

**BY-LAWS  
RIVER VIEW CONDOMINIUMS**

**ARTICLE I**

Plan of Property Unit Ownership

Section 1. Unit Ownership. River View Condominiums located at Pierre, South Dakota, (hereinafter called the "Condominium" or "Project") is to be submitted under the laws of the State of South Dakota SDCL Chapter 43-15A, herein referred to as the "Act".

The legal description is as follows:

All of Lots 9 and 10, Block 2, Riverplace Second Addition in 29-11-79, to the City of Pierre, Hughes County, South Dakota, according to the recorded plat thereof.

Section 2. Applicability of By-Laws. The provisions of these By-Laws are applicable to the condominium and to the use and occupancy thereof. The term "condominium property" as used herein shall include the land, the buildings and all other improvements thereon, all easements, rights and appurtenances belonging thereto and all other property, personal, or mixed, intended for use in connection therewith, and are intended to be submitted pursuant to the provisions of the laws of the State of South Dakota to the South Dakota Real Estate Commission under the Act. These By-Laws apply to all of the land described in Section 1 included in a Master Deed to be filed and recorded pursuant to SDCL 43-15A-3. The development of River View Condominiums includes the construction of six (6) individual condominium units located in one structure. Diamond O Rentals, Inc., a South Dakota corporation of Pierre, South Dakota, hereinafter called "Sponsor", is the Developer of the River View Condominiums project.

Section 3. Application. All present and future Co-Owners, mortgagees, lessees and occupants of units and their employees and other persons who may use the facilities of the condominium in any manner are subject to these By-Laws, the Master Deed and rules and regulations pertaining to use and operation of the condominium property. The acceptance of a deed or conveyance, the entering into of a lease or the act of occupancy of a unit shall constitute an acceptance of the provisions of these instruments and as agreement to comply therewith. The term "Co-owner" shall mean any person, firm, corporation, partnership, association, trust or legal entity or any combination thereof who has unit ownership. The term "Council of Co-Owners" shall mean owners of the units.

Section 4. Office. The office of the condominium and the Board of Managers shall be located at Pierre, South Dakota.

## ARTICLE II

### Management

Section 1. Board of Managers. The affairs of the Condominium shall be governed by a Board of Managers. Until Condominium units representing 50% in common interest shall have been sold by the "Sponsor", and shall have been paid for and thereafter until the successors shall have been elected by the Council of Co-Owners, the Board of Managers shall be composed of three (3) persons, all of whom shall be owners, spouses of owners or mortgagees; or, in the case of partnership owners or mortgagees, shall be members or employees of such partnership; or, in the case of corporate owners or mortgagees, shall be officers, stockholders or employees of such corporation; or, in the case of fiduciary owners or mortgagees, shall be officers or employees of such fiduciaries.

Section 2. Powers and Duties. The Board of Managers shall have the powers and duties necessary for the administration of the affairs of the Condominium, except such powers and duties as by law, by the Master Deed or by these By-Laws may not be delegated to the Board of Managers by the Council of Co-Owners. The powers and duties to be exercised by the Board of Managers shall include, but shall not be limited to, the following:

- a) Operation, care, upkeep and maintenance of the common elements;
- b) Determination of the amount required for operation, maintenance and other affairs of the Condominium;
- c) Collection of the common charges from the unit owners;
- d) Employment and dismissal of the personnel, as necessary for the efficient maintenance and operation of the Condominium;
- e) Adoption and amendment of rules and regulations covering the detail of the operation and use of the Condominium property;
- f) Opening of bank accounts on behalf of the Condominium and designating the signatories required therefore;
- g) Purchasing, leasing or otherwise acquiring in the name of the Board of Managers, or its designee, corporate or otherwise, on behalf of all Co-Owners, units offered

for sale or lease or surrendered by their owners to the Board of Managers.

- h) Purchasing condominium units at foreclosure or other judicial sales in the name of the Board of Managers, or its designee, corporate or otherwise, on behalf of co-unit owners;
- i) Organizing a corporation or limited liability company to act as designees of the Board of Managers in acquiring title to or leasing of units on behalf of all Co-Owners;
- j) Making repairs, additions and improvements to, or alterations of, the condominium property; and repairs to the restoration of the property in accordance with the other provisions of these By-Laws after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

Section 3. Managing Agent and Manager. The Board of Managers may employ, for the Condominium, a managing agent and a manager at a compensation established by the Board of Managers to perform such duties and services as the Board of Managers shall authorize, including, but not limited to, the duties listed in subdivisions a), c), d), and j) of Section 2 of this Article II. The Board of Managers may delegate to the manager or managing agent all of the powers granted to the Board of Managers by these By-Laws other than the powers set forth in subdivisions b), e), f), g), h), and i) of Section 2 of this Article II.

Section 4. Election and Term of Office. At the first annual meeting of the Council of Co-Owners, the term of office of one (1) member of the Board of Managers shall be fixed as one (1) year and the term of office of one (1) member of the Board of Managers shall be fixed at two (2) years, and one (1) member of the Board of Managers shall be fixed at three (3) years. At the expiration of the initial term of office of each respective member of the Board of Managers, his successor shall be elected to serve for a term of three (3) years. The members of the Board of Managers shall hold office until their respective successors shall have been elected by the Co-Owners.

Section 5. Removal of Members of the Board of Managers. At any regular or special meeting of Council of Co-Owners, any one or more of the members of the Board of Managers may be removed with or without cause by the action of two-thirds or more of the Co-Owners and a successor may then or thereafter be elected to fill the vacancy thus created. Any member of the Board of Managers whose removal has been proposed by the Co-Owners shall be given an opportunity to be heard at the meeting.

Section 6. Vacancies. Vacancies in the Board of Managers, caused by any reason other than the removal of a member thereof by a vote of the Co-Owners, shall be filled by a vote of a majority of the remaining members at a special meeting of the Board of Managers, held for the purpose, promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Board of Managers for the remainder of the term of the member so removed and until a successor shall be elected at the next annual meeting of the Co-Owners.

