

**EMERALD HEIGHTS
TOWNHOMES ASSOCIATION, INC.**

**DECLARATION
OF
COVENANTS
CONDITIONS
AND
RESTRICTIONS**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
EMERALD HEIGHTS TOWNHOMES, INC**

THIS DECLARATION, made on the date hereinafter set forth by Emerald Heights Townhomes Association, Inc. of Black Hawk,, Meade County, South Dakota, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Meade and State of South Dakota, which is more particularly described as:

Lots A through U of Block 17 of Summerset Subdivision, Meade County, South Dakota.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and condition, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Emerald Heights Townhomes Association, Inc., its successors and assigns.

Section 2. "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 3. "Member" shall mean any person or entity who is an Owner.

Section 4. "Properties" shall mean and refer to that certain real property hereinbefore described.

Section 5. "Lot" shall mean and refer to any plot of land shown on any recorded subdivision map of the Properties.

Section 6. "Townhome Unit" 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.

Section 7. "Dwelling Unit" shall mean any Single Family Dwelling or Townhome Unit.

Section 8. "Rules and Regulations" shall mean any rules and regulations adopted and promulgated from time to time by the Board of Directors.

ARTICLE II

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 Association shall have two classes of voting membership:

Class A: Class A members shall be Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot or Dwelling Unit owned. When more than one person holds an interest in any Lot or Dwelling Unit, all such persons shall be members. The vote for such 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.

Class B: Class B member (s) shall be the Declarant and shall be entitled to ten (10) votes for each Lot or Dwelling Unit owned. For the purposes of these Covenants, "Lot" shall be defined to include all proposed lots within the area identified by Declarant as Emerald Heights Townhomes. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership exceed the total votes outstanding in the Class B membership, or
- (b) On January 1, 2014

ARTICLE III

EASEMENTS FOR ENCROACHMENTS

Section 1. Easement Encroachments: Improvements or modifications to a Lot, whether from construction, landscaping or other modification, either during initial construction or subsequently by the Lot Owner, which encroach upon any easement, shall be subject to removal or demolition by a utility company or governmental authority, if necessary, for construction or maintenance of utilities, drainage or other use reserved by easement upon plats of record or for compliance with State or local laws or ordinances governing the use of the same. Repair or replacement of any such improvements, landscaping or other modification shall be at the expense of the Owner, when and if allowed, upon completion of actions requiring repair or replacement by the utility or government authority.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments: The Owner of each Lot or Dwelling Unit owned within the Properties, by acceptance of a deed therefore, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Summerset Master Owner's Association and the Emerald Heights Townhomes 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 attorney's 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 attorney's fees, shall also 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/her successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties:

- (a) All operating expenses of the Association including services furnished for snow removal and lawn maintenance.
- (b) The cost of necessary management and administration fees, including fees paid to any Management Agent by the Association.

- (c) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve.

Section 3. Basis of Annual Assessments: Until June 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$600.00 or \$50.00 per month. Thereafter the annual or monthly assessment shall be as approved by fifty percent (50%) of the membership at their annual meeting voting in person or by proxy.

The Community of Summerset has protective covenants and an Owners Association to help insure the resident's quality of life, to protect home values, and to maintain the roads, park areas and community utility systems. The Emerald Heights Townhomes Association is a member of the Summerset Owners Association and enjoys the benefits of this Association. A minimum maintenance fee of \$15.00 per month will be paid to the Summerset Owners Association.

The Board of Directors shall, with due consideration to the current maintenance costs, prepare a proposed budget and compute the required Regular Annual Assessment based thereon for action at the annual meeting. Written notice of the amount of the approved Regular Annual Assessment shall be sent to each Member not later than thirty (30) days prior to the end of the fiscal year.

