessments. The Assessments levied by the HOA shall be used exclusively for the purpose of: (i) promoting the recreation, health, safety and welfare of the residents at the Property; (ii) providing for the improvement, maintenance and repair of the Common Areas; (iii) providing services devoted to the use and enjoyment of the Property; and (iv) covering any common expenses of the Development, as determined by the HOA from time to time.
3. Assessment Year. Unless modified by the Board of Directors by majority vote, an assessment year shall run from January 1 through December 31 each year (the "Assessment Year"). For the avoidance of doubt, the 2025 Assessment Year shall mean and refer to the Assessment Year running from January 1, 2025 through December 31, 2025, the 2026 Assessment Year shall mean and refer to the Assessment Year running from January 1, 2026 through December 31, 2026, and so on.

4. Annual Assessment. The Board of Directors shall be responsible for determining the annual assessment for each Assessment Year, at the times and in the manner prescribed by the Bylaws.
  - a. The initial annual assessment for the 2025 Assessment Year for an Owner who has opted out of lawncare and snow removal, has been set at \$600 per Lot.
  - b. The initial annual assessment for the 2025 Assessment Year for an Owner who has not opted out of lawncare and snow removal, is \$1,250 per Lot.

As of the date of this Declaration, the Any Owner purchasing a Lot from the Declarant shall be responsible, at closing, to pay its pro-rata share of the initial annual assessment to the HOA at closing. Unless otherwise modified by the Board of Directors by majority vote, the annual assessment shall be determined and notified to the Owners no later than January 1<sup>st</sup> of each year and shall be due and payable within thirty (30) days of the receipt of the notice of the annual assessment amount. Failure to provide notice of the annual assessment for the upcoming Assessment Year by January 1 shall not relieve the Owners of the responsibility to pay the annual assessment within thirty (30) days of the notification of the amount of the annual assessment.

5. Special Assessments. In addition to the annual assessments authorized by Section 4 above, the HOA 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 costs of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, or for any other purpose which may be determined to be for the benefit of the Members, provided that any such assessment shall be approved by two-thirds (2/3) of the vote of the Members who are voting in person or by proxy at a meeting called for such purpose. Written notice of such meeting shall be sent by first class mail at least thirty (30) days in advance.
6. Repairs. The HOA may assess any Owner for the cost of any repairs authorized by this Declaration.
7. Quorum for any Action Authorized under Sections 5. The quorum required for any action authorized by Sections 5 hereof shall be as follows: (A) at the first meeting called for such purpose, the presence of members or proxies entitled to cast more than fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Section 5 and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than forty-five (45) days following the preceding meeting.

8. Date of Commencement of Annual Assessments. Notwithstanding anything herein to the contrary, the Declarant shall not be levied any type of assessment for any Lot while under development or construction or while unoccupied. The annual assessment shall be first levied on each Lot after the Declarant conveys such Lot to a third party (not including an affiliate of Declarant). The annual assessment shall be prorated to the date of the conveyance and shall be paid at closing.
9. Due Date of Special Assessments. The due date of any special assessments allowed within this Article shall be fixed in the resolution authorizing such assessments.
10. Duties of the Board of Directors. The Board of Directors of the HOA shall fix the date of commencement and the amount of the annual assessment at least thirty (30) days in advance of such date and shall maintain a roster of the properties and assessments applicable thereto which shall be kept in the office of the HOA and shall be open to inspection by any Owner. Written notice of the annual assessment shall be sent by first class mail to every Owner subject thereto. The HOA shall upon demand furnish to any Owner liable for assessment, a certificate in writing signed by an officer of the HOA setting forth whether the assessment has been paid. Such certificate shall be conclusive evidence of the payment of assessment therein stated to have been paid.
11. Effect of Non-Payment of Assessment. If the Assessments are not paid on the date when due as specified herein, then such assessment shall become delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, become a continuing lien on the property which shall bind such properties in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and the HOA may bring an action at law against the owner personally obligated to pay the same, or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event judgment is obtained, such judgment shall include interest, costs, reasonable attorney's fees as allowed by law, and any other expenses allowed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the Common Areas or abandonment of his Lot.
12. Subordination of Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any purchase money mortgage placed upon a Lot subject to assessments; provided however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of a Lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure; such

sale or transfer shall not release a Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments.

13. Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein:
  - A. All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
  - B. All properties exempted from taxation by the laws of the State of South Dakota;
  - C. The Common Areas; and
  - D. Any portion of the Property owned by the Declarant while under development or construction or while unoccupied.

Notwithstanding any provision herein to the contrary, no land or improvements devoted to dwelling use shall be exempt from assessments, charges, or liens.

14. Exterior and Interior Maintenance. In addition to maintaining the Common Areas, the HOA may perform repairs and maintenance, and engage any subcontractors or contractors necessary to perform such maintenance on any or all of the buildings, including Living Units, in the Property. The HOA may contract services for lawncare and snow removal. The HOA may provide for all or any portion of the exterior maintenance, including repair and replacement of roofs, siding, masonry, gutters, downspouts, painting and staining, and other periodic maintenance to be performed on the buildings. Furthermore, the HOA may assume the responsibility for certain interior repairs and maintenance, to the sewers, plumbing, heating, air conditioning and electrical systems to any and all buildings constructed as a part of the Property. Nothing in this provision shall be construed as the HOA's obligation to assume the maintenance or repairs described herein. In the event the HOA contracts for lawncare and snow removal services, the HOA may, in the HOA's discretion give the Owners an option to "opt out" of such services, on the terms and conditions determined by the HOA.
15. Cost of Exterior and Interior Maintenance. The cost of any maintenance performed by the HOA as allowed for and/or required by Section 14 above, shall be assessed to each Owner and added to the annual assessment assessed to such Lot. Where any such maintenance expense extends to more than one (1) Lot, the cost of such shall be rateably apportioned among the Lots benefiting from such repair or improvements, as determined in the HOA's reasonable discretion.
16. Landscape Maintenance. Each Owner maintain their landscaping in good condition, as determined by the HOA, in its reasonable discretion. Each Owner replace all dead or declining landscape, sod, trees, plantings, broken irrigation lines, or similar items and to

keep planted and sodded areas free from weeds, trash, debris, and the like. It is hereby declared that where grass or weeds exist on any Lot exceeding the height of six (6) inches as to an occupied lot, or one (1) foot as to any vacant lot, then said grass or weeds shall be prima facie considered unsatisfactory to the Board of Directors. The foregoing provisions shall not preclude the Board of Directors from determining that the grass or weeds of a lesser height are unsatisfactory or that other conditions are not satisfactory, but is included rather to serve as an encouragement for the Board to act quickly in extreme incidences.

In the event an Owner of any Lot in the Property should fail to perform adequate landscape maintenance under this provision, the HOA shall have the right, through its agents, independent contractors or employees to enter upon the said Lot and to perform such landscape maintenance, provided the HOA first give notice to the Lot Owner who shall have five (5) days to perform the landscape maintenance before the HOA may exercise its rights set forth in this Section.

Notwithstanding the foregoing or anything to the contrary in this Declaration, the HOA shall perform, through its agents, independent contractors, or employees, routine mowing and weed control on all vacant Lots regardless of whether owner by a Lot Owner. The Owner of a vacant Lot may elect to perform its own mowing and weed control by notifying the HOA in writing, but such election shall at all times be subject to the requirements of this Section and any other conditions required by the HOA, in their reasonable discretion.

Any and all costs incurred by the HOA under this section, together with a reasonable administrative fee as set by the Board of Directors, shall be reimbursed to the HOA immediately by the applicable Lot Owner, and if not immediately paid, shall be added to and become part of the assessment to which such Lot is subject.