Section 7. Organization Meeting. The first meeting of the members of the Board of Managers following the annual meeting of the Co-Owners shall be held within ten (10) days thereafter, at such time and place as shall be fixed by the Co-Owners at the meeting at which such Board of Managers shall have been elected. No notice shall be necessary to the newly elected members of the Board of Managers in order legally to constitute such meeting, providing a majority of the Board of Managers shall be present there at.

Section 8. Regular Meetings. Regular meetings of the Board of Managers may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Managers, but at least one such meeting shall be held during each fiscal year. Notice of regular meetings of the Board of Managers shall be given to each member of the Board of Managers, by mail or telegraph, at least three (3) business days prior to the date of such meeting.

Section 9. Special Meetings. Special meetings of the Board of Managers may be called by the President on three (3) business days' notice to each member of the Board of Managers, given by mail or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Managers shall be called by the President or Secretary-Treasurer in like manner and on like notice on the written request of at least three (3) members of the Board of Managers.

Section 10. Waiver of Notice. Any member of the Board of Managers may, at any time, waive notice of any meeting of the Board of Managers in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Managers at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Managers are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 11. Quorum of Board of Managers. At all meetings of the Board of Managers, a majority thereof shall constitute a

quorum for the transaction of business, and the votes of a majority of the members of the Board of Managers present shall constitute the decision of the Board of Managers. If at any meeting of the Board of Managers there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business, which might have been transacted at the meeting originally called, may be transacted without further notice.

Section 12. Compensation. Board members shall receive no compensation for their services unless expressly provided by resolution duly adopted by the Co-Owners.

Section 13. Liability of the Board of Managers. The Members of the Board of Managers shall not be liable to the Co-Owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Co-Owners shall indemnify and hold harmless each member of the Board of Managers against all contractual liability to others arising out of contracts by the Board of Managers on behalf of the Condominium unless any such contract shall have been made in bad faith contrary to the provisions of these By-Laws. It is intended that the members of the Board of Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium. It is also intended that the liability of any Co-Owner arising out of the indemnity in favor of the members of the Board of Managers shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the total percentage interests of all the Co-Owners in the common elements. Every agreement made by the Board of Managers, by the managing agent or by the manager on behalf of the condominium shall provide that the members of the Board of Managers, the managing agent or the manager, as the case may be, are acting only as agents for the Co-Owners and shall have no personal liability thereunder (except as Co-Owners), and that each Co-Owner's liability thereunder shall be limited to such proportions of the total liability thereunder as his interest in the common elements bears to the total interest of all Co-Owners in common elements.

### **ARTICLE III**

#### Council of Co-Owners

Section 1. Annual Co-Owner's Meetings. The annual Co-Owner's meeting shall be held on the 1st day of June of each year unless such date shall occur on a Saturday or Sunday, in which event the meeting shall be held on the succeeding Monday. At such meetings, the Board of Managers shall be elected by ballot of the Co-Owners in accordance with the requirements of Article

II, Section 4 of these By-Laws. The Co-Owners may transact such other business at such meetings as may properly come before them.

Section 2. Place of Meetings. Meetings of the Co-Owners shall be held at the principal office of the Condominium or at such other suitable place convenient to the owners as designated by the Board of Managers.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the Co-Owners if so directed by resolution of the Board of Managers or upon a petition signed and presented to the Secretary-Treasurer by Co-Owners owning a total of at least two-thirds of the common interest. The notice of any special meeting shall state the time, place and purpose of the meeting. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Notice of Meetings. The Secretary-Treasurer shall mail to or deliver to the residence of each Co-Owner of record a notice of each annual or special meeting of the Co-Owners at least ten (10) but not more than twenty (20) days prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, at the building or at such other address as such Co-Owner shall have designated by notice in writing to the Secretary-Treasurer. The mailing or delivery of a notice of meeting in the manner provided in this section shall be considered service of notice.

Section 5. Adjournment of Meetings. If any meeting of Co-Owners cannot be held because a quorum has not attended, a majority in common interest of the Co-Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than 48 hours from the time the original meeting was called.

Section 6. Order of Business. The order of business at all meetings of the Co-Owners shall be as follows:

- a) Roll call;
- b) Proof of notice of meeting;
- c) Reading of minutes of preceding meeting and other meetings as necessary;
- d) Reports of officers;
- e) Report of Board of Managers;
- f) Report of committees;
- g) Election of inspectors of election (when so required);
- h) Election of members of the Board of Managers (when so required);
- i) Unfinished business; and
- j) New business.

Section 7. Title to Units. Title to units may be taken in the name of an individual, in the names of two or more persons, as tenants in common or as joint tenants, in the name of a corporation or partnership or in the name of a fiduciary.

Section 8. Voting Rights. Only one person with respect to each unit ownership shall be entitled to vote at any meeting of the Co-Owners. Such person shall be known (and hereinafter referred to) as a "voting member". Such voting member may be the owner or one of the group composed of all the owners of a unit ownership, or may be some person designated by such owner or owners to act as proxy on his or their behalf and who need not be an owner. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the owner or owners. Proxies shall be valid only for the particular meeting designated thereon and must be filed with the Board before the scheduled time of the meeting. Any or all of such owners may be present at any meeting of the voting members (those constituting a group acting unanimously) and may vote or take any other action as a voting member, either in person or by proxy. The total number of votes of all voting members shall be one hundred percent (100%), and each owner or group of owners shall be entitled to the number of votes equal to the total of the percentage of ownership in common elements applicable to his or their unit ownership. The Sponsor (or the nominee) may exercise the voting rights with respect to any unit owned by the Sponsor.

Section 9. Insurance. The Council of Co-Owners shall be required to obtain and maintain, to the extent obtainable, the following insurance:

- a) Fire insurance with extended coverage, vandalism, and malicious mischief endorsements, insuring the entire building (including all of the units and fixtures initially installed therein by the Sponsor, but not including furniture, furnishings or other personal property supplied or installed by Co-Owners), together with all air conditioning equipment and other service machinery contained therein. Such insurance shall cover the condominium, the Board of Managers and all unit owners and their mortgagees, as their interest may appear, in an amount equal to the 90% co-insurance of replacement value of the building. Each policy shall contain a South Dakota standard mortgagee clause in favor of each mortgagee of a condominium unit which shall provide that proceeds shall be payable to such mortgagee as its interest may appear; subject, however, to payment provisions in favor of the Board of Managers or any insurance trustee. (The Board of Managers may be the insurance trustee).