Section 4. Special Assessments:

Services: In addition to the annual assessments authorized above, the Association may levy special assessments to defray the costs of providing services. In the event the Association's Board of Directors, in its sole discretion, after taking into account available reserves, shall determine that such are necessary to meet the costs of snow removal and lawn maintenance, the same shall be due immediately upon levy by the Board of Directors, provided the same shall not exceed in any month the actual cost incurred by the Association in excess of regular assessment payments.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 & 4: Written notice of any meeting called for the purpose of taking any action under Sections 3 & 4, which requires approval by the membership, shall be sent to all members not less than thirty (30) days nor 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 two-thirds (2/3) of all the members entitled to vote shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirements, 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 6. Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for all Lots of similar type. Annual assessments may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the filing of the warranty deed, and shall be adjusted according to the number of months left in the calendar year. Assessments, whether paid annually or monthly, shall be paid in advance, and shall be due within ten (10) days of the first of the month or year. Individual members may elect to pay in advance.

Section 8. Effect of Nonpayment of Assessment: 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 judgements. 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 liability for the assessments provided for herein by non-use..

Section 9. Subordination of 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 become due prior to such sale or transfer. No sale or transfer shall relieve such Lot Owner from liability for any assessment thereafter becoming due or from the lien thereof.

Section 10. Utilities: Utilities, including, but not limited to, water, sewer, electricity, telephone and gas shall be the responsibility of the individual Owner and no responsibility for such shall be assumed by the Association.

ARTICLE V

INSURANCE

Section 1. Required Owners Insurance: Insurance shall be purchased by each Owner to cover the following:

- (a) Hazard insurance against loss by fire and extended coverage for full replacement value of all building improvements on the Owner's property naming the Owner as the principal insured and any mortgagee, as well as the Association, as additional insureds.
- (b) Liability insurance coverage with minimum combined single limit coverage in the amount required by the Association.
- (c) The Association recommends a million dollar umbrella liability policy.

Section 2. Owner Responsibility: If damage occurs only to a dwelling for which the responsibility of maintenance and repair is that of the Owner, then the Owner shall be required to reconstruct and repair the dwelling to the satisfaction of the Association, being responsible for all costs for reconstruction and repair of the casualty.

Section 3. 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. The reconstruction or repair shall be diligently pursued and completed with 180 days or within such period of time as reasonably necessary.

ARTICLE VI

USE, COVENANTS AND RESTRICTIONS

Section 1. Use of Dwelling Unit: Each Lot or Dwelling Unit 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. Exterior Appearance: The exterior of all buildings shall be in compliance with the architectural guidelines established by the Summerset Subdivision.

Section 3. Approval by Architectural Control Committee: No building shall be altered on any Lot until the plan showing the plans for alterations have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures and as to location with respect to topography and finished grade elevation and set back requirements. No fence or wall shall be erected, placed or altered on any Lot without prior approval by the Architectural Control Committee. In no event may a fence be erected in the designated drainage area.

Section 4. Architectural Control Committee. The Architectural Control Committee shall be composed of not more than three (3) members appointed by the Board of Directors. The terms of the committee members shall be for a period of three (3) years with the initial terms staggered so that one member's term shall expire each calendar year. Eligibility shall be limited to Lot Owners. In the event of death, resignation or ineligibility of any member of the committee, the remaining members shall have full authority to designate a temporary successor until a successor is appointed by the Board of Directors for the Association. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant at any time. The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee or its

designated representative fails to approve or disapprove plans submitted to it within thirty (30) days after such submission, the plans must be submitted to the Board of Directors.

The decision of the Architectural Control Committee shall be final, except that any Owner who is aggrieved by an action or forbearance from action by the Architectural Control Committee may appeal the decision of the Architectural Control Committee to the members of the Board of Directors. Upon request, such Owner shall be entitled to a special meeting of the members of the Board of Directors for that purpose.

Section 5. Appearance and Improvements of Lot: All improvements on each Lot must be maintained by the Lot Owner so as to remain in a state of good repair, neat and well kept in appearance. The Association shall provide snow removal and lawn maintenance and it is the responsibility of each Lot Owner to see that any lawns, landscaping or gardens are kept in a neat and orderly condition. Replacement of all trees and shrubbery shall become the responsibility of the Lot Owner one year after initial planting. Additional landscaping, including but not limited to shrubbery, plantings, gardens and flowers may be added or individualized as long as it does not interfere with lawn maintenance or existing sprinkler system and must be approved by the Architectural Control Committee prior to their use or development.

