

**Prepared By:**  
 Founders Park, L.L.C.  
 35 South 4<sup>th</sup> Street  
 Custer, SD 57730  
 605-673-2350

**DECLARATION OF COVENANTS,  
 RESTRICTIONS, CONDITIONS, AND EASEMENTS**

This Declaration of Covenants, Restrictions, Conditions, and Easements ("Declaration") is made this 17<sup>th</sup> day of April, 2007, by Founders Park, LLC, a South Dakota limited liability company ("Declarant").

**ARTICLE I  
 RECITALS**

All capitalized terms used herein shall have the meaning described herein unless the context clearly provides otherwise.

Declarant is the fee owner of certain real property located in the City of Rapid City, Pennington County, South Dakota, and legally described as:

The West Half of the Northwest Quarter of the Southeast Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section Thirty-five (35), Township Two (2) North, Range Seven (7) East of the Black Hills Meridian, in the City of Rapid City, including Block One (1) of North Riverside Addition, Pennington County, South Dakota ("Property"). Including Lots 1, 7 and 8 of Founders Park Subdivision as shown on plat filed at Book 34 of Plats, Page 80 in the office of the Register of Deeds of Pennington County, South Dakota.

Declarant recites that the Property is at or near the historic site first occupied by the founders of the City of Rapid City; that Declarant intends to develop an office building complex on the Property; that Declarant, among other things, wishes to restrict the appearance of the Buildings to be constructed on the Property to reflect a theme compatible with the history of the area; that in order to do so, all Buildings shall contain design elements and materials that reflect past historical, frontier, agrarian, or mining forms (hereinafter, the "Property Theme").

The Declarant further intends that these restrictions are placed upon the Property for the purpose of enhancing and protecting the value, attractiveness, and desirability of the Lots constituting the Property. Wherefore, Declarant hereby declares that the Property, and each part of the Property shall be held, sold, and conveyed only subject to the following covenants, restrictions, conditions, and easements (collectively, the "Restrictions").

Declarant further recites that Declarant intends to Subdivide the Property in phases and intends to Plat Subdivided Lots from the Property in a series of Plats and to make the Platted Lots expressly subject to this Declaration.

The Declarant further intends that the Restrictions created herein are and shall be perpetual and construed as covenants running with the land, and each and every Person accepting a deed to any Lot in the Property shall be deemed to accept said deed with the understanding that each and every other Person so accepting a deed is also bound by the provisions herein contained, and each and every Person, by accepting a deed to any Lot, thereby consents and agrees to be bound by the Restrictions herein contained to the same extent as though such Person had signed this Declaration. The Declarant further expressly states and declares that it is Declarant's intent that the Restrictions created herein shall not merge with the underlying title to the Property, and that the Restrictions are created for the benefit and burden of future grantees of any Lot.

## ARTICLE II DEFINITIONS

2.1 "Addendum" shall mean an addition to this Declaration recorded in the office of the Register of Deeds of Pennington County which either (i) subjects any subsequently Platted Lots to the Declaration and sets forth the Maximum Allowable Square Footage for each Platted Lot; or (ii) releases or exempts any portion of the Property, including any subsequently Platted Lots from the Declaration.

2.2 "Amendment" shall mean a document which alters, modifies, or amends the Declaration and is recorded in the office of the Register of Deeds of Pennington County. An Addendum shall not be considered an Amendment.

2.3 "Articles" shall mean the Articles of Incorporation of the Association attached hereto as Exhibit A.

2.4 "Assessments" or "Common Expenses Assessments" means the sums attributable to each Lot and due to the Association as a result of the Common Expenses allocated to each Lot.

2.5 "Association" shall mean and refer to The Village at Founders Park Building Owners Association, Inc., a South Dakota nonprofit corporation.

2.6 "Board of Directors" or "Board" means the Board of Directors of the Association.

2.7 "Budget" shall have the meaning set forth in Section 6.3.1.

2.8 "Building" means the permanent Structures to be erected and affixed on each Lot, subject to the Restrictions.

2.9 "Bylaws" means the Bylaws of the Association attached hereto as Exhibit B.

2.10 "Committee" shall mean the Architectural Control Committee described in paragraph 4.1.

2.11 "Common Area" shall mean that portion of the Property to be owned by the Association for the common use and enjoyment of the Owners as shown on a Plat.

2.12 "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to Reserves as further defined in 6.3.4.

2.13 "Declarant" means Founders Park, LLC.

2.14 "Declaration" shall mean and refer to this document, as the same may be amended from time to time by an Amendment, and any Addendums thereto.

2.15 "Develop," "Development," or its derivatives shall mean those construction services and provision of utilities, streets, parking surfaces, drainage, irrigation systems, landscaping, lights, signs, and access to each Lot in compliance with all land use restrictions, zoning, and subdivision requirements of any governmental body having jurisdiction.