- b) Such other insurance as the Council of Co-Owners may determine.

All such policies shall provide that adjustment of loss be made by the Board of Managers and that the net proceeds thereof shall be payable to the Board of Managers as trustees for the Co-Owners.

The amount of fire insurance to be maintained until the first meeting of the Board of Managers following the first annual meeting of the Co-Owners shall be in at least the sum equal to 90% of the highest sale price of unit(s) sold multiplied by the number of units sold.

All policies of physical damage insurance shall contain waivers of subrogation and waivers of any defense based on coinsurance or invalidity arising from any acts of the insured, and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insured, including all mortgagees of the units. Duplicate originals of all policies of physical damage insurance and all renewals thereof, together with proof of payment of premiums, shall be delivered to all mortgagees of the units at least ten (10) days prior to expiration of the then current policies. Prior to obtaining any policy of fire insurance or any renewal thereof, the Council of Co-Owners shall obtain an appraisal from a fire insurance company or otherwise of the full replacement value of the building, including all of the units and all of the common elements therein, for the purpose of determining the amount of fire insurance to be effected pursuant to this section.

The Council of Co-Owners shall also be required to obtain and maintain, to the extent obtainable, public liability insurance covering each member of the Board of Managers, the agent, the manager and each Co-Owner. Such public liability coverage shall also cover cross liability claims of one insured against another. The Council of Co-Owners shall review such limits at each renewal date of said policy. Until the first meeting of the Council of Co-Owners such public insurance shall be in single limit of \$1,000,000 covering all claims for bodily injury or property damage arising out of one occurrence.

#### **ARTICLE IV**

##### Officers

Section 1. Designation. The principal officers of the Condominium shall be the President, Vice-President and Secretary-Treasurer, all of whom shall be elected by the Board of Managers. The Board of Managers may appoint an Assistant Treasurer, an

Assistant Secretary and such other officers as, in its judgment, may be necessary. The President and Vice-President must be members of the Board of Managers.

Section 2. Election of Officers. Officers shall be elected by the Board of Managers at the organization meeting of each new Board Managers and shall hold office at the pleasure of the Board of Managers.

Section 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Managers, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board of Managers called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Condominium. He shall preside at all meetings of the Co-Owners and of the Board of Managers. He shall have all of the general powers and duties which are incident to the office of President of the corporation.

Section 5. Vice-President. The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board of Managers shall appoint some other member of the Board of Managers to act in the place of the President, or an interim basis. The Vice-President shall also perform such other duties as shall, from time to time, be imposed upon him by the Board of Managers or by the President.

Section 6. Secretary-Treasurer. The Secretary-Treasurer shall keep the minutes of all the meetings of the Co-Owners and the Board of Managers. He shall have charge of such books and papers as the Board of Managers may direct; and he shall, in general, perform all the duties incident to the office of Secretary-Treasurer.

The Secretary-Treasurer shall have the responsibility for condominium funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall be responsible for the deposit of all monies and other valuable effects in the name of the Board of Managers or the managing agent in such depositories as may, from time to time, be designated by the Board of Managers; and he shall, in general, perform all the duties incident to the office of Secretary-Treasurer.

Section 7. Agreements, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Condominium shall be executed by any two (2)

officers of the Condominium or by such other person or persons as may be designated by the Board of Managers.

Section 8. Compensation of Officers. Officers shall receive no compensation for their services unless expressly provided for in resolutions duly adopted by the Council of Co-Owners.

## ARTICLE V

### Operation of the Property

Section 1. Budget for First Year. When the first Board elected hereunder takes office, it shall determine the "estimated cash requirement" as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the owners during said period as provided herein.

Section 2. Determination of Common Expenses and Common Charges. Thereafter, the Board of Managers, at least annually, shall prepare a budget for the Condominium, determine the amount of the common charges required to meet the common expenses of the Condominium and allocate and assess such common charges against the Co-Owners according to their respective common interests. The common expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Council of Co-Owners pursuant to the provisions of Section 9 of this Article III, and the fees and disbursements of the insurance trustee. The common expenses also may include such amounts as the Board of Managers may deem proper for the operation and maintenance of the condominium property, including, without limitation, an amount of working capital for the Condominium, for a general operating reserve, for a reserve fund for replacements and to make up any deficit in the common expenses for any prior year. The common expenses may also include such amounts as may be required for the purchase or lease by the Board of Managers or its designee, corporate or otherwise, on behalf of all Co-Owners, of any unit whose owner has elected to sell or lease such unit or of any unit which is to be sold at foreclosure or other judicial sale. The Board of Managers or its designee shall advise such Co-Owner, in writing, of the amount of common charges are based to all unit owners and to their mortgagees.

Section 3. Reserve for Contingencies and Replacements. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such reserve. If said "estimated cash requirement" proves inadequate

for any reason, including nonpayment of any Co-Owner's assessment, the Board may, at any time, levy a further assessment which shall be assessed to the Co-Owners according to each owner's percentage of ownership in the common elements. The Board shall serve notice of such further assessment upon all Co-Owners by a statement, in writing, giving the amount of the assessment and of reasons therefor, and such further assessment shall become effective with the next monthly maintenance payment which is due not sooner than ten (10) days after the delivery or mailing of such notice of further assessment. All Co-Owners shall be obligated to pay the adjusted monthly amount. At the time each unit is first occupied, Co-Owner shall pay (in addition to the first monthly assessment) to the manager or managing agent, or as otherwise directed by the Board, an amount equal to three (3) times the first full monthly assessment for such Co-Owner, which amount shall be used and applied as an operating reserve for common expenses in the manner herein provided.

Section 4. Co-Owners Insurance. Each Co-Owner shall be responsible for his own insurance on the contents of his own unit, his additions and improvements thereto and decorating, furnishing and personal property.