17. Maintenance by Owners. Nothing in Section 14 or 15 above shall preclude or relieve an Owner from maintaining a Living Unit or their Lot, in general. Any repairs, improvements, and/or maintenance not performed by the HOA shall be performed by the Owners and must be accomplished in a good and skillful manner to the satisfaction of the HOA and conform to the party wall agreement set forth herein. No repairs, improvements or maintenance may alter the exterior aesthetics of the property, unless approved in advance by the Architectural Committee. In the case of any dispute between an Owner and the HOA concerning any such maintenance or repairs, the opinion of the HOA shall prevail.
18. Monument Sign. In the event Declarant installs a monument sign or signs for the Development, the costs and expenses of maintenance, repair, and any and all utilities associated with the monument sign or signs shall be paid by the HOA and costs shall be assessed to all Lot Owners as provided for in this Declaration.

19. Authorization of Owner for Creation of Mechanic's Lien, Materialman's Lien and/or Personal Property Lien. If the Owner fails to comply with the maintenance standards set forth in this document as to his or her own real property or if the Owner or his/her guests damage any portion of the Common Areas, then that Owner specifically authorizes the HOA to make such improvements and/or repairs as the HOA deems necessary and that the Owner hereby authorizes that the cost of the improvements shall become a mechanic's lien, materialman's lien or personal property lien on the Lot pursuant to SDCL 44-9 and SDCL 44-11.

## **ARTICLE SIX INSURANCE**

1. Election to Not Insure as an Association. Declarant has elected to not insure the Town House Units under an association policy.
2. Owner's Insurance. Each Owner is required to purchase and maintain its own insurance in accordance with this Article Six.
3. Required Coverage. Insurance shall be purchased and maintained by each Owner to cover the following:
  - A. Hazard insurance insuring against loss by fire and extended coverage for full replacement value of all building improvements on the Owner's Lot.
  - B. Liability insurance coverage with a minimum combined single limit coverage in the amount of \$500,000.
4. Payment. Premiums on the insurance policies shall be paid for by the Owner in a timely manner so as to maintain coverage without cancellation.
5. Miscellaneous.
  - A. Coverage amount for all hazard insurance shall be the sum required for full insurable replacement value of the Town House Unit in the event of its loss.
  - B. Each Owner shall furnish a Declarations Page for the required insurance policies verifying the required insurance is in place on an annual basis to the HOA.
6. Additional Insurance. Any Owner may also purchase additional insurance for personal liability, personal property, and betterment of individual Town House Units at the sole discretion of the Owner.

7. Owner Responsibility. Regardless of whether damage to a Living Unit is covered by insurance, the Owner shall be required to reconstruct and repair such damages to the satisfaction of the HOA.
8. Lien for Premiums. The HOA may, but shall not be required to, make payment of insurance premiums on behalf of any Owner who becomes delinquent in such payment. In the event the HOA does make such payment, then such payment and the cost thereof shall be treated as if it was a part of the annual assessment described above and shall be a charge on the land and a continuing lien on the property for whose benefit such premium payment is made and also the personal obligation of the Owner of such property at the time when such premium payment is made.
9. HOA Insurance. The HOA may obtain and maintain insurance in any amount determined by the Board of Directors to be necessary for its purposes.

#### **ARTICLE SEVEN WHEN DAMAGED PROPERTY IS TO BE RECONSTRUCTED OR REPAIRED**

1. Property Owned by the HOA. If the Common Areas or Living Units owned or operated and maintained for the benefit of the HOA are damaged, they shall be reconstructed or repaired. The HOA shall obtain reliable and detailed estimates of the cost to rebuild or repair so as to place the damaged property in condition as good as that before the casualty.
2. Property Owned by an Owner. If damage occurs to a Living Unit for which the responsibility of maintenance and repair is that of the Owner, then the Owner shall be responsible for all reconstruction and repair after casualty.
3. Approval. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original buildings or according to the plans and specifications approved by the Board of Directors of the HOA or the Architectural Committee as provided for in Article Ten below.

#### **ARTICLE EIGHT PROTECTIVE COVENANTS**

1. Construction Standards. All structures constructed upon a Lot shall be subject to the prior approval of the Architectural Committee as more fully described below. The Architectural Committee shall be permitted to set construction standards from time to time, provided that they do not set standards that would make previously approved construction no longer be in compliance with such standards.