2.16 "First Mortgage" shall mean a Mortgage on a Lot which has first priority under South Dakota law.

2.17 "First Mortgagee" shall mean any bank, credit union, financial institution, or other lender that is the holder of a First Mortgage lien on a Lot.

2.18 "Landscaping" means the arrangement of trees, shrubbery, plants, grasses, footpaths, fountains, irrigation systems, and similar articles to produce a pleasing and picturesque effect.

2.19 "Lot" means any plot of land Subdivided from the Property by a Plat upon which Lot a Building is to be constructed.

2.20 "Material Amendment is defined in Section 8.4.2.

2.21 "Maximum Allowable Square Footage" shall mean that certain Building Square Footage allowable on a particular Lot.

2.22 "Member" shall mean every Person who holds a membership in the Association.

2.23 "Mortgage" shall mean a mortgage in compliance with South Dakota law on any Lot.

2.24 "Owner" shall mean the record owner, whether one or more Persons or entities, of fee simple title to any Lot that is part of the Property.

2.25 "Parking Area" means that portion of each Lot which has been constructed to provide vehicle parking for Owners of the Lots, and their business invitees, guests, tenants, and employees.

2.26 "Period of Declarant Control" shall mean that period of time during which the Declarant, or Persons designated by the Declarant, may appoint and remove members of the Board of Directors. The Period of Declarant Control shall terminate ("Termination Date") no later than the earlier of (i) sixty (60) days after conveyance of eighty percent (80%) of the Lots, other than lots designated as common areas to Owners other than the Declarant; or (ii) the day the Declarant, after having given written notice to the Owners, records an instrument voluntarily surrendering all rights to control activities of the Association.

2.27 "Person" shall mean a natural person, corporation, partnership (either general or limited), business trust, association, limited liability company, joint venture, company, division, estate, trust, two or more persons having a joint or common interest, or any other legal entity, in any case, whether acting in a personal, fiduciary, or other capacity.

2.28 "Plat" shall mean any map, plan, or layout prepared in accordance with the requirements of law Subdividing Lots from the Property.

2.29 "Property" is described in Article I. Recitals above.

2.30 "Property Theme" shall have the meaning set forth in Article I above.

2.31 "Reserves" shall mean that portion of the Common Expenses determined by the Board to be necessary for the proper and prudent operation of the Association and maintenance of the Property; provided, however, that in no event shall the Reserves include any amounts for Development expense.

2.32 "Restrictions" shall have the meaning set forth in the recitals in Article I hereof.

2.33 "Rules and Regulations" means those rules and regulations promulgated by the Board in accordance with Section 3.3.

2.34 "Square Footage" or "Square Feet" shall mean the gross square footage of a Building measured by the exterior dimensions of the Building, but not including any basement area which is unfinished or used for, or limited in its use for storage, mechanical or utility rooms, parking, or other uses not compatible with occupancy by business employees.

2.35 "Structure" shall mean and refer to that which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires more or less permanent or temporary location on the ground, or which is attached to something having a permanent or temporary location on the ground. The term is to be construed as if followed by the words "or part thereof."

2.36 "Subdivide" or "Subdivision" shall mean the division of the Property into Lots or the Common Area by Plats.

2.37 "Termination Date" shall have the meaning ascribed to that term in Section 2.26 above.

2.38 "Total Allowable Square Footage" shall mean the total Square Footage of Buildings which shall be allowed on the Property, as set forth in Section 5.4.

### ARTICLE III. MEMBERSHIP IN ASSOCIATION; VOTING RIGHTS

3.1 **Membership Upon Ownership of Lot.** Every Owner of a Lot shall automatically upon purchase of the Lot be a Member of the Association and shall remain a Member thereof until such time as the ownership ceases for any reason, at which time membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot. Only Owners of a Lot may be a Member of the Association. No Member may resign his or her membership.

3.2 **Voting Rights.** The Members of the Association shall have the following voting rights:

3.2.1 **Voting Rights of Owners.** Subject to Section 3.2.2, Members shall be entitled to one vote for each Lot owned. When more than one Person holds a fee ownership interest in a given Lot, the vote for the Lot shall be exercised as they may determine between or among themselves; however, in no event shall more than one vote be cast with respect to any one Lot.

3.2.2 **Period of Declarant Control.** During the Period of Declarant Control, Declarant shall have the right to unilaterally appoint members of the Board of Directors; provided, that not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots other than lots designated as common areas to Persons other than the Declarant, at least one (1) Member and not less than twenty-five percent (25%) of all the members of the Board of Directors must be elected by Members other than the Declarant. In addition, not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots other than lots designated as common areas to Persons other than the Declarant, not less than one-third (1/3) of the members of the Board of Directors must be elected by Members other than the Declarant. Not later than sixty (60) days after the Termination Date of the Period of Declarant Control, the Members shall elect a Board of Directors, of at least three (3) members but no more than nine (9), all of whom shall be Members. The Board of Directors shall elect any officers.