Section 5. Repair or Reconstruction After Damage. In the event that all or a substantial and material portion of the project has been destroyed and 50% or more of the Co-Owners do not duly and promptly resolve to proceed with repair or restoration, the Board of Managers shall arrange for the prompt repair and restoration of the building (including any damaged units and any fixtures initially installed therein by the Sponsor, but not including any wall, ceiling or floor decorations or coverings or other furniture, furnishings, fixtures or equipment installed by unit owners in the units), and the Board of Managers or the insurance trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration, and any repairs or restoration in excess of the insurance proceeds shall constitute a common expense and the Board of Managers may assess all the Co-Owners for such deficit as part of the common charge.

In the event that all or a substantial and material portion of the project has been destroyed or substantially damaged, and that condominium owners holding in aggregate more than 50% interest in the common areas are opposed to repair or restoration of the project, the Condominium property shall be subject to an action for partition at the suit of any Co-Owner or lienor, as if owned in common, in which even the net proceeds of sale, together with the net proceeds of insurance policies (or if there shall have been a repair or restoration pursuant to the first paragraph of this Section 5, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration) then the excess of such insurance proceeds shall be divided by the Board

of Managers or the insurance trustee, as the case may be, among all the Co-Owners in proportion to their respective common interest, after first paying out of the share of each Co-Owner the amount of any unpaid liens on his unit, in the order of the priority of such liens. The insurance trustee shall be appointed, from time to time, by the Board. It is understood that should 50% of the Co-Owners oppose repair or restoration in writing, the South Dakota State Statutes shall apply.

Section 6. Amendments. Except for such amendments as may be required to conform any provision of this By-Law to the requirements of law, all amendments to this Article V shall be effective only upon unanimous written consent of the Co-Owners and their mortgagees. No Co-Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common elements or abandonment of his or their unit.

Section 7. Payment of Common Charges. All Co-Owners shall be obligated to pay the common charges assessed by the Board of Managers pursuant to the provisions of Section 2 of this Article V, such time or times as the Board of Managers shall determine.

Section 8. Collection of Assessments. The Board of Managers shall assess common charges against the Co-Owners, from time to time and at least annually, and shall take prompt action to collect from a Co-Owner any common charge due which remains unpaid by him for more than thirty (30) days from the due date for its payment.

Section 9. Remedies for Failure to Pay Assessments. If any co-Owner shall default in any payment of any charge or assessment imposed by the Board as herein provided, the Board, or its agent, shall have the authority for and on behalf of itself and said association and as the representative of all other Co-Owners, to exercise and enforce any and all rights and remedies as may be provided in the Act, these By-Laws, the Master Deed or otherwise available at law or in equity, for the collection of all such unpaid charges or assessment, specifically including the right to take possession of any such Co-Owner's interest in the property and specifically including the right to maintain for the benefit of all other Co-Owners an action for possession in the manner prescribed in the Forcible Entry and Detainer Act. In addition, if any Co-Owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the Board or its agents, may bring suit for and on behalf of itself and as representative of all other Co-Owners to enforce collection thereof or to foreclose the lien therefor as hereinafter provided; and there shall be added to the amount due, the costs of said suit together with legal interest and reasonable attorneys' fees to be fixed by the Court. To the extent permitted by decision or any state law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, interest,

costs and fees as above provided shall be and become a lien or charge against the unit ownership of the Co-Owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. Unless otherwise provided in this document, the members of the Board and their successors in office acting on behalf of the other Co-Owners shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Said lien shall take effect and be in force when and as provided in the Act; provided, however, that encumbrances owned or held by or on behalf of any bank, insurance company or savings and loan association shall be subject as to priority after written notice to said encumbrancer of unpaid common expenses only to the lien of all common expenses on the encumbered unit which become due and payable subsequent to the date of said encumbrancer either takes possession of the unit, accepts a conveyance of any interest therein or after a receiver has been appointed in a suit to foreclose such lien. Any encumbrancer, from time to time, may request in writing a written statement from the Board setting forth the unpaid common expenses with respect to the unit covered by his encumbrance; and, unless the request shall be complied with within twenty (20) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to such unit and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid at the same rank as the lien of his encumbrance.

Section 10. Involuntary Sale. If any Co-Owner (either by his own conduct or by the conduct of any other occupant of his unit) shall violate or breach any of the covenants, By-Laws, restrictions or provisions of the Master Deed, the Act or the regulations adopted by the Board, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall occur or re-occur more than once thereafter, then the Board shall have the power to issue to the defaulting Co-Owner a ten (10) day notice in writing to terminate the rights of the said defaulting Co-Owner to continue as a Co-Owner and to continue to occupy, use or control his unit and thereupon an action in equity may be filed by the members of the Board against the defaulting Co-Owner for a decree of mandatory injunction against the Co-Owner or occupant or, in the alternative, a decree declaring the termination of the defaulting Co-Owner's right to occupy, use or control the unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the Co-Owner in the property shall be sold at a judicial sale upon such notice and terms as the Court shall establish, except that the Court shall enjoin and restrain the defaulting Co-Owner from re-acquiring his interest at such judicial sale. The proceeds of any such judicial sale shall

first be paid to discharge the lien of any then existing mortgage, court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Co-Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Co-Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the unit ownership, and, subject to the Board's rights as provided in Section 7 of Article VII hereof, to immediate possession of the unit sold and may apply to the Court for a writ of assistance for the purpose of acquiring such possession and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the property sold subject to these By-Laws, and the purchaser shall become a member of the Association in the place and stead of the defaulting Co-Owner.

Section 11. Statement of Common Charges. The Board of Managers shall promptly provide any unit Co-Owner who makes a request in writing with a written statement of his unpaid common charges.

Section 12. Abatement and Enjoining of Violations. The violation of any rule or regulation adopted by the Board of managers, the breach of any By-Law contained herein or the breach of any provision of the Master Deed shall give the Board of Managers the right, in addition to any other rights set forth in these By-Laws, to: (a) enter the unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting unit Co-Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Managers shall not thereby be deemed guilty in any manner of trespass; or (b) enjoin, abate or remedy such thing or condition by appropriate legal proceedings.

Section 13. Maintenance, Repairs and Replacements of Units.

