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**RECEIVED**  
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Rapid City  
Planning Department

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS OF WELLINGTON HEIGHTS, A  
PLANNED RESIDENTIAL DEVELOPMENT**

THIS DECLARATION, made on the date hereinafter set forth by Wellington Heights, LLC, a South Dakota Limited Liability Company, Eugene R. Quinn, Manager, Rapid City, Pennington County, South Dakota, hereinafter referred to as "Declarant."

WITNESSETH:

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

Lot B of Cleary Subdivision located . . .

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 conditions, 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 the Wellington Heights Association, Inc., its successors and assigns.

Section 2. "Common Area" shall mean all real property (including easements) for the installation and placement of water and sewer utilities, common pathways or sidewalk and streets constructed for the common use and enjoyment of the owners as Common Area is platted, it will be conveyed or dedicated to the Association prior to the conveyance of the first Lot in any such plat. The Common Area is intended for use by the Association for common

utilities and access. Such areas are not dedicated hereby for use by the general public but are dedicated to the common use and enjoyment of the Homeowners in the subdivision, as more fully provided by this Declaration of Covenants, Conditions and Restrictions.

Section 3. "Declarant" shall mean and refer to Wellington Heights, LLC and its successors and assigns.

Section 4. "Developer" shall mean and refer to Wellington Heights, LLC and its successors and assigns.

Section 5. "Dwelling Unit" means any Single Family Dwelling or Town House Unit.

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

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

Section 8. "Properties" shall mean and refer to that certain real property hereinbefore described and known as Wellington Heights Subdivision, and such additions thereto as may hereafter be brought within the jurisdiction of the Association by annexation hereto.

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

Section 10. "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 and designated and intended for use and occupancy as a residence by a single family.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable fees for the maintenance, preservation replacement and repair of Common Area improvements;

(b) The right of the Association to suspend the voting rights of an Owner for any

period during which any assessment against the Owner's Lot or Dwelling Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Use Reserved to Declarant. Declarant reserves unto itself its invitees, guests, public authorities, successors and assigns the right of use and access in and to the common areas as reserved upon all plats for the properties.

### ARTICLE III

#### 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 all 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. The 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 subject to the Declaration of Covenants, Conditions and Restrictions for Wellington Heights, a Planned Residential Development. 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 equal the total votes outstanding in the

Class B membership, or

(b) On December 31, 2012.

So long as there are any Class B members of the Association, the Declarant may replat portions of the property consistent with the development objectives of the Declarant and may provide additional easements for utilities.

#### ARTICLE IV

##### EASEMENTS FOR ENCROACHMENTS

Easements. If any portion of the Common Area, or Common Area Improvements thereon, now or hereafter, encroaches upon any Lot, or if any Lot or Lot Improvement thereon, now or hereafter, encroaches upon any other Lot or upon any portion of the Common Area, as a result of the construction of the Buildings or other Improvements, or if any such encroachments shall occur hereafter as a result of settling or shifting of any Building or other Improvements or for any other reason, a valid easement shall be deemed to exist for the encroachment and for the maintenance of the same shall exist so long as the Building or other Improvements shall exist. In the event any Dwelling Unit, Lot, Improvement or adjoining Common Area Improvement shall be partially or totally destroyed or taken as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments due to this rebuilding shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the Building or other Improvements shall stand. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Lot.

#### ARTICLE V

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot or Dwelling Unit owned within the Properties, hereby covenants, and each Owner of any Lot or Dwelling Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements and services to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable 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 successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments.

(a) Dwelling Unit Assessment as set forth in Section 1 above may be used for the cost of furnishing Common Area maintenance and improvements, maintenance of common sprinkler system, including cost of operating the same, water utilities, snow removal, street lights, lawn maintenance, lawn watering, fertilizing and related services. The Dwelling Unit assessments shall further be utilized to pay the cost of necessary management and administration, including fees paid to any management agent by the Association, taxes and assessments levied against the Association or upon any property owned by the Association, and the cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements.

(b) Town House Unit Lot assessments may be used for the improvement and maintenance of the Town House properties, services and facilities devoted to this purpose and to maintenance of limited Common Areas and driveways necessary for the same. Town House Units shall be assessed such Town House Unit assessments in addition to the Dwelling Unit Assessment set forth hereinabove.