3.2 **Governance of Association.** The Association shall be governed by this Declaration, its Articles of Incorporation and its Bylaws, as those documents maybe amended from time to time. The initial Articles of Incorporation and the initial Bylaws are attached hereto as Exhibits A and B.

3.3 **Powers and Duties of the Association.** The Association shall have all of the powers, duties, and authorities permitted by law, by this Declaration, the Articles, and the Bylaws, and such additional powers and

duties as may be necessary or appropriate to manage the business and affairs of the Association and the Property. The Board of Directors of the Association may promulgate rules and regulations to govern other aspects of management not otherwise set forth in the Declaration, the Articles, or the Bylaws and not inconsistent therewith ("Rules and Regulations").

Such powers and duties of the Association shall include, without limitation, the powers and duties to:

3.3.1 Enforce, either in its own name or in the name of any Owner, any or all Restrictions that are set forth in this Declaration or which may hereafter be lawfully imposed on or against any of the Property. Nothing contained in this subparagraph shall be deemed or construed to prevent any Owner from enforcing in Owner's name any of the restrictions.

3.3.2 Manage the Common Area, provided that such management shall at all times be subject to the laws, regulations, ordinances and the like of any governmental agency having jurisdiction.

3.3.3 Mow, trim, water, care for, and maintain the Landscaping on the Lots.

3.3.4 Pay for the operation and maintenance of such lights as are placed on the streets, gateways, entrances, and Parking Lots of the Property.

3.3.5 Provide for the plowing and removal of snow from the Parking Areas and all sidewalks and streets when such services are not made available from any public source.

3.3.6 Exercise control over such easements as it may acquire from time to time.

3.3.7 Own the title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association, and to pay the taxes on such real estate as may be owned by it.

3.3.8 Levy and collect the Assessments as provided for elsewhere in this Declaration and impose charges for late payments of Assessments.

3.3.9 Acquire liability insurance insuring the Association against any and all liability to the public, to any Owner or Owners, or to the invitees, guests, or tenants of any Owner or Owners arising out of use of the Common Area. The policy limits shall be set by the Association and shall be reviewed at least annually and increased or decreased in the discretion of the Association.

3.3.10 Adopt and amend Budgets for Common Expense Assessments, which may include the determination of reasonable Reserves.

3.3.11 Hire and discharge managing agents and other employees, agents, and independent contractors for maintenance, bookkeeping, legal, accounting, and other services.

3.3.12 Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the common interest of the Property.

3.3.13 Make contracts and incur liabilities.

3.3.14 Procure any other materials, supplies, labor, services, maintenance, repairs, alterations, insurance, taxes, or assessments that the Association is required to secure or pay pursuant to the terms of this Declaration or by law, or which shall be necessary or proper in the opinion of the Board of Directors of the Association for the maintenance or operation of the Common Area or the Property, for the benefit of the Owners or the Property; or for the enforcement of this Declaration.

#### ARTICLE IV. ARCHITECTURAL CONTROL

4.1 The Board of Directors may appoint three persons, who need not be Members of the Association, to serve as the Architectural Control Committee, to serve at the pleasure of the Board. If the Board of Directors shall for any reason fail to appoint a Committee, then it shall be the duty of the Board of Directors and it shall have the power to act as the Committee.

4.2 No Owner may construct or have constructed on Owner's behalf any Building or other Structure on any Lot until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same, the general plan of Landscaping, and the grading plan shall have been submitted to and approved in writing as to location and harmony with the Property Theme by the Committee. In the event said Committee fails to approve or disapprove such design and location within 30 days after said plans and specifications have been received by the Committee, it shall be deemed that the plans and specifications have been approved, and this subsection shall be deemed to have been fully complied with.

4.3 Subsequent to construction of a Building on a Lot in compliance with subsection 4.2 above, thereafter, no additional Building, Structure, fence, wall, aerial, antenna, satellite dish, exterior lighting, exterior painting or other coverings, restaining or repainting to the exterior of a Building, or any other alterations of any kind to the exterior of a Building shall be commenced, erected, or maintained upon any of the Buildings or on any Lot,

and no Landscaping shall be performed, until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same, and a general plan thereof shall have been submitted to and approved in writing as to location and harmony with the Property Theme by the Committee. The foregoing list of actions which require approval is illustrative only, it being the intention of this paragraph that any activity which would change the then existing exterior appearance of a Building or a Lot, its Structures, or other improvements, and Landscaping requires approval by the Committee. In the event the Committee fails to approve or disapprove such design and location within 30 days after said plans and specifications have been received by the Committee, it shall be deemed that the plans and specifications have been approved, and this subsection shall be deemed to have been fully complied with.