- a) By the Board: The Board, at its expense, shall be responsible for the maintenance, repair and replacement of those portions, if any, of each unit which contribute to the support of the building, excluding, however, interior wall, ceiling and floor surfaces. In addition, the Board shall maintain, repair and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which may be located within the unit boundaries, exclusive of any portions of the foregoing which may be located at or beyond the wall outlets, or which may be the responsibility of an individual Co-Owner under any other provision of the Master Deed.

b) By the Owner: Except as otherwise provided in paragraph a) above, each Co-Owner shall furnish, at his own expense and be responsible for the following:

1) All of the maintenance, repairs and replacements within Owner's own unit and all of the doors and windows appurtenant thereto, and all internal installations of such lighting fixtures and other electrical fixtures, appliances and heating, plumbing and air conditioning fixtures or installation and any portion of any other utility service facilities located within the unit boundaries; provided, however, such maintenance, repairs and replacements as may be required for the bringing of water and/or electricity to the unit shall be furnished by the Board as part of the common expenses. The Board may provide, by its rules and regulations, for ordinary maintenance and minor repairs and replacements to be furnished to units by building personnel as a common expense.

2) All of the decorating within Owners' own unit, from time to time, including sink washers, switches, painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. Each Co-Owner shall be entitled to the exclusive use of such portions of the perimeter walls, floors, ceilings and non-structural interior walls as lay within the boundaries of the unit as shown on the construction plans, and such Co-Owner shall maintain such portions in good condition at Owners' sole expense as adjoining units in such manner and upon such conditions as may be required from time to time, which said maintenance and use shall be subject to the rules and regulations of the Board. The surfaces of all windows forming part of a perimeter wall of a unit shall be cleaned or washed at the expense of each respective Co-Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades or other items visible on the exterior of the building, shall be subject to the rules and regulations of the Board. Decorating of the common elements (other than interior surfaces within the units as above provided) and any redecorating of units to the extent made necessary by any damage to existing decorating or such units caused by maintenance, repair or replacement work of the common elements by the Board, shall be furnished by the Board as part of the common expenses. Nothing herein contained shall be construed to impose a contractual liability upon the Board for maintenance, repair and replacement, but the Board's liability shall be limited

to damages resulting from negligence. The respective obligations of the Board and Co-Owners set forth in these By-Laws shall not be limited, discharged or postponed by reason of the fact that any such maintenance, repair or replacement is required to cure a latent or patent defect in material or workmanship in the construction of the property, nor because they may become entitled to the benefit of any construction guarantee or proceeds under policies of insurance.

Section 14. Decks, Patios or Exclusive Entries of Halls. A deck or patio, entryway or hall to which a unit has sole access shall be for the exclusive use of the Co-Owner of such unit. Such Co-Owner shall keep such deck, etc., free and clean of snow, ice and accumulation of water and shall make all repairs thereto resulting from Co-Owner's negligence, misuse or neglect. All other repairs in, to or with respect to such deck, etc., shall be made by the Board of Managers as a common expense.

Section 15. Covenants and Restrictions as to Use and Occupancy. The units and common elements shall be occupied and used as follows:

- a) Purpose. No part of the property shall be used for other than housing and related common purposes for which the property was designed. Each unit or any two or more adjoining units used together shall be used as a residence for a single family or such other use permitted by these By-Laws and for no other purpose. That part of the common elements separating any two or more adjoining units used together as aforesaid may be altered to afford ingress and egress to and from such adjoining units only in such manner and upon such conditions as shall be determined by the Board in writing.
- b) Obstruction of Common Elements. There shall be no obstruction of the common elements, nor shall anything be stored in the common elements without the prior consent of the Board, except as hereinafter expressly provided. Each Co-Owner shall be obligated to maintain and keep in good order and repair Co-Owner's own units.
- c) Hazardous Uses and Waste. Nothing shall be done or kept in any unit or in the common elements, which will increase the rate of insurance on the property or contents thereof, without the prior written consent of the Board. No Co-Owner shall permit anything to be done or kept in Co-Owner's unit or in the common elements which will result in the cancellation of insurance on the property or contents thereof, or which would be in

violation of any law. No waste shall be committed in the common elements.

- d) Exterior Exposure of Building. Co-Owners shall not cause nor permit anything to be hung or displayed on the outside of windows or placed on the outside walls of any building, and no sign, awning, canopy, shutter, radio or television dish or antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior written consent of the Board.
- e) Pets. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any unit or in the common elements. Any such pet shall be permanently removed from the property. However, a dog or a cat of 20 lbs. or less is allowed. Pet owners will be responsible for any messes or annoyances caused by these animals.
- f) Nuisances. No unlawful, immoral, noxious or offensive activity shall be carried on in any unit or in the common elements, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become, in the judgment of the Board, an annoyance or nuisance to the other Co-Owners or occupants.
- g) Impairment of Structural Integrity of Building. Nothing shall be done in any unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building except as is otherwise provided herein. No unit Co-Owner shall overload the electric wiring in the building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.
- h) Laundry or Rubbish. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the common elements. The common elements shall be kept free and clear of rubbish, debris and other unsightly materials. Trash, garbage and other wastes shall be kept only in enclosed sanitary containers, and shall be disposed of in a clean, sightly, healthy and sanitary manner, and as may be prescribed, from time to time, by the rules and regulations of the Board.
- i) Lounging or Storage in Common Elements. There shall be no playing, lounging, parking of baby carriages or playpens, bicycles, wagons, vehicles, toys, benches or

chairs on any part of the common elements except that baby carriages, bicycles and other personal property may be stored in a storage area designated for that purpose.