(c) Developer shall, commencing one year from the completion of each Town House Unit, pay minimally one-third (1/3) of the assessment applicable to each Town House to which the Developer retains ownership. In the event that while a Class B membership exists, assessed fees collected for the Association fail to adequately meet Association expenses, then the Declarant must pay sufficient capital up to the full assessed share applicable to the specific Town House Units still retained. In determining Developer's assessment liability, Developer shall be credited for the cost of insurance maintained on the premises during the construction period and sales period and any maintenance or landscaping services furnished by Developer. In addition, the Developer shall not be required to make assessment payments for Town Houses during any development period prior to completion of said Town House and the placement of same upon the market for sale. Developer shall pay full assessment on rental units.

(d) Dwelling Unit and Town House Unit Assessments shall be initially established and disclosed by the Developer based upon the anticipated costs of services and maintenance provided for herein.

(1) Beginning with January 1, 2004, the Board of Directors shall set the first annual assessment based upon actual budgeted costs for services provided for herein.

(2) From and after January 1, 2005, and each January 1 thereafter, the annual general assessment may be increased effective January 1 of each year which increase shall not exceed the previous annual assessment by ten percent (10%).

(3) From and after January 1, 2005, the annual general assessment may be

increased above that established by Article V, Section (2c)(2) by a vote of the members provided that any such change shall have the assent of fifty-one percent (51%) of the votes of each class for the next succeeding two years, and at the end of each such period of two years, for each succeeding period of two years, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(e) Insurance costs, if purchased under blanket coverage by the Association, shall be assessed at actual cost per unit for fire and extended coverage/home owners insurance.

### Section 3. Special Assessments.

(a) Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including Association sprinkler systems and fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

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

Section 4. Notice and Quorum for Any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 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 sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be

fixed at a uniform rate for all Lots of similar type. All annual assessments shall be divided by twelve and billed and paid on a monthly basis unless otherwise provided by the Association.

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

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. Assessments shall be due and payable monthly on the first day of the month for an amount equivalent to one-twelfth of the annual assessment unless otherwise specified by the Association. Any assessment not paid by the tenth (10<sup>th</sup>) day of the month shall incur a Ten Dollar (\$10.00) late charge and shall further be charged interest at the annual percentage rate specified by law on unpaid Judgments after the end of the month, which interest shall be applied to the past due amount including the late charge. 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 of the Common Area or abandonment of his Lot.

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

## ARTICLE VI

### INSURANCE

#### A. Insurance by Association.

Section 1. Common Insurance. The Association may purchase insurance as trustee for

the benefit of the Association, Owners and their mortgages, as their interest may appear. Provisions shall be made for the issuance of certificates of mortgage endorsements through the mortgages of the units.

Section 2. Authorized Coverage. Insurance may be purchased to cover the following:

1. All dwellings and buildings, including without limitations, improvements owned or operated and maintained for the benefit of the Association in an amount equal to the insurable replacement value, as determined annually by the Board of Directors of the Association, which coverage shall afford protection against "all risks" or direct physical damage or loss with such deductible as deemed appropriate.
2. Fidelity bond of the Association directors, fiscal officers, and agents in an amount as the Board of Directors shall determine from time to time, and workmen's compensation as required by law.
3. Such other insurance as the Board of Directors of the Association shall determine necessary.

Section 3. Payment. Premiums on insurance policies purchased and paid for by the Association for all coverages set forth in this section shall be assessed and billed to each Owner as an additional annual assessment as follows:

1. For that portion of the insurance attributable to only the unit or units owned by the Member, the premium amount so attributable.
2. For all other insurance required or authorized by this section to be purchased by the Association, the same may be paid from the general reserve or in the alternative, at the discretion of the Board, each Member will be assessed pro-rata in proportion to the number of completed units in the project for each unit owned of the total premiums.

Section 4. Additional Insurance by Owners. The insurance of personal liability, personal property and betterment of individual dwellings, or upon the election of the individual Owner to acquire additional or excess coverage, shall be the individual responsibility and cost of the Owner thereof.

Section 5. Trust for Proceeds. All insurance policies purchased by the Association shall provide that proceeds covering property losses shall be paid to the Association and such



proceeds, as paid, shall be held in trust for the benefit of the dwelling Owner and their mortgagees or assigns. Proceeds on account of dwellings, if any, shall be held for the Owner of the damaged dwelling in proportion to the cost of repairing the damages suffered by each dwelling Owner, which cost shall be determined by the Association. In the event a mortgagee endorsement has been issued as to a dwelling, the share of the dwelling Owner shall be held in trust for the mortgagee and the dwelling Owner, as their interest may appear.