2. Residential Use. Except as otherwise expressly provided for herein, the Property shall be improved, used and occupied for residential purposes only. Any lease of a Living Unit shall be for no less than thirty (30) days at a time to the same lessee. Short-term vacation home rentals shall be expressly prohibited. For purposes of this provision, a “short-term vacation home rental” shall mean a rental for less than thirty (30) days at a time. Except as expressly permitted by this Declaration, any commercial or business activity that is conducted on any portion of the Property is subject to the prior written approval of the HOA.
3. Prohibited Activities. No noxious or offensive activities shall be carried on upon any Lot nor shall anything be done thereon which shall become an annoyance or nuisance. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot except that one dog or one cat or other small household pet may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. No automotive repair may be conducted on any lot except within a garage, however, no commercial automotive repair shall be conducted under any circumstances.
4. Prohibited Residences. No trailer, basement, tent, shack, garage, barn, outbuilding or structure of a temporary character shall be used on any Lot at any time as a residence either temporarily or permanently.
5. Automobile and Recreational Vehicle storage. No vehicle, recreational vehicle, boat, snowmobile, trailer, or unlicensed motor vehicle may be kept on any Lot or the Common Areas, for a period of time in excess of five (5) days, except if it is fully contained within a garage. Private streets within the Property, if any, shall be reserved for temporary and intermittent parking only. Any Owner who violates this Section 4 is subject to having the offending vehicle towed and the costs of such towing and any other expenses incurred by the HOA shall be assessed against the Owner.
6. Trash Containers. No trash or debris shall be left on or in any Lot except in approved containers. No trash receptacles or incinerators or garbage cans shall be located outside of a building unless placed on a temporary basis only, awaiting pickup.
7. Community Mailboxes. No individual mailbox will be allowed on any Lot. All mailboxes for the Property shall be community mailboxes (sometimes known as “cluster box unit” mailboxes) as required by the U.S. Postal Service. The location of the community mailboxes is determined by the U.S. Postal Service and no Lot Owner may object to or attempt to change the location of any community mailbox. Upon taking title to a Lot, each Lot shall be subject to an initial community mailbox fee of \$300, which fee shall be invoiced by the HOA and due within 15 days of the invoice.
8. Miscellaneous Restrictions. Notwithstanding any omission in this Article Eight, the use of any Property included in this Declaration shall be restricted by any other limits expressed elsewhere in this Declaration.

## **ARTICLE NINE PARTY WALLS**

1. General Rules to Apply. Each wall which is built as part of the original construction of the living units in the Property and placed on the dividing line between Lots shall be a party wall, and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
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.
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 Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing necessary protection against such elements.
5. Right to Contribution Runs with the Land. Right of any Owner to contribution from any other Owner under Article shall be appurtenant to the land and shall pass to the Owner's successors in title.

## **ARTICLE TEN ARCHITECTURAL COMMITTEE**

1. Architectural Committee. There shall be an Architectural Committee which shall be responsible for reviewing the plans of all proposed construction, repairs, additions, or modifications. Such committee shall be responsible for ascertaining that the plans meet the minimum building requirements set forth in this Declaration and that such plans satisfy any design and construction standards adopted by the Architectural Committee. The primary purpose of such Committee shall be to assist the Owners in achieving compliance with such building restrictions. Notwithstanding anything contained in this Article to the contrary, the Committee may not approve plans which do not meet the applicable building codes.
2. Composition of Architectural Committee. The Declarant shall serve as the Architectural Committee until such time as the Declarant has assigned the authority for the Architectural

Committee to the HOA. Once the authority for the Architectural Committee has been assigned to the HOA, the Architectural Committee shall consist of not less than three (3) nor more than seven (7) Members to be selected annually by the Board of Directors of the HOA, with the Members to be chosen for varying terms so as to achieve staggered terms and continuity of membership of such committee. However, the Declarant shall have the power to veto any action taken by the Committee until the termination of the Class B membership.