- j) Prohibited Activity and Signs. No industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational or otherwise designed for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the property, nor, except with the consent of the Sponsor and the board, shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted by any Co-Owner on any part of the property or in any unit therein. The right is reserved by the Sponsor and the Board, its beneficiaries or its agent, to place "For Sale" or "For Rent" signs on any unsold or unoccupied units and to place such other signs on the property as may be required to facilitate the sale of unsold units. The right is hereby given to the Sponsor or Board or its representative to place "For Rent" or "For Sale" signs on any unit or on the property for the purpose of facilitating the disposal of units by the Sponsor, any Co-Owner, mortgagee or the Board.
- k) Alterations of Common Elements. Nothing shall be altered or constructed in or removed from the common elements except upon the written consent of the Board.
- l) Display of Model Units. During the period of construction of the building on the property, the Sponsor and the Sponsor's beneficiaries, contractors, subcontractors and their respective agents and employees, shall be entitled to access ingress and egress to said building and property as may be required in connection with said construction. During the period in which sales of units by the beneficiaries of the Sponsor are in progress, but in no event for any period extending beyond thirty (30) months from the recordation of these By-Laws, the Sponsor's beneficiaries may occupy, with or without rental, as determined by the Sponsor or said beneficiaries, one or more units for business or promotional purposes, including clerical activities, sales offices, model units for display and the like; provided that the activities in the units so occupied do not interfere with the quiet enjoyment of any other Co-Owner or occupant.
- m) Certain Personal Professional Activities Permitted. The unit restrictions in paragraphs a) and j) of this Section shall not, however, be construed in such manner

as to prohibit a Co-Owner from (1) maintaining his personal business or professional records or accounts therein; or (2) maintaining his personal, professional library therein; or (3) handling his personal, business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of paragraphs a) and j) of this agreement.

- n) Parking. No vehicle shall be left standing in a parking stall in a non-operative condition, nor shall there be any repairs to vehicles done in a parking stall. Exterior off street designated parking, if any, is intended for guest parking only. No trucks, boats, trailers, pickup campers or other types of R.V. equipment can be parked outside for more than three (3) days without written permission from the Board of Directors.

Section 16. Use of Common Elements and Facilities. A Co-Owner shall not place any furniture, packages or objects in the lobbies, vestibules, public halls, stairways or other common areas, if any, or common facilities, except in an area to which he has sole access, or in an area designated as a storage area. The lobbies, vestibules, public halls and stairways, if any, shall be used for no purpose other than for normal transit.

Section 17. Additions, Alterations or Improvements by Board of Managers. Whenever, in the judgment of the Board of Managers, the common elements shall require additions, alterations or improvements costing in excess of \$500.00 and the making of such additions, alterations or improvements shall have been approved by a majority of the Co-Owners and by those mortgagees holding mortgages constituting first liens upon one (1) or more units, the Board of Managers shall proceed with such additions, alterations or improvements, and shall assess all Co-Owners for the cost thereof as a common charge. Any additions, alterations or improvements costing \$500.00 or less may be made by the Board of Managers without approval of the Co-Owners or any mortgagees of units and the cost thereof shall constitute a common charge. In all cases, it is understood that the first mortgage lien is superior to common charges for additions, alterations, etc. in excess of \$500.00.

Section 18. Additions, Alterations or Improvements by Co-Owners. No Co-Owner shall make any structural additions, alterations or improvements in or to his unit, without the prior written consent thereto of the Board of Managers. The Board of Managers shall have the obligation to answer any written request by a Co-Owner for approval of a proposed structural addition, alteration or improvement in such unit owner's unit, within

thirty (30) days after such request. Failure to do so within the stipulated time shall constitute a consent by the Board of Managers to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any unit shall be executed by the Board of Managers. The Board of Managers shall not be liable to any contractor, subcontractor, materialman or to any person sustaining personal injury or property damage for any claim arising in connection with such addition, alteration or improvement. The provisions of this Section 18 shall not apply to units owned by the Sponsor until such units shall have been initially sold by the Sponsor and paid for.

Section 19. Right of Access. A Co-Owner shall grant a right of access to his unit to the manager, the managing agent and any other person authorized by the Board of Managers, the managing agent or the manager to make inspections; to correct any condition originating in his unit and threatening another unit or a common element; to install, alter or repair mechanical or electrical services or other elements in his unit or elsewhere in the building; and to correct any condition which violates the provisions of any mortgages covering another unit. Requests for such entry shall be made in advance and such entry shall be immediate, whether the Co-Owner is present at the time or not.

Section 20. Separate Real Estate Taxes. It is intended and understood that real estate taxes are to be separately taxed to each Co-Owner for his unit and his corresponding percentage of ownership in the common elements. In the event that, for any year, such taxes are not separately taxed to each Co-Owner, but are taxed on the property as a whole, then each Co-Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the common elements.

Section 21. Utilities. Each Co-Owner shall pay for his own telephone, electricity, gas, cable TV and other utilities which are separately metered or billed to each user by the respective provider. Utilities, if any, which are not separately metered or billed shall be treated as part of the common expenses.

Section 22. Negligence of Owner. If, due to the negligent act or omission of a Co-Owner, of a member or his family or household pet, of a guest or other authorized occupant or visitor of such Co-Owner, damage shall be caused to the common elements or to a unit or units owned by others or maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such Co-Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board, subject to the rules, regulations and By-Laws of the Board.

Section 23. Joint Facilities. To the extent that equipment, facilities and fixtures within any unit or units shall be connected to similar equipment, facilities or fixtures affecting or serving other units or the common elements, then the use thereof by the individual Co-Owners shall be subject to the rules and regulations of the Board. The authorized representatives of the Board, or of the manager or management agent for the building, shall be entitled to reasonable access to the individual units as may be required in connection with maintenance, repairs or replacements of or to the common elements or any equipment, facilities or fixtures.

## ARTICLE VI

### Mortgages

Section 1. Separate Mortgages of Units. Each Co-Owner shall have the right to mortgage or encumber his own respective unit, together with his respective ownership interest in the common elements. No Co-Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the property or any part thereof, except his own unit and his own respective ownership interest in the common elements as aforesaid.

Section 2. Notice to Mortgage Lenders. Upon written request to the Board, the holder of any duly recorded mortgage or trust deed against any unit ownership shall be given a copy of any and all notices permitted or required by these By-Laws to be given to the owner or owners whose unit ownership is subject to such mortgage or trust deed.

Section 3. Books and Records. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection by any Co-Owner or any representative of a Co-Owner duly authorized in writing, at such reasonable time or times during the normal business hours as may be requested by the Co-Owner. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Co-Owner shall be furnished a statement of account, setting forth the amount of any unpaid assessments or other charges due and owing from such Co-Owner.