**4.4. No Liability for Approval.** The Committee does not determine or assume any responsibility for the quality of construction or soundness of any Buildings or Structures, and no obligation or liability relating to construction of any Buildings or Structures shall result from the Committee's review or approval of any plans or specifications. Furthermore, the Committee does not evaluate any plans or specifications to determine whether such satisfy all applicable governmental requirements. Approval or disapproval of plans and specifications by the Committee shall be based on aesthetic values and conformance with the Property Theme only. Neither Declarant nor the Committee nor the Association, nor their officers, agents, or Members make any representations or warranties regarding any plans or specifications approved hereunder on any Buildings or Structures constructed according to such plans or specifications. Further, neither the Association, Committee, or the Declarant, nor their officers, agents, or members shall be liable for any loss, damages, injury, or expense arising out of or in any way connected with the performance of their duties hereunder.

## **ARTICLE V. USE AND OTHER RESTRICTIONS**

**5.1 General Plan.** It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Property in order to enhance the value, desirability, and attractiveness of the Property and to serve and promote the sale thereof, consistent with the Property Theme.

**5.1.1 Addendums to Declaration.** Declarant may, without consent of any Owner, by the recording of Addendum(s), expressly provide that the Declaration and the Restrictions set forth herein shall apply to all Lots set forth on a Plat Subdividing the Property. In addition, Declarant may, without the consent of any Owner, by recording an Addendum, specifically release or exempt any portion of the Property from the force and effect of this Declaration and the Restrictions set forth herein; provided, however, that such release may not affect any material vested rights of the Owners of any Lots.

**5.2 Uses Allowed.** The Lots and the Buildings thereon may be used for any commercial or business operation which is common to first-class office complexes as determined in the discretion of the Board and which is not prohibited by this Declaration or by law. As an illustration of the foregoing and not by way of limitation, the following uses shall be allowed:

**5.2.1** Office buildings for doctors, dentists, lawyers, architects, engineers, real estate brokers and agents, appraisers, stockbrokers, accountants, insurance agents, and similar professions, but not including any activity which is carried on by catering to retail trade with the general public or where a stock of goods is maintained for sale to customers;

**5.2.2** Financial institutions;

**5.2.3** Art galleries, museums, or photographic studios;

**5.2.4** Notwithstanding Section 5.2.1, restaurants or cafes as may be approved by the Board upon prior written consent.

**5.3 Building Material and Design Restrictions.** All Buildings shall have pitched roofs and shall include multiple dormer roofs and wide roof overhangs. No rooftop mechanical equipment shall be allowed unless enclosed and concealed by materials compatible with the Building roof design. All exterior finishes and roofing shall be earth-tone colors. Each exterior wall shall be approximately one-third native stone, cultured stone, distressed or tumbled brick, or distressed and tumbled concrete block. Additional exterior wall finish materials shall be wood or simulated wood material or distressed metal siding, all to be of a rustic look. EIFS, or synthetic stucco, may be used if it covers less than 50% of the total exterior wall area. Roof materials shall be of concrete shakes or dimensional shingles. All four exterior elevations shall be accentuated with a "heavy timber" look. At least one fireplace with an exterior masonry chimney exposed shall be provided. Exterior lighting shall be provided to fully illuminate the exterior of the Buildings in a glare-free configuration, such as ground and/or soffit lighting. All

Building entrances shall be designed to be taller than adjacent roof lines to clearly demark the entrance to the Building. Each Building shall have appurtenant to it at least one outdoor activity space, such as a patio or deck.

**5.4 Size Restrictions.**

**5.4.1** No Building on any Lot shall contain less than four thousand (4,000) Square Feet on the ground floor of the Building. Any Building which is to be built on a Lot which Lot consists of or occupies substantially all of that portion of the Property contained within a rectangle the length of the which is congruent with the east four hundred feet (E 400') of the south property line of the Property and the width of which is congruent with the south two hundred feet (S 200') of the east property line of the Property shall be restricted to a one-story Building.

**5.4.2** The Total Allowable Square Footage of all Buildings on the Property shall be One Hundred Five Thousand (105,000) Square Feet.

**5.4.3** The Maximum Allowable Square Footage of a Building on a particular Lot shall be determined by the Declarant when the Lot is Platted and shall be set forth on an Addendum to this Declaration, as described in Section 2.1.