Proceeds of insurance policies received by the Association shall be disbursed as follows:

1. All expenses of the Association incurred in connection with such insurance shall be paid first.
2. Proceeds for damage to any Lot or Dwelling Unit shall be utilized for reconstruction unless all Owners of units attached to or connected with the damaged unit or units and the Association and mortgagee, if any, agree to otherwise disburse the funds.
3. If it is determined that damage for which the proceeds are paid shall not be reconstructed or repaired, or if there are excess proceeds remaining after the reconstruction and repair, the remaining proceeds shall be distributed to the dwelling Owner and mortgagee, being payable jointly to them. This is a covenant for the benefit of any mortgagee, and may be enforced by such mortgagee.

Section 6. 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 responsible for reconstruction and repair of the casualty.

Section 7. Reconstruction or Repair Standards. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original buildings, or if not, then according to the plans and specifications approved by the Board of Directors, as provided in this Declaration, which reconstruction or repair shall be diligently pursued and completed within 180 days or within such period of time as reasonably necessary.

B. Election to Not Insure as an Association.

Section 1. Owner's Insurance. In the event the Association shall elect to not purchase insurance as Trustee, for the benefit of the Association, the Owners and their mortgagees, as provided in Article VI, Section A, then each Owner is required to purchase insurance according to Article VI, Section B.

Section 2. Required Coverage. Insurance shall be purchased by each Owner to cover the following:

1. 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.
2. Liability insurance coverage with minimum combined single limit coverage in the amount of required by the Association.

Section 3. Payment. Premiums on the insurance policies purchased by the Owner shall be paid for by the Owner in a timely manner so as to maintain coverage without cancellation:

1. Insurance shall not be cancellable without a prior written notice to the Association, the same to be given for not less than the minimum number of days required for notice of cancellation of insurance under the law of the State of South Dakota from time to time.
2. Coverage amount for the insurance shall be the sum required for full insurable replacement value of the Town House Unit in the event of its loss, the amount of which may be determined annually by the Board of Directors of the Association in its sole discretion. The Owner shall furnish a certificate of the coverage to the Association annually. In the event that the Association shall determine that the coverage is not adequate for full replacement, the Association may require the Owner to increase coverage to the minimum determined by the Association required for full replacement of the Town House.
3. In the event that the Owner shall fail to maintain the required coverage as evidenced by Notice of Cancellation or other termination of hazard insurance or in the event that the insurance maintained by the Owner does not meet the minimums required by the Association, then the Association may proceed to purchase insurance upon the premises and parties as required hereby and assess the Owner with the cost thereof as a special assessment without the requirement of obtaining the assent required in Article V, Section 3 a. which assessment shall be a continuing lien against the premises owned by the Owner in like manner as the lien established under Article V, Section 1 and each Owner of any Lot or Dwelling Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association this special assessment for insurance, together with interest, costs and reasonable attorney's fees, all of which shall be a charge on the land and shall be a continuing lien upon the property against which such special assessment is made. Each assessment, together with interest, costs and

reasonable attorney's fees, shall also be the personal obligation of the person(s) owning the property at the time the special assessment is made. The personal obligation for the special assessment shall not pass to successors in title unless expressly assumed by them.

Section 4. Additional Insurance. The 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 of the Town House or Lot.

Section 5. Trust for Proceeds. All insurance policies purchased hereunder shall provide that the proceeds covering property losses shall be paid to the Association and such proceeds, as paid, shall be held in Trust for the benefit of the dwelling Owner and his, her or their mortgagees or assigns. The proceeds on account of dwellings, if any, shall be held for the Owner of the damaged dwelling in proportion to the cost of repairing the damages suffered by each dwelling Owner, which costs shall be determined by the Association. In the event a mortgagee endorsement has been issued as to a dwelling, the share of the dwelling Owner shall be held in trust for the mortgagee and the dwelling Owner as their interest may appear.

The proceeds of the insurance policies paid to the Association shall be disbursed as follows:

1. Any expenses of the Association incurred in connection with receipt and distribution of such proceeds shall be paid first.
2. Proceeds for damage to any Lot or Dwelling Unit shall be utilized for reconstruction unless all Owners of Units attached to or connected with the damaged Unit or Units and the Association and the mortgagee, if any, agree to otherwise disburse the funds.
3. If it is determined that damage for which the proceeds are paid shall not be reconstructed or repaired, or if there are excess proceeds remaining after the reconstruction and repair, the remaining proceeds shall be distributed to the dwelling Owner and mortgagee, being payable jointly to them. This is a covenant for the benefit of any mortgagee, and may be enforced by such mortgagee.

