

THIRD AMENDED AND RESTATED BYLAWS  
VISTA TOWERS CONDOMINIUM UNIT OWNERS ASSOCIATION, INC.

ARTICLE 1.  
General Provisions

- 1.1. Applicability. These Bylaws provide for the governance of the Vista Towers Condominium Unit Owners Association, Inc., and the Condominium known as Vista Towers Condominium Residences. Vista Towers Condominium Residences (the “Property”) is located at 2908 West 37<sup>th</sup> Circle, Sioux Falls, SD on land legally described as follows:
- Tract 2, Vista Park Addition to the City of Sioux Falls, Minnehaha County, South Dakota.
- The Property is more particularly described in the Master Deed which declares the Property to be a Condominium and submits it to the provisions of the South Dakota Condominium Act by recordation of such declaration with the Minnehaha County Register of Deeds.
- 1.2. Office. The office of the Unit Owners Association and the Board of Directors thereof shall be located at the Property or at such other place as may be designated from time to time by the Board of Directors.
- 1.3. Definitions. Terms used herein without definitions shall have the meanings specified for those terms in the Master Deed, or if not defined therein, the meanings specified for those terms in the Condominium Act. The following terms have the following meanings:
- a. “Board of Directors” or “Board” means the executive organization established pursuant to the Bylaws.
  - b. “Common Element Interest” Means each Unit’s equal but undivided interest in the Common Elements, Common Expenses and Common Profits and votes in the Unit Owners Association.
  - c. “Declarant” means Vista Towers Limited Partnership.
  - d. “Declarant Control Period” means the period prior to the date on which 100%, or at the option of Declarant, 75% or more of the Units have been conveyed to Unit Owners other than the Declarant or the date Declarant elects, in writing, to terminate the Declarant Control Period, whichever first occurs.
  - e. “Declaration” means the Master Deed referred to above.
  - f. “Majority Vote” means a vote by those Unit Owners owning more than 50% of the Units actually voted in person or by proxy at a duly convened meeting at which a quorum is present. Any specified percentage vote or presence of the Unit Owners shall mean a vote or presence by the Unit Owners owning such percentage of Units with respect to the total number of Units voting at such meeting voting or being

present at such a meeting. Any specified percentage vote of the Mortgagees shall mean a vote by the Mortgagees of such percentage of Units with respect to the total number of Mortgagees voting on such issue.

- g. "Mortgagee" means an institutional lender holding a first mortgage encumbering a Condominium Unit that has notified the Association of its status and has requested all rights under the Condominium Instruments. For purposes of Article 7 only, when any such right is to be given to a Mortgagee, the Board of Directors shall also give that right to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmer's Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guaranteeing mortgages if the Board has notice of such participation.
- h. "Officer" means any person holding office pursuant to Article 4 of these Bylaws.
- i. "Reserved Common Element" means a Common Element in which the Board of Directors has granted irrevocable license for exclusive use by less than all of the Unit Owners or which the Board of Directors has prohibited for general use of the Unit Owners.
- j. "Unit Owners Association" or "Association" means the incorporated, not-for-profit association of all the Unit Owners owning Condominium Units in the Condominium, incorporated pursuant to the laws of the State of South Dakota.

## ARTICLE 2

### Unit Owners Association

- 2.1. Composition. The Association shall consist of all of the Unit Owners. The name of the Association shall be "Vista Towers Condominium Unit Owners Association, Inc." The Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting assessments and charges, arranging for the management of the Condominium and performing all for the other acts that may be required or permitted to be performed by the Association by the Condominium Act and the Master Deed. Except as to those matters that are specifically required to be performed by a vote of the Association, the foregoing responsibilities shall be performed by the Board of Directors through its officers or a Managing Agent as more particularly set forth in these Bylaws.
- 2.2. Annual Meetings. The annual meetings of the Association shall be held at least 30 days before the beginning of each calendar year, at a time established by the Board of Directors. At such annual meetings the Board of Directors shall be elected by ballot of the Unit Owners in accordance with the requirements of Article 3 of these Bylaws. During the Declarant Control Period, the Declarant shall be entitled to designate members of the Board of Directors without an election.
- 2.3. Place of Meetings. Meetings of the Unit Owners Association shall be at the principal office of the Association or at such other suitable place convenient to the Unit Owners as may be designated by the Board of Directors.