**5.4.4** In the event that an Owner of a Lot constructs a Building which is less than the Maximum Allowable Square Footage for that Lot as shown on an Addendum, then, subject to prior written approval of the Board, the Owner of such Lot may transfer to the Owner of another Lot, upon such terms as such Owners may agree, the first Owner's unused Square Footage allowance. Upon such approval and transfer, then, the Maximum Allowable Square Footage of the transferor Lot and the transferee Lot shall be amended to reflect the transfer, as well as for purposes of Common Expense Allocations.

**5.5 Landscaping.** All areas of each Lot not covered by Buildings, Structures, or walkways shall be maintained as lawn or Landscape areas. No stone, gravel, or paving of any type shall be used as a lawn unless approved by the Committee. The determination of whether adequate provision has been made for Landscaping shall be at the sole discretion of the Committee.

**5.6 Antennas, Disks, and Flagpoles.** Without prior Committee approval, no outside antennas, aerials, antenna poles, antenna masts, electronic devices, antenna towers, citizens band or amateur band antennas, or flagpoles shall be permitted on any Lot except if such is completely inside a Building; provided, however, that satellite dishes may be permitted on the outside of a Building if such satellite dish is twenty-four inches (24") in diameter or less.

**5.7 Temporary Structures.** No tents or temporary Structures shall be permitted on any Lot or on the Common Area unless their size, appearance, and temporary location have first been approved by the Committee. Any signs to be used in conjunction with any tent or temporary Structure must also be approved by the Committee.

**5.8 Factory-Built Structures.** No Structure of any kind of what is commonly known as factory-built, modular, manufactured, or mobile home-type construction shall be erected, placed, or allowed to remain on any Lot or on the Common Area.

**5.9 Signs.** No signs, free-standing or otherwise installed, shall be erected or displayed in or on any Lot, the Common Area, a Building, or any Structure unless the placement, character, form, size, lighting, and time of placement of such sign shall first be approved by the Committee. No sales price may be displayed on any sign. No flashing or electronic message-type signs shall be permitted. All signs must also conform with all governmental codes and regulations and with any master design plan for signs established by the Board. The Board may summarily remove and destroy all unauthorized signs, and such shall not be deemed a trespass. Notwithstanding anything contained herein, the Board shall be under no obligation to approve any signs.

**5.10 Walls, Fences, and Hedges.** No wall or fence shall be constructed on any Lot until its height, length, type, design, composition, material, and location shall have first been approved by the Committee, nor shall any Landscaping consisting of hedges, shrubbery, trees, or similar items exceed the maximum heights, widths, and density established by the Committee.

**5.11 Trucks, Commercial Vehicles, Recreational Vehicles, Mobile Homes, Boats, Campers, and Trailers.** No heavy-duty trucks or industrial machinery, commercial buses, recreational vehicles, mobile homes, motor homes, campers, trailers, or boats may be kept on any Lot or the Common Area except as allowed in Section 5.22 below. With the prior approval of the Board, commercial vehicles and vans may be kept, used, or stored on a Lot. Commercial vehicles and vans shall include all trucks (but not including trucks with more than two (2) axles or more than four (4) wheels) or vans which bear signs or have printed on the sides, front, or rear of the same reference to any commercial undertaking or enterprise.

**5.12 Animals.** No animal of any kind except guide dogs for the legally blind shall be kept, maintained, or allowed to remain on any Lot or on the Common Area.

**5.13 Maintenance.** No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any Lot, and no refuse or unsightly object shall be allowed to be placed or suffered to remain upon any Lot. All lawns, Landscaping, and irrigation systems and all Buildings, Structures, and other improvements and appurtenances shall be kept in a good, safe, clean, neat, and attractive condition.

**5.14 Refuse and Waste.** All rubbish, trash, garbage, and waste shall be regularly removed from each Lot and shall not be allowed to accumulate thereon except in approved receptacles.

**5.15 Storage.** No auxiliary or outbuildings for storage or any other purpose shall be constructed upon any Lot without the prior consent of the Committee as provided for herein.

**5.16 Nuisances.** No noxious or offensive activity shall be carried on upon any Lot or the Common Area. No loud noises, electromechanical disturbance, radiation, electromagnetic disturbance, vibrations, dust, vapors, or noxious odors shall be permitted on any Lot or the Common Area, and the Board shall have the right to determine if any of such constitutes a nuisance or potential hazard to any Person or Owner of any Lot.

**5.17 Mailboxes.** Mailboxes shall be maintained for the Property in compliance with requirements of the United States Post Office, Rapid City, South Dakota, and in a form and manner approved by the Committee as provided for herein.

**5.18 Lots Not To Be Subdivided.** No Lot or Lots shall be subdivided by an Owner other than Declarant except as previously approved by the Board in writing and then only for the purpose of combining portions with an adjoining Lot, and provided that no additional Building site may be created thereby.