3. Approval Required. No construction, change, modification or alteration for which plans are to be submitted to the Architectural Committee shall commence until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall be submitted to and approved in writing by the Architectural Committee as to the harmony of external design and location in relation to the surrounding structures and other such factors as the Architectural Committee considers necessary and relevant to maintain the aesthetics in the Development. In the event the Architectural Committee fails to approve or disapprove such design plan within thirty (30) days after such plans and specifications have been submitted to it, approval will not be required and full compliance with this Section will be deemed to have occurred. The Architectural Committee shall have no liability to the Owners for a failure to approve, disapprove, or respond.
4. Review Fees. When an Owner, other than the Declarant, submits a request to the Architectural Committee for review or approval, the submission shall include the applicable review fee, which may be modified by the Board of Directors from time to time. As of the date of this Declaration, the review fees are as follows:
  - a. New Home Construction. The original contemplated alteration of a Lot from its natural state to a Living Unit, with submission to include building plans, specifications, and other plans required by this Declaration and/or the Architectural Committee: Five Hundred Dollars (\$500).
  - b. Major Alteration or Addition: Structural or site modification taking place after the original construction, which is significant enough to require the issuance of a building permit by a governmental authority: Five Hundred Dollars (\$500).
  - c. Changes to or Resubmission of Plans: Whenever a submission for which the Architectural Committee has previously granted final approval is resubmitted for final approval to the Architectural Committee due to changes in the originally approved plan, or whenever a submission whose approval is previously denied is resubmitted by a builder or by a homeowner: One Hundred Dollars (\$100).
  - d. Additional Review Fees: in addition to the review fees as described above, the Architectural Committee shall be reimbursed by any Owner for such costs and expenses which are incurred by the Architectural Committee in the evaluation process, including, but not limited to, ordering surveys of lot lines and easements,

and/or engaging the resources of an engineer, architect, attorney, or consultant. Notwithstanding this provision, the Architectural Committee is not required or obligated to incur any outside third-party costs in the evaluation process of plans, specifications, or permits.

5. Landscaping. Nothing contained in this Article shall entitle any Owner, individually, to landscape any of the Common Areas, with the exception of the limited use common area adjacent to patios and entry ways. All landscaping and maintenance of lawns and shrubs shall be the responsibility of the HOA, with the exception of limited use common area adjacent to patios and entry ways which shall be the Owner's responsibility.
6. Design and Construction Standards. The Architectural Committee shall be permitted to establish and modify from time to time the design and construction standards for the Development, including but not limited to determining acceptable color schemes, construction materials, building height restriction, roof pitch requirements, establishing required setbacks, etc. In addition, the Architectural Committee may set standards and limitations on outbuildings and location of fencing. All fencing within the development shall be 4' black metal fencing. All design and construction standards shall apply equally to all similar Living Units (i.e. all Town House Units shall be subject to the same standards, all single family homes shall be subject to the same standards, etc.). Any modification to the design and construction standards shall not serve to make a Lot which was previously in compliance to become out of compliance.

## **ARTICLE ELEVEN EASEMENTS**

1. Owners Easements. Owners shall have an easement and right of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot.
2. Extent of HOA Easements. The rights and easements of enjoyment by the Owner of each Lot and the title of such lot shall be subject to the rights of the HOA to an easement on and over said lot for the purpose of installation and maintenance of necessary utilities.
3. Access and Utility Easements. There is hereby reserved and created a blanket easement upon, across, over, and under the Development for ingress and egress to allow installation, replacement, repairing and maintaining all utilities. By virtue of this easement it shall be expressly permissible for any governmental body or public utility to install, erect, repair, replace and maintain any and all equipment necessary or appropriate for providing utility services within the Development. In the event it should be necessary to enter an individual Living Unit for these purposes, notice shall be given to the owner thereof and where possible permission obtained if it cannot be accomplished without unreasonable delay. These easements shall in no way affect any other recorded easements on the Property and shall be appurtenant to each lot and shall pass with title to each lot whether specifically recited on such deed or not.