Section 4. Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the Co-Owner shall not constitute a waiver or release in any manner of such Co-Owner's obligation to pay the monthly maintenance charge at the then existing monthly rate established

for the previous period until the monthly maintenance payment which is due not sooner than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

Section 5. Notice of Default. The Board of Managers, when giving notice to a Co-Owner of a default in paying common charges or other default, shall send a copy of such notice to each holder of a mortgage covering such unit whose name and address has theretofore been furnished to the Board of Managers.

## ARTICLE VII

### Sale, Leasing or Other Alienation

Section 1. Sale or Lease. Any Co-Owner, other than the Sponsor, who wishes to sell the Co-Owner's unit ownership to any person not related by blood or marriage to the Co-Owner shall give to the Board of Managers no less than thirty (30) days prior written notice of the terms of any contemplated sale, together with the name and address of the proposed purchaser and his or their financial and character references. The Board, acting on behalf of the other Co-Owners as hereinafter provided, shall at all times have the first right and option to purchase such unit ownership upon the same terms as the proposed sale, which option shall be exercisable for a period of seven (7) days following the date of receipt of such notice; provided, however, that if the proposed purchase shall be for a consideration which the Board, in its reasonable opinion, deems inconsistent with the then existing bona fide fair market value of such unit ownership, the Board, notwithstanding any other provision herein stated to the contrary, may elect to exercise such option in the manner, within the period and on the terms set forth herein. If said option is not exercised by the Board within the aforesaid option period or if said option is properly waived, the Co-Owner may, at the expiration of said period (and at any time within sixty (60) days after the expiration of said period) contract to sell or assign such unit ownership to the proposed purchaser named in such notice upon the terms specified therein, and, if he fails to close said proposed sale transaction within said sixty (60) days, his unit ownership shall again become subject to the Board's right of first option as herein provided. Any person acquiring ownership of any unit shall be bound by and shall be subject to all of the obligations and all of the terms and provisions herein contained relative to such unit. With respect to a lease or sublease of any unit, the lease shall expressly provide that the lessee shall be expressly subject to all of the provisions herein contained. In the event that any Co-Owner or lessee of any unit shall lease or sublease any unit, a true and correct copy of such lease or sublease shall be filed with the Board, and any Co-Owner or lessee of any such unit making any such lease shall not be relieved thereby from any of the Co-Owner's or lessee's obligations as herein imposed. The foregoing provisions with respect

to the Board's right of first option as to any proposed sale, as well as the options hereinbelow created, shall be and remain in full force and effect until the property as a whole shall be sold or removed from the provisions of SDCL Chapter 43-15A, unless sooner rescinded or amended by the Co-Owners in the manner herein provided for amendments to these By-Laws. The Board may adopt rules and regulations, from time to time, not inconsistent with the foregoing provisions, for the purpose of implementing and effectuating the foregoing provisions.

Section 2. Consent of Voting Members. The Board shall not exercise any option hereinabove set forth to purchase any unit ownership or interest therein, or transfer its rights to any single unit owner or group of unit owners, without the prior written consent of the voting members holding 100% of the voting rights in the Association and whose unit ownerships are not the subject matter of such option. The Board may bid to purchase at any sale of a unit ownership or interest therein, which said sale is held pursuant to an order or direction of a Court, upon the prior written consent of the aforesaid voting members, which said consent shall set forth a maximum price which the Board of Managers is authorized to bid and pay for said unit or interest herein. If the requisite consent is obtained, any of the aforesaid options shall be exercised by the Board of Managers solely for the use and benefit of all owners, including the minority of owners not consenting thereto.

Section 3. Title to Acquired Interests. Unit ownership or interests therein acquired pursuant to the terms of this Article shall be held of record in the name of the members of the Board and their successors in office, or such nominee as they shall designate, for the benefit of all the Co-Owners. Said unit ownerships or interests therein shall be sold or leased by the Board in such manner as it shall determine. All proceeds of such sale and/or leasing shall be deposited in the maintenance fund and credited to each owner in the same proportion in which the Board could levy a special assessment under the terms of these By-Laws.

Section 4. No Severance of Ownership. No Co-Owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to his unit without including therein the appurtenant interest, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage or other instrument purporting to affect one or more of such interests, shall be deemed and taken to include the interest or interests so omitted, even though such interests shall not be expressly mentioned or described therein. No part of the appurtenant interests of any unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the unit to which such interests are appurtenant,

or as part of a sale, transfer or other disposition of such party of the appurtenant interests of all interests.

Section 5. Release by Board of Managers of Right of First Refusal. The right of refusal contained in Section 1 of this Article VII may be released or waived by the Board of Managers, in which event the unit may be sold or conveyed, free and clear of the provision of such section.

Section 6. Certificate of Termination of Right of First Refusal. A certificate may be executed and acknowledged by the Secretary-Treasurer of the Condominium, stating that the provisions of Section 1 of this Article VII have been met by a Co-Owner, or have been duly waived by the Board of Managers. Alternatively, the Board of Managers may borrow money to finance the acquisition of such unit, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the unit so to be acquired by the Borrower who has, in fact, complied with the provisions of Section 1 of this Article VII or in respect to whom the provisions of such section have been waived, upon request, at a reasonable fee not to exceed \$10,000.00.

Section 7. Financing of Purchase of Units by Board of Managers. Acquisition of units by the Board of Managers or its designee, on behalf of all Co-Owners, may be made from the maintenance fund in the hands of the Board of Managers, or if such funds are insufficient, the Board of Managers may levy an assessment against each unit owner in proportion to his ownership in common elements as a common charge, which assessment shall be enforceable in the same manner as provided in Article V. Alternatively, the Board of Managers may borrow money to finance the acquisition to such unit, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the unit so to be acquired by the Board of Managers.

Section 8. Exceptions. The provisions of Section 1 of this Article VII shall not apply with respect to any sale or conveyance by a Co-Owner of his unit to his spouse, to any of his children, to his parent or parents, to his brothers or sisters or any one or more of them, or to a unit owned by the Sponsor, or to the acquisition or sale of a unit by a mortgagee herein authorized who shall acquire title to such unit by foreclosure or by deed in lieu of foreclosure.