**5.19 No Hazardous Activities.** No activities shall be conducted upon the Property or in or on any Building or Structures on any Lot within the Property which are or might be unsafe or hazardous to any Person or other property, or might cause the cancellation or diminution of insurance or an increase in insurance premiums.

**5.20 Destruction to Structures.** In the event that a Building or other Structure is damaged or destroyed by casualty loss or other loss, then, within a reasonable period of time after such incident, as determined by the Board, the Owner thereof shall either commence to rebuild or repair the damaged Building or Structure and diligently continue such rebuilding or repairing until completion (but such completion shall take place not later than twelve (12) months after such loss), or properly clear the damaged Building or Structure and restore or repair the Lot in a manner satisfactory to the Committee. As to any such reconstruction of a destroyed Building or Structure, the same shall only be replaced with Buildings or Structures or improvements as are approved by the Committee as provided herein.

**5.21 Owner Compliance.**

**5.21.1** Except for such maintenance and other services which are to be provided by the Association, the Owner of each Lot shall keep the Building and the Lot in a state of good repair, neat and well-kept.

**5.21.2** The Restrictions and other provisions of this Declaration shall apply not only to Owners, but also to any other Person occupying an Owner's Building under lease from the Owner or by permission or invitation of the Owner or his tenants, express or implied, licensees, invitees or guests. Failure of an Owner to notify any Person of the existence of the Restrictions and other provisions of this Declaration shall not in any way act to limit or divest the right of Declarant, the Association, or any other Owner of enforcement of this Declaration against the Owner or such Person; and, in addition, the Owner shall be responsible for any and all violations of these provisions by Owner's tenants, licensees, invitees, or guests, and by guests, licensees, and invitees of Owner's tenants at any time.

**5.22 Development by Declarant.** The Declarant shall undertake the work of Developing all Lots included within the Property. The completion of that work, and the sale, rental, or other disposal of Lots is essential to the establishment and welfare of the Property. In order that such work may be completed and the Development of the Property be established as soon as possible, nothing in this Declaration shall be understood or construed to prevent Declarant, or the employees, contractors, or subcontractors of Declarant from:

**5.22.1** Doing on any part or parts of the Property or Subdivision owned or controlled by Declarant whatever Declarant determines may be reasonably necessary or advisable in connection with completion of the Development work;

**5.22.2** Constructing and maintaining on any part or parts of the Property or Subdivision owned or controlled by the Declarant such Structures as may be reasonably necessary for the completion of such Development work and the disposition of Lots by sale, lease, or otherwise;

**5.22.3** Conducting on any part or parts of the Property or Subdivision owned or controlled by the Declarant the business of completing such Development work and of disposing of Lots by sale, lease, or otherwise; or

**5.22.4** Maintaining such sign or signs on any of the Lots owned or controlled by the Declarant as may be necessary in connection with the sale, lease, or otherwise of Lots owned or controlled by Declarant.

## ARTICLE VI COVENANT AND CONTINUING LIEN FOR ASSESSMENTS

**6.1 Creation of the Lien and Personal Obligation of Assessments.** Declarant covenants for each Lot within the Property, and each Owner of a Lot is deemed to covenant by acceptance of the Owner's deed for the Lot, whether or not it shall be so expressed in the deed, to pay to the Association the Common Expense Assessments to be established as hereinafter provided and consents and agrees to the lien rights set forth hereafter against the Owner's Lot. The Common Expense Assessments, together with interest at the statutory judgment rate, costs, and reasonable attorney's fees incurred by the Association in enforcing or collecting such Assessments, shall be a charge on the applicable Lot and shall be a continuing and contractual lien upon the Lot against which Assessments are made. Each such Assessment, together with interest at the statutory judgment rate, costs, and reasonable attorney's fees in enforcing or collecting such Assessments, shall also be the personal obligation of the Person(s) who was the Owner of such Lot at the time when the Assessment fell due.

**6.2 Purpose of Assessments.** The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners in the Property and for the Common Area.

**6.3 Payment of Common Expenses and Assessments.**

**6.3.1 Payment by Declarant.** Until the Association makes a Common Expense Assessment, the Declarant shall pay all Common Expenses.

**6.3.2 Budget.** In making a Common Expense Assessment, the Association shall cause the total anticipated Common Expenses for any partial year to be set forth in a budget adopted by the Association ("Budget") not later than 60 days before apportionment and assessments to the Lots, or, if done on a calendar year basis, not later than October 31 of the calendar year preceding the calendar year for which the Budget is being adopted.

**6.3.3 Lot Assessment.** The total anticipated Common Expenses shall be apportioned to and assessed upon the Lots based upon, for each Lot, the product arrived at by multiplying the total anticipated Common Expenses reflected by the Budget by a fraction, the numerator of which is the Maximum Allowable Square Footage for the applicable Lot and the denominator of which is the Total Maximum Allowable Square Footage.