**ARTICLE TWELVE  
GENERAL PROVISIONS**

1. Duration. The covenants, restrictions and easements of Declaration shall run with the land and bind and inure to the benefit of and be enforceable by the HOA and the Owners of any Lot, their respective legal representatives, heirs, successors and assigns, for a period of twenty (20) years from the date this Declaration is recorded, after which time said covenants, restrictions and easements shall be automatically extended for successive periods of ten (10) years each. Amendments to this Declaration may be affected by a two-thirds (2/3) vote of the Members of the HOA. Any amendments to this Declaration must be recorded. Notwithstanding the preceding, until such time as Declarant has transferred all of the Lots to Owners, any amendment, change, termination, or modification of these Covenants shall be subject to the express written approval of Declarant, which may be withheld in the Declarant's sole discretion. This particular approval right is not subject to assignment and is personal to Declarant. In addition, until such time as Declarant has assigned its rights and obligations hereunder as Declarant to the HOA, Declarant reserves the right to amend this Declaration unilaterally by an instrument duly acknowledged and recorded in the Register of Deeds Office of Lawrence County, South Dakota, provided that such amendment does not result in a Lot which was previously in compliance with the covenants and restrictions to no longer be in compliance.
2. Enforcement. If any Owner shall violate or threaten to violate any of the provisions of this Declaration and the covenants and restrictions contained herein, any Owner, the Declarant, or the HOA may enforce this Declaration and the covenants and restrictions contained herein and may institute proceedings at law or in equity to enforce the provisions of this Declaration to restrain the violator or threaten violator and recover damages, actual and punitive, for such violation. If the Declarant, the HOA or any Owner shall be successful in such proceedings, the violating Owner shall also be liable to the enforcing party in such action for all attorneys' fees, costs and expenses incurred.
3. Severability. Invalidation of any one of these covenants and restrictions by judgment or Court order shall in no way affect the remaining provisions.
4. Notice. Any notice to be given pursuant to this Declaration shall be given to the Owner of any Lot at the legal address in writing by certified or first class mail. Notice to the HOW shall be by certified mail to the registered agent of the HOA of record from time to time.
5. Waiver. Failure of the HOA or any Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

[Signatures on the Following Page.]

Dated this 6<sup>th</sup> day of May 2025.

DECLARANT:

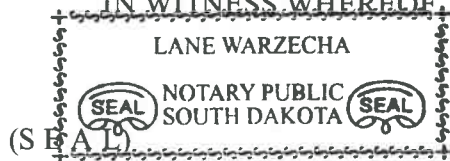
SLH HOLDINGS, LLC

By: [Signature]  
Kirk Simet, Manager

STATE OF SOUTH DAKOTA )  
 ) ss.  
COUNTY OF BROOKINGS )

On this 6<sup>th</sup> day of APRIL MAY, 202<sup>5</sup>~~4~~, before me, the undersigned, personally appeared Kirk Simet, who acknowledged himself to be the Manager of SLH Holdings, LLC, and that he, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of SLH Holdings, LLC as such Manager.

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



[Signature]  
Notary Public, State of South Dakota  
My Commission Expires: 01-02-2030

STATE OF SOUTH DAKOTA)  
 ) ss.  
COUNTY OF PENNINGTON )

On this \_\_\_\_ day of \_\_\_\_\_, 2025, before me, the undersigned officer, personally appeared Steve Burian, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for purposes therein contained.

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

(SEAL) \_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires: \_\_\_\_\_  
**EXHIBIT A**

Lots 1A, 1B, 2A, 2B, 3A, and 3B of Block 2 of Peaceful Pines Subdivision located in Tract P, formerly Tract P1 and a portion of Tract P of Elkhorn Ridge Addition, City of Spearfish, Lawrence County, South Dakota, located in the SE1/4 of Section 15, T6N, R3E, B.H.M.; and

The remainder of Tract P of Elkhorn Ridge Addition, City of Spearfish, Lawrence County, South Dakota, located in the SE1/4 of Section 15, T6N, R3E, B.H.M.