Section 6. Owner Responsibility. If damage occurs only to a dwelling for which the responsibility of maintenance and repair is that of the Owner, whether the same is an insured loss or not, then the Owner shall be responsible for reconstruction and repair of the casualty.

Section 7. Reconstruction or Repair Standards. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original buildings, or if not, then according to the plans and specifications approved by the Board of Directors, as

provided in this Declaration, which reconstruction or repair shall be diligently pursued and completed within 180 days or within such period of time as reasonably necessary.

## ARTICLE VII

### USE, COVENANTS, AND RESTRICTIONS

The following covenants shall apply to the Wellington Heights Subdivision:

Section 1. Use of Lot or Dwelling Unit. Each Lot or Dwelling Unit shall be used for single family residential purposes only and not for any business, trade, commercial or industrial purpose whatsoever except that individuals may conduct non-nuisance, unoffensive businesses from their homes which is defined as an on-premises shipping, receiving or retail sales or service business unless no drive up or walk in customers are serviced at the location of the unit.

Section 2. Sales Facilities of Developer. Notwithstanding any provision in Section 1, Developer, its agent, employees and contractors shall be permitted to maintain during the period of construction and sale of the buildings in the Project upon such portion of the property as Developer may choose, such facilities as in the sole opinion of the Developer may be reasonably required, convenient, or incidental to the construction, sale or rental of Lots and Dwelling Units including, but without limitation, a business office, construction and storage area, signs, model Dwelling Units, sales offices and parking areas.

Section 3. Construction. All construction shall be original in that no previously constructed dwelling, trailer house or mobile home can be permitted to be placed on any properties; no basement, trailer, vehicle or structure of any kind except a completed dwelling house shall be occupied or used for residential purposes at any time.

Section 4. Exterior Appearance. The exterior of every building shall meet the approval of the developer and shall be generally composed of one or more of a combination of the following: natural wood, plywood or other rustic material similar thereto, stone or brick or brick veneers or material similar thereto approved by the developer. All exterior surfaces shall be painted or stained as required using a semi-transparent stain or clear sealer. The exterior shall have at least 30 square feet of brick veneer on the street side. Any materials used for replacement or repair or remodeling after initial construction shall require approval by the architectural control Committee and all materials must harmonize with the general design and type and finish of materials located within the Wellington Heights Subdivision.

Section 5. Approval by Architectural Control Committee. After initial construction by the developer, no building shall be erected, placed or altered on any Lot until the construction, plans and specifications, and the plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony

of external design with existing structures and as to location with respective topography and finished grade elevation. No fence or wall shall be erected, placed or altered on any Lot unless similarly approved. Fence shall be limited to dog run areas only which shall not exceed six feet by twenty feet and shall be screened from view by appropriate materials. Dog runs must be located behind the residence and screened to prevent the view by the neighbors. No grade elevation or landscaping shall be altered, modified, or changed on any lot unless similarly approved. Approval shall be as hereafter provided.

- a. Single family homes on one level shall be a minimum of 1300 square feet with double garage. Two story single family homes shall be a minimum of 900 square feet on the first story and 700 square feet on the second story, with double garage.
- b. Town Homes facing Wellington Drive shall be a minimum of 1150 square feet with double garage. All other Town Homes shall be a minimum of 1050 square feet with double garage.

Section 6. Architectural Control Committee. The Architectural Control Committee will be composed of five (5) members appointed by Declarant until authority is transferred to the Homeowner's Association on January 1, 2008. Thereafter, the Architectural Control Committee shall be appointed by the Board of Directors of the Association. The terms of the committee members shall be for a period of five (5) years, with the initial members terms staggered so that one member's term shall expire each calendar year. Eligibility shall be limited to Owners and members constituting the Declarant. In the event of death or 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. The majority of the committee may designate a representative to act for it. 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, or in any event if no suit to enjoin the construction has been commenced prior to the completion of construction, approval will not be required and the related covenants shall be deemed to have been fully complied with.

Section 7. Completion of Construction. Any building, addition, or other improvement commenced on any Lot shall be prosecuted diligently to completion and shall be completed within twelve (12) months from the commencement of the construction unless such completion is prohibited by inclement weather or disaster.