**6.3.4 Common Expenses.** The Common Expenses shall be those expenses incurred by the Association under subsections 3.3.1 through 3.3.14 and under 6.7.

**6.3.5 Notice of Assessment.** The Association shall cause notice of the Common Expense Assessments to be sent to each Lot Owner within thirty (30) days of the assessment by the Association. The Assessments shall be due to the Association within thirty (30) days of the notice date. After thirty (30) days from the notice date, the Assessments shall bear interest at the statutory judgment rate then currently in effect. In addition to interest charges, the Association may require the Lot Owner for which Assessments are more than thirty (30) days overdue to pay a late charge in an amount to be determined by the Board.

**6.4 Effect of Nonpayment of Assessment and Association Remedies.** In the event any Owner shall fail to pay Assessments within thirty (30) days after the same become due, in addition to the application of interest and late charges, the Association shall, in its sole discretion, have any and all of the following remedies to the full extent permitted by law, which remedies are cumulative and which are not in lieu of, but are in addition to, all other remedies available to the Association:

**6.4.1** To file an action to foreclose the Association's lien as provided in this Declaration. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a Mortgage on real property, including, but not limited to, the right to recover interest, late charges, reasonable attorney's fees, tax, and costs in foreclosing such lien.

**6.4.2** To file an action at law against the Owner to collect the Assessment plus interest and late charges and reasonable attorney's fees, tax, and court costs, without waiving any lien rights or rights of foreclosure.

**6.5 No Waiver.** No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Area or abandonment of the Owner's Lot.

**6.6 Notice and Perfection of Lien.** Recording of this Declaration constitutes record notice of and perfection of the continuing contractual lien provided for herein. No further recordation of any claim of lien for Assessments due hereunder is required for foreclosure or other purposes.

**6.7 Subordination of the Lien to Mortgages.** The lien of the Assessments provided for herein shall be subordinate to the lien of any purchase money loan secured by a First Mortgage of record and real estate taxes as provided by statute. Sale or transfer of any Lot shall not affect the lien of the Assessments; provided, that the lien for Assessments may be foreclosed in like manner as other inferior liens in the foreclosure of any First Mortgage; and in that event, any unpaid Assessments foreclosed shall become Common Expenses due from all Owners,



including the First Mortgagee acquiring title by foreclosure, or its successor or assigns. No sale, transfer, foreclosure, or any proceeding in lieu thereof shall relieve any Lot or its Owner from liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

**6.8 Homestead.** The lien for Assessments provided herein shall be superior to any homestead exemption as is now or may hereafter be provided by South Dakota law. The acceptance of a deed to any Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said Assessment lien.

**6.9 Exempt Property.** The following Property subject to this Declaration shall be exempt from the Assessments created herein:

- 6.9.1 All properties dedicated to and accepted by local public authority; and
- 6.9.2 The Common Area.

## **ARTICLE VII EASEMENTS**

The Property shall be subject to the easements created and set forth hereafter for the benefit and burden of each of the Lots for the following purposes:

**7.1 Easements on Plat; Utilities and Drainage.** Each Lot shall be subject to easements for the installation and maintenance of utilities, drainage, public access, roadways and other easements as shown on any Plat. Within these easements, no Owner shall place or permit to remain any Structure, planting, or other material that may damage or interfere with the installation and maintenance of utilities, or that may damage, interfere with, or change the direction of flow of drainage or impede access in the easements. By virtue of these easements, it shall be expressly permissible for utility providers to install and maintain necessary underground only equipment on and in any Lot and to affix and maintain wires, circuits, conduits, and equipment on the Lots where indicated on a Plat. This easement is granted not only for the benefit and burden of each of the Lots contained within the Property, but also for the benefit of the utility providers; provided, that all utilities shall be placed underground.

**7.2 Parking and Access.** Each Parking Area of each Lot shall be subject to nonexclusive reciprocal easements in favor of all other Lots in the Property for the purpose of access to such other Lots and for parking vehicles of the Lot Owners, their invitees, licensees, guests, and tenants.

**7.3 Maintenance Easements.** Each Lot shall be subject to an easement in favor of the Association, its agents, employees, contractors, or subcontractors, for the purpose of performance of those duties required of the Association set forth in this Declaration.

**7.4 Common Area Use.** The Common Area shall be subject to an easement in favor of all Members of the Association for access to and use and enjoyment of the Common Area.

**7.5 Additional Easements.** The Declarant, during the Period of Declarant Control, and the Association, subsequent to the Termination Date, shall have the right to execute, without further authorization, such grants of easements or other instruments as may from time to time be necessary or desirable over, under, across, and upon the Property or portions thereof in order to supplement and carry out the provisions of this Declaration, subject to limitations as to then existing Buildings, Structures, and Landscaping, constructed or placed within or on the Property. Any easements granted hereunder by the Declarant may be assigned by the Declarant to the Association.