Section 6. Landscaping: Landscaping shall at all times be maintained in good condition and repair. Each Owner is responsible for the cost of water to water the lawn on his/her Lot. All sprinkler system cycles shall be coordinated by the Architectural Control Committee and the lawn service provider to insure lawns are kept green and equalize demand on the outside water supply system. No owner shall have the right to alter or discontinue water settings without written approval from the Architectural Control Committee.

Section 7. Vehicle Parking: On street parking is governed by local zoning requirements and ordinances. Residents' vehicles shall be parked within the provided garages when possible and additional vehicles shall be parked in the driveway provided for each Unit. No boat, truck, trailer or camper shall be parked at any Unit for more than 72 hours. No vehicle shall be allowed to park in any location that interferes with access to any other location or that unduly obstructs sidewalks, vision or view. Outdoor repair of any vehicle or equipment is prohibited, and no vehicle without a current license plate shall be parked at any location.

Section 8. Pets: The maintenance, keeping, boarding and/or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any dwelling on the property, except that this shall not prohibit the keeping of dogs, cats or caged birds as domestic pets, provided that they are not kept, bred or maintained for commercial purposes, and provided further, that such domestic pets are not a source of annoyance or nuisance to the community or members. No animal shall be permitted to run at large. Any animal taken outside of the dwelling must be on a leash, and all fecal deposits must be collected by the pet owner for sanitary disposal. The total number of dogs and cats shall be limited to three (3) per household.

Section 9. Annoyance: No obnoxious or offensive activity shall be carried out upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 10: Signs: No sign of any kind shall be displayed to the public view on any Lot, or right of way except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" and such signs as may be erected and maintained by the Declarant or the Association. No signs or advertising devices of any character shall be erected, posted, or displayed upon, in, or about any Lot within the property, provided, however, that one temporary real estate sign not exceeding six (6) square feet in area may be erected upon any Lot placed upon the market for sale or rent. Any such temporary real estate sign shall be removed promptly following the sale or rental of such Lot. This covenant shall not apply to signs of the Declarant during the period of sales activity of the Declarant.

Section 11. Fences: There shall be no fencing allowed whatsoever in any front yard, forward of the front corner of any home or garage. Except as approved by the Architectural Control Committee, no fence, wall or similar type of barrier of any kind shall be constructed, erected or maintained around the perimeter of any Lot for any purpose whatsoever, and no fence, wall or similar type of barrier shall be erected within the confines of any such Lot.

Section 12. Mailboxes: Standard mailboxes will be provided for each Lot Owner in a location designated by the Declarant. Newspaper boxes may be mounted on the same posts as the mailboxes, in a uniform manner, as prescribed by the Declarant or as approved by the Architectural Control Committee.

Section 13. Towers and Antennas: There shall be no towers, antennas or satellite dishes located on any Lot unless specifically approved by the Architectural Control Committee.

Section 14. Trash: None of the property shall be used or maintained as a dumping ground for old cars, rubbish or trash. All garbage or similar 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. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No incinerators shall be kept or maintained upon any property. The Architectural Control Committee may specify type and size of containers approved for the Summerset Subdivision Development.

Section 15. Lot Division: No Lot shall be divided or subdivided and no portion of any lot other than the entire Lot shall be transferred or conveyed for any purpose. No portion or any dwelling, other than the entire dwelling, shall be leased. The provisions of this subsection shall not apply to the Declarant, and further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any municipality, political utility, or other public body or authority, or to the Association.

Section 16. Garage/Doors: Garage doors and the doors of any other storage room or the like shall be maintained in a closed position whenever possible. No windows shall be permitted in the vehicle entrance doors of the garages.

Section 17. Clothes Lines: There shall be no outdoor hanging of clothing or household fabrics, and there shall be no clothes lines or poles for such purpose permitted.

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 homes 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 Repairs 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 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 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, and 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 the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to receive contributions from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owners 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 exterior maintenance of all structures on his/her Lot. In the event an Owner of any Lot 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 a 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 plan and any additions and annexations thereto. There shall also be sewer and power easements over and across the Lots for purposes of serving each Lot with such utilities.