Section 9. Gifts, Devises, Etc. Any Co-Owner shall be free to convey or transfer his unit by gift, to devise his unit by Will or to pass the same by intestacy, without restriction.

Section 10. Waiver of Right of Partition with Respect to Units Acquired by Board of Managers. In the event that a unit shall be acquired by the Board of Managers or its designee, on

behalf of all Co-Owners as tenants in common, all such Co-Owners shall be deemed to have waived all rights of partition with respect to such unit.

Section 11. Payment of Assessments. No Co-Owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his unit unless and until he shall have paid in full to the Board of Managers all unpaid common charges theretofore assessed by the Board of Managers against his unit and until he shall have satisfied all unpaid liens against such unit, except permitted mortgages.

## **ARTICLE VIII**

### Condemnation

In the event of taking in condemnation or by eminent domain of part or all of the common elements, the award made for such taking shall be payable to the Board of Managers if such award amounts to \$50,000.00 or less, and to the insurance trustee if such award amounts to more than \$50,000.00. If 50% or more of the Co-Owners duly and promptly approve the repair and restoration of such common elements, the Board of Managers shall arrange for the repair and restoration of such common elements, and the Board of Managers or the insurance trustee, as the case may be, shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payment. In the event the project is obsolete and uneconomical and 50% or more of the Co-Owners do not duly and promptly approve the repair and restoration of such common elements, the Board of Managers or the insurance trustee, as the case may be, shall disburse the net proceeds where there is no repair or restoration of the damage, as provided in Article V of these By-Laws.

## **ARTICLE IX**

### Records

The Board of Managers or the managing agent shall keep detailed records of the actions of the Board of Managers and the managing agent, minutes of the meeting of the Co-Owners and financial records and books of account of the Condominium, including a chronological listing of receipts and expenditures, as well as a separate account of each unit, which, among other things, shall contain the amount of each assessment of common charges against such unit, the date when due, the amounts paid thereon and the balance remaining unpaid. A written report summarizing all receipts and expenditures of the Condominium shall be rendered by the Board of Managers to all Co-Owners at least annually. In addition, an annual report of the receipts and expenditures of the Condominium, which may be certified by an independent certified public accountant, shall be rendered by the

Board of Managers to all Co-Owners and to all mortgagees of units who have requested the same, promptly after the end of each fiscal year.

## ARTICLE X

### Miscellaneous

Section 1. Notices. All notices to the Board of Managers shall be sent by registered or certified mail, in care of the managing agent, or if there is no managing agent, to the office of the Board of Managers or to such other address as the Board of Managers may hereafter designate from time to time. All notices to any Co-Owner other than notice of meetings as herein provided shall be sent by registered or certified mail to the building or to such other address as may have been designated by him, from time to time, in writing, to the Board of Managers. All notices to mortgagees of units shall be sent by registered or certified mail to their respective addresses, as designated by them, from time to time, in writing, to the Board of Managers. All notices of change of address shall be deemed to have been given when received.

Section 2. Invalidity. The invalidity of any part of these By-Laws shall not impair, or affect in any manner, the validity, enforceability or effect of the balance of these By-Laws.

Section 3. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws or the intent of any provision thereof.

Section 4. Gender. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

Section 5. Waiver. No restriction, condition, obligation or provision in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

Section 6. Waiver of Damages. Neither the Sponsor, its beneficiaries nor its respective representatives or designees shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities reserved, granted or delegated to it by, or pursuant to, these By-Laws, or in the Sponsor's (or Sponsor's beneficiaries, representative representatives or designees) capacity as developer, contractor, owner, manager or seller of the property, whether or not such claim:

- (a) shall be asserted by any Co-Owner, occupant, the Board or the Association, or by any person or entity claiming through any of them; or
- (b) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or
- (c) shall arise ex contractu or (except in case of gross negligence) ex delict. Without limitation to the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any neighboring property or personal property located on or about the property, or by reason of the failure to function, or disrepair of, any utility services (heat, air conditioning, electricity, gas, water, sewage, etc.).

Section 7. Amendments to By-Laws. The provisions of Article II, Article III, Article VI, Article VIII and Section 7 of Article X of these By-Laws may be changed, modified or rescinded by instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Board, all of the Co-Owners and all mortgagees having bona fide liens of record against unit ownerships. Other provisions of these By-Laws (except Section 6 of Article X, which may never be changed without written consent of the Sponsor) may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Board, the Co-Owners having 100% of the total vote and containing an affidavit by an officer of the Board certifying that a copy of the change, modification or rescission has been mailed by certified mail to all mortgagees having bona fide liens of record against any unit ownership, not less than ten (10) days prior to the date of such affidavit. Such change, modification or rescission shall be effective upon recordation of such instrument in the office of the Hughes County Register of Deeds; provided, however, that no provision in these By-Laws may be changed, modified or rescinded so as to conflict with the provisions of the Act.

Section 8. Interpretation of These By-Laws. The provisions of these By-Laws shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium apartment development.

Section 9. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of these By-Laws or of any part of the same, shall not impair or

affect in any manner the validity, enforceability or effect of the rest of this Declaration.

**ARTICLE XI**

Amendments to the By-Laws

Except as hereinafter provided otherwise, these By-Laws may be modified or amended by a vote of two-thirds in number and in common interest of all Co-Owners at a meeting of Co-Owners duly held for such purposes, but only with the written approval of those mortgagees holding mortgages constituting first liens upon one or more units.

Section I of Article VII, insofar as it provides for a right of first refusal to the Board of Managers, and this Article XI, however, may not be amended without the consent in writing of the Sponsor, so long as the Sponsor shall be the owner of one or more units. No By-Law or amendment thereof shall affect a security interest without the consent of the holder of the security.

**ARTICLE XII**

Conflicts

These By-Laws as set forth are to comply with the requirements of the laws of the State of South Dakota. In case any of these By-Laws conflict with the provisions of such statute or of the Master Deed, the provisions of such statute or of the Master Deed, as the case may be, shall control.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

DIAMOND O RENTALS, INC. (Sponsor)

BY: \_\_\_\_\_  
NICK OSTERKAMP  
Secretary-Treasurer