**7.6 Easement of Nondevelopment.** Prior to conveyance of the Common Area to the Association, Declarant shall prepare and record an easement on the Common Area subject to prior easements of record for the benefit of the Lot Owners preventing the Common Area from being developed for any uses other than recreational uses and for the use and enjoyment of the Association and its Members as provided for herein.

## **ARTICLE VIII GENERAL PROVISIONS**

**8.1 Enforcement.** The Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all Restrictions imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**8.2 Enforcement of Rules and Regulations.** The Association shall have the power and authority to enforce each and every one of its Rules and Regulations, including the power to commence and maintain an action to enjoin any breach or threatened breach of any of said Rules and Regulations.

**8.3 Severability.** Invalidity of any one of these Restrictions by judgment or court order shall in no way affect any other Restrictions or other provisions of this Declaration, which shall remain in full force and effect.

**8.4 Term of Declaration; Amendments.**

8.4.1 The Restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded ("Initial Term"), after which time the Restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing signed by not less than seventy-five percent (75%) of the Owners of the individual Lots has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change the Restrictions or terminate the same.

8.4.2 In addition to any other right of amendment or modification provided for in this Declaration, Declarant may, in its sole discretion, record an Amendment to the Restrictions or other provisions of this Declaration during the Period of Declarant Control, so long as the Amendment(s) do not constitute a Material Amendment of the Declaration. For purposes of this subparagraph, a Material Amendment shall mean any Amendment to the Declaration which has as its purpose or results in, by any means, one or more of the following: (1) an addition to the category of Common Expenses set forth herein without ratification of the same by all Members who are not the Declarant; (2) an increase in the proportionate share of Common Expenses for any Lot Owner without the consent of the Lot Owner; (3) any Amendment which would have the effect of substantially impairing any vested rights of a Lot Owner; (4) any Amendment which would change the contemplated use of the Common Area; (5) any Amendment to the Declaration to add to the Property subject to the Declaration other property not described herein without the consent of all Lot Owners who are not the Declarant; provided, that Addendums allowed under 5.1.1 shall not be deemed a Material Amendment.

8.4.3 After the Termination Date, this Declaration may be amended by the written consent of all of the Lot Owners, together with the approval or ratification of the same by a majority of the Board of the Association.

8.4.4 Notwithstanding the provisions of 8.4.3 above, after the Termination Date, Amendments for correction of scrivener's errors or other changes which do not materially affect any Owner's rights hereunder may be made by the Board of the Association alone without the need of consent of any Lot Owner. The determination of whether the Amendment is for the correction of a scrivener's error or other nonmaterial change shall be made by the Board in its discretion.

8.5 **Subordination to Developer.** Declarant and the Association agree that their respective interests as provided for in this Declaration shall be and are subordinate to the lien, encumbrance, and operation of any existing (as of the date hereof) Mortgages encumbering the Property and any additional or replacement or subsequent Mortgage obtained by the Declarant for the purpose of financing the Development of the Property.

8.6 **Property Taxes.** Any real property taxes taxed, assessed, or placed on any Lot and required to be paid to any governmental entity shall be the responsibility of the Lot Owner, and said taxes shall be paid in a prompt manner when due and payable. The property taxes for the Common Area shall be a Common Expense.

8.7 **Priority of Documents.** In the event of any conflict, the following documents shall control in the order stated: This Declaration and Amendments, the Articles, the Bylaws, the Rules and Regulations.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and date first set forth above.

FOUNDERS PARK, LLC, Declarant

By   
Its: Member


By   
Its: Member

State of South Dakota

County of Pennington

On the 16<sup>th</sup> day of April, 2007, before me, the undersigned officer, personally appeared PATRICK D. THUSTOS, who acknowledged himself to be a member of Founders Park, LLC, a South Dakota limited liability company, and that he, as such member, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as member.

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

  
 Notary Public, South Dakota  
 My Commission Expires \_\_\_\_\_ My Commission Expires  
 (SEAL) September 30, 2010

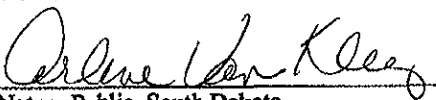


State of South Dakota

County of Custer

On the 17<sup>th</sup> day of April, 2007, before me, the undersigned officer, personally appeared Michael E. Tennyson, who acknowledged himself to be a member of Founders Park, LLC, a South Dakota limited liability company, and that he, as such member, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as member.

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

  
 Notary Public, South Dakota  
 My Commission Expires 11/10/11  
 (SEAL)