- 2.4. Special Meetings.
- a. The President shall call a special meeting of the Association if so directed by a resolution of the Board of Directors or, after the termination of the Declarant Control Period, upon a petition signed and presented to the Secretary by not less than 25% of the Unit Owners. The notice of any special meeting shall state the time, the place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.
  - b. Not later than the termination of the Declarant Control Period, a special meeting of the Association shall be held at which Directors shall be elected by the Unit Owners including the Declarant if the Declarant owns one or more Units.
- 2.5. Notice of Meetings. The Secretary shall mail to each Unit Owner a notice of each annual or regularly scheduled meeting of the Unit Owners at least 21 days but not more than 30 days, and of each special meeting of the Unit Owners at least 7 but not more than 30 days, prior to the meeting, stating the time, the place and purpose thereof. The mailing of a notice of meeting in the manner provided in this Section and Section 11.1 of the Bylaws shall be considered service of notice.
- 2.6. Quorum and Adjournment of Meetings. Except as otherwise provided in these Bylaws, the presence in person or by proxy of 25% or more of the Unit Owners shall constitute a quorum at all meetings of the Association. If at any meeting of the Association a quorum is not present, Unit Owners of a majority of the Common Element Interest who are present at such meeting in person or by proxy may adjourn the meeting to a time not less than 48 hours after the time the original meeting was called.
- 2.7. Order of Business. The order of business at all meetings of the Association shall be as follows:
- a. Roll call;
  - b. Proof of notice of meeting;
  - c. Reading of minutes of preceding meeting;
  - d. Reports of officers;
  - e. Report of Board of Directors;
  - f. Reports of Committees;
  - g. Election of members of the Board of Directors, when so required;
  - h. Unfinished business; and
  - i. New business.

- 2.8. Conduct of Meetings. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat. The President may appoint a person to serve as parliamentarian at any meeting of the Association. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict of the Condominium Act or the Condominium Instruments. All votes shall be tallied by tellers appointed by the President or other officer presiding over the meeting.
- 2.9. Voting.
- a. Voting at all meetings of the Association shall be determined by assigning one vote to each Unit described in the Declaration. When ownership of a Unit is in more than one person, the person who is entitled to cast the vote is the person named in a certificate executed by all of the owners of the Unit and filed with the Secretary or, in the absence of that named person from the meeting, the person who is entitled to vote is the person owning the Unit who is present. If more than one person owning the Unit is present, then the vote shall be cast only in accordance with their unanimous agreement.
  - b. Except when a greater number is required by the Condominium Act or the Condominium Instruments, a Majority Vote is required to adopt decisions at any meeting of the Association. If the Declarant owns or holds title to one or more Units, Declarant shall have the right at any meeting of the Unit Owners Association to cast the votes to which its Units is or are entitled.
  - c. No Unit Owner may vote at any meeting of the Association to be elected to serve on the Board of Directors if payment of the assessment on his Unit is delinquent by more than 30 days and the amount necessary to bring his account current has not been paid at the time of the meeting or election. There shall be no cumulative voting.
- 2.10. Proxies. A vote may be cast in person or by proxy. A proxy may be granted by any Unit Owner in favor of only another Unit Owner, the Declarant, or the Unit Owner's Mortgagee, or in the case of a non-resident Unit Owner, his attorney or management agent or the lessee of that owner's Unit; provided, however, that no person other than the Declarant, the Managing Agent or an officer of the Condominium shall cast votes as a proxy for more than one Unit not owned by that person. Proxies shall be duly executed in writing, shall be witnessed, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. A proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of notice of revocation from any of the persons owning the Unit. Except with respect to proxies in favor of a Mortgagee, no proxies shall in any event be valid of a period in excess of 180 days after the execution thereof.

ARTICLE 3  
Board of Directors

- 3.1. Powers and Duties. The Board shall have all the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things as are not by the Condominium Act or the Condominium Instruments required to be exercised or done solely by the Association. The Board shall have the power from time

to time to adopt Rules and Regulations deemed necessary for the benefit and enjoyment of the Condominium; provided, however, that such Rules and Regulations shall not conflict with the Condominium Act or the Condominium Instruments. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on matters relating to the duties of the Managing Agent. In addition to the duties imposed by these Bylaws, or by any resolution of the Association that may hereafter be adopted, the Board shall, on behalf of the Association:

- a. Prepare and adopt an annual budget, which shall include the assessments of each Unit Owner for the Common Expenses;
- b. Make assessments against Unit Owners to defray the costs and expenses of the Condominium, establish the means and methods of collecting these assessments from the Unit Owners and establish the period of the installment payment of the annual assessment for Common Expenses;
- c. Provide for the operation, care, upkeep and maintenance of all of the Property and service of the Condominium;
- d. Designate, hire and dismiss personnel necessary for the maintenance, operation, repair and replacement of the Common Elements and to provide services for the Property and, when appropriate, provide for the compensation of these personnel and for the purchase of equipment, supplies, and material these personnel shall use in the performance of their duties, which supplies and equipment shall be deemed part of the Property;
- e. Collect the assessments against the Unit Owners, deposit the proceeds thereof in bank depositories designated by the Board and use the proceeds to carry out the administration of the Property;
- f. Make and amend the Rules and Regulations;
- g. Open bank accounts on behalf of the Association and designate the signatories thereon;
- h. Make, or contract for the making of, repairs, additions and improvements to or alterations of the Property, and repairs to and restoration of the Property, in accordance with these Bylaws after destruction or damage by fire or other casualty, or as a result of condemnation or eminent domain proceedings;
- i. Enforce by legal means the provisions of the Declaration, these Bylaws and the Rules and Regulations, act on behalf of the Unit Owners with respect to all matters arising out of any eminent domain proceeding and notify the Unit Owners of any litigation against the Association;
- j. Obtain and carry insurance against casualties and liabilities as provided in the Master Deed and pay the premiums therefor and adjust and settle any claims thereunder;
- k. Pay the cost of all authorized services rendered to the Association and billed to Unit Owners of individual Units or otherwise;