Section 2. 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 and partly on another Lot or 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. 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) **Repair and Maintenance:** The cost of reasonable repair and maintenance of any joint driveways shall be shared by the Owners who make use of the same in proportion to their use.
- (c) **Damage or Destruction:** In the event that any joint driveway is destroyed or damaged, any Owner who has used the same may restore it, and if the other Owners thereafter make use of the same, they shall contribute to the cost of restoration in equal proportions without prejudice, however, to the right of the

Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

- (d) **Easement:** There shall be a perpetual and nonexclusive easement 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 interfere with the free and unobstructed use thereof by said Owners.
- (e) **Right to Contribution Runs With Land:** The right of any Owner to receive contributions from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in title.

ARTICLE X

WATER, SEWER AND ROADS

Each Owner shall be a member of and subject to the Summerset Owner's Master Association for Common Maintenance of streets, utilities, and other common property or areas used in common by this Association and the Owners of other properties in Summerset Subdivision or any sanitary district and/or road district or similar governmental agency which Grantor reserves the right to establish in lieu thereof or as a successor thereof for the provision and maintenance of common streets and utilities, security or other common needs. The Unit Owners, by acceptance of a deed, consent to the formation and establishment of such for the common good of Summerset Subdivision.

Section 1. Western Management Corporation of Rapid City, Pennington County, South Dakota, shall cause a central water system and sewer system to be installed in the subdivision to service the Summerset Subdivision. Western Management Corp. shall further install roads and streets as required by public authorities. After installation, the following are intended to occur:

- (a) The water system shall be connected to Black Hawk Water User District for the supply of water and each Owner shall execute any agreements required by such District or any subsequent entity providing water service and make arrangements for payment of all costs for water services.
- (b) The sewer system shall be operated and maintained by Western Management Corporation, its successor or assignee and each Owner, by acceptance of a deed, covenants and agrees to pay any sewer tap fees, connection fees and use fees assessed by Western Management Corp., its successors or assignee or

any subsequent public authority such as a sanitary district or municipality operating the sanitary sewer system.

Section 2. Each Owner, by acceptance of a deed, covenants and agrees to the formation of a Sanitary District with Road District Powers for the purpose of a public authority to eventually acquire, own and operate the water system, sewer system or streets of the subdivision.

Section 3. Each Owner shall pay for and install a water meter as required by the Water District and shall pay any hook-up fee required at the time of connection to the water system. Such meter shall have a remote reading device installed as required by the Summerset Subdivision Association. The meter reading shall be available to the operator of the Sanitary Sewer system as well for the purposes of determining sanitary sewer service charges.

Section 4. Each Owner shall pay all costs of maintenance and necessary replacement of all water and sewer service lines located upon any Lot or Unit.

ARTICLE XI

MASTER ASSOCIATION

Section 1. Master Association: The Association shall join the Summerset Master Owners Association, Inc., The Master Association was created for the Summerset Subdivision in order to provide for an Association made up of all of the Property Owners Associations located within said Subdivision. The Master Association provides for joint action of the Associations upon common roadways, utilities, other shared systems, and matters common to all associations.

Section 2. Membership: The Master Association members shall consist only of the respective Property Owners Associations created for the Summerset Subdivision.

ARTICLE XII

MISCELLANEOUS TERMS

Section 1. Enforcement: The Association, or any Owner, shall have the right to enforce, by any proceeding at law or inequity, 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 any one 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 covenants 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 of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five (75%) of the Lot Owners, and thereafter by an instrument signed by not less than sixty-six and two-thirds percent (66-2/3%) of the Lot Owners. Any amendment must be recorded.

Section 4. Additional Property: Additional residential or common property other than above described, may be annexed to the properties by an instrument signed by two-thirds (2/3) of the Lot Owners.

Section 5. Conflict: If there is any conflict in the provisions of this Declaration, the Articles of Incorporation, the By-Laws, or the Rules and Regulations, the provisions of this Declaration shall control, followed by the Articles of Incorporation, the By-laws, and the Rules and Regulations in that order.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this _____ day of _____, 2005

DECLARANT:

EMERALD HEIGHTS TOWNHOMES
ASSOCIATION, INC.

By: _____
Its: President

State of South Dakota:

ss.

County of Pennington:

On this _____ day of _____, 2005, before me, the undersigned officer, personally appeared Douglas E. Andrews, 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 the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires: _____