Section 8. Appearance and Landscaping. The improvements on each Lot and the landscaping shall at all times be maintained in a manner required by the rules of the Association.

Section 9. On Street Parking. No parking shall be permitted on Wellington Drive except temporary guest parking for a period of time not to exceed three (3) hours. Guest parking is available on the guest parking common area. No boat, truck, trailer or camper shall be parked or stored on any Lot or portion thereof. Guests who arrive with recreational vehicles will be allowed to keep them upon such Lot for a maximum of forty-eight (48) hours. No automobile shall be parked or left on any portion of a Lot other than inside a garage or driveway and shall not be visible unless it is in operating condition with current license plates. The outdoor repair of automobiles is prohibited upon any portion of the property as well as any other activities which may be or become an annoyance or nuisance to the neighborhood.

Section 10. Pets. No animals, livestock or poultry of any kind shall be raised, fed or kept by any Owner except dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. All pets must be confined inside the Dwelling Unit or upon the Owner's property on a leash. Pets outside must be on a leash. Number of pets shall be limited to three (3) per household.

Section 11. Annoyance. No obnoxious or offensive activity shall be carried upon or on any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No firearms shall be discharged within the subdivision. No noisy recreational vehicles, such as motorcycles, dirt bikes, or snowmobiles shall be allowed to operate within the development area known as Wellington Heights Common Area.

Section 12. Signs. No sign of any kind shall be displayed to the public view on any Lot 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 or Dwelling 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 or attached to any Dwelling Unit 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 or Dwelling. This covenant shall not apply to signs of the Declarant during the period of sales activity of the Declarant in sale of Wellington Heights.

Section 13. Fences. 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 except dog runs as permitted by Section 5 above.

Section 14. Mailboxes. The developer will provide standard mailboxes for each Lot Owner in a location designated by the developer. No other mailboxes will be permitted on any Lot or common area within the development.

Section 15. 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 16. 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 Wellington Heights Subdivision.

Section 17. 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. All dwelling units shall be owner occupied. No portion of any 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 18. 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 doors of such garages or such storage rooms.

## ARTICLE VIII

### TOWN HOUSE 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 Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

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

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or 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 contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

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

## ARTICLE IX

### EXTERIOR MAINTENANCE

The Association shall require the Dwelling Unit Owners to provide exterior maintenance in accordance with uniform standards for the Dwellings within the subdivision, including but not limited to, such items and paint or stain of exterior, repair, replacement and care of roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, grass, sidewalks, driveways and other concrete flat work and glass surfaces.

In the event that the need for maintenance or repair of a Dwelling Unit is required, the Association shall give notice of the same unto the Owner of the Dwelling Unit. No alterations or changes to the general architectural scheme, color or structural design or materials utilized therein shall be made on any Dwelling Unit without the approval of the Architectural Control Committee.

In the event an Owner of a Dwelling Unit in the properties shall fail to maintain the premises and the improvements thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Unit and the exterior thereof and any other improvements erected thereon. The cost of such exterior maintenance plus ten percent (10%) shall be added to and become part of the assessment to which such Lot is subject which shall be a continuing lien upon the property enforceable in like manner as a Mechanic's Lien under the laws of the State of South Dakota.

## ARTICLE X

### 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 or annexations thereto. There shall also be sewer and power easements over and across the Lots for purposes of serving each Lot with such utilities.

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 or partly on one Lot and partly on another Lot or other Lots, shall constitute a joint driveway for the equal and common use and benefit of the Owners of any Lots or other portions of the property which it is reasonably designed to serve, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding joint driveways and of liability for property damage due to negligent or willful acts or omissions regarding the same shall apply thereto.

b. Repair and Maintenance. The cost of repair and maintenance of joint driveways shall be paid by the joint owners thereof with the cost shares on a square foot basis of concrete replaced or repaired with each respective owner paying for the share on his side of the common boundary line.

c. Easement. There shall be a perpetual and nonexclusive easement, in, through, and over any such joint driveway reserved to the Owners of any Lot or Lots upon which the same has been built or installed or which the same has reasonably been designed to serve and no person shall in any way interfere with the free and unobstructed use thereof by said Owners.

Section 3. Watering Easement. An easement is hereby reserved unto the Association and its employees for access to the underground watering system and for water hydrants at each Dwelling Unit or residence for the purpose of watering the lawn area of the respective unit and adjacent units.

ARTICLE XI

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. Invalidity 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.