- l. Keep books with detailed accounts in chronological order of the receipts and expenditures affecting the Property, and the administration of the Condominium, specifying the expenses of maintenance and repair of the Common Elements and other expenses incurred. These books and vouchers shall be available for examination by the Unit Owners or their agents during general business hours on business days and shall be kept in accordance with generally accepted accounting principles;
  - m. Notify a Mortgagee of any default hereunder by the Unit Owner of the Unit subject to the mortgage, in the event the default continues for a period exceeding 60 days;
  - n. Borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements; provided, however, that the consent of at least two-thirds in number of all Unit Owners, obtained either in writing or at a meeting duly called and held for that purpose in accordance with the provisions of these Bylaws, shall be required to borrow any sum in excess of \$10,000. If any sum borrowed by the Board on behalf of the Condominium pursuant to the authority contained in this subsection is not repaid by the Association, a Unit Owner who pays to the creditor a percentage of the total amount due equal to his Common Element Interest in the Condominium shall be entitled to obtain from the creditor a release of any judgment or other lien that the creditor shall have filed or shall have the right to file against that Unit Owner's Condominium Unit, and the Association shall not be entitled to assess his Unit for payment of the remaining amount due to that creditor;
  - o. Acquire, hold and dispose of Condominium Units and mortgage the same if such expenditures and hypothecation are included in the budget adopted by the Association;
  - p. In its sole discretion, from time to time to designate certain Common Elements as Reserved Common Elements and impose any restrictions and conditions on the use thereof as the Board of Directors deems appropriate, however, the interior of any Unit may not be designated as a Reserved Common Element;
  - q. Do any other things and acts not inconsistent with the Condominium Act or the Condominium Instruments that the Board of Directors may be authorized to do by a resolution of the Association.
- 3.2. Managing Agent. The Board shall employ for the Condominium a "Managing Agent on terms and conditions negotiated by the Board.
- a. Requirements. The Managing Agent shall advise the Board on the administrative operation of the Condominium.
  - b. Duties. The Managing Agent shall perform such duties and services as the Board shall direct. The Board of Directors may delegate to the Managing Agent all of the powers granted to the Board by these Bylaws other than the power to make assessments, the power to make and amend Rules and Regulations, the power to borrow money on behalf of the Condominium, and the power to designate Common Elements as Reserved Common Elements. The Managing Agent shall perform the obligations, duties and services relating to the management of the Property, the rights of

Mortgagees and the maintenance of reserve funds in compliance with the provisions of these Bylaws.

- c. Standards. The Board shall impose standards of performance upon the Managing Agent. Unless the Managing Agent is instructed otherwise by the Board:
    1. The accrual method of accounting shall be employed and expenses required by these Bylaws to be charged to more than one but less than all Unit Owners shall be accounted for separately;
    2. Two or more persons shall be responsible for handling cash to maintain adequate financial control procedures;
    3. Cash accounts of the Association shall not be mingled with any other accounts;
    4. No remuneration shall be accepted by the Managing Agent from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finders' fees, service fees or otherwise and any discounts received shall benefit the Association;
    5. Any financial or other interest that the Managing Agent has in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors; and
    6. A monthly financial report shall be prepared for the Association containing such detail as is required by the Board.
  - d. Limitations. During the Declarant Control Period, the Board may employ a Managing Agent for a term not to exceed 2 years. Thereafter, the Board may employ a Managing Agent for such term as the Board deems appropriate. The Association shall not undertake "self-management" or fail to employ a Managing Agent without the consent of at least 75% of the Unit Owners and at least 51% of the Mortgagees.
- 3.3. Numbers of Directors: Terms of Office. The Initial Board of Directors shall consist of three persons as designated by the Declarant in the Association's Articles of Incorporation. The term of office of these Directors shall expire at the special meeting called upon termination of the Declarant Control Period as set forth in Section 2.4(b). At such meeting, three Directors shall be elected in accordance with the provisions of Section 2.4 by the Unit Owners including the Declarant if the Declarant owns one or more Units. The persons elected shall serve until the next annual meeting of the Association. No person shall be eligible to be a Director who is not a Unit Owner, a Mortgagee, a designee of Mortgagee, or a designee of Declarant. Except for resignation or removal. Directors shall hold office until their respective successors shall have been elected by the Association.
- 3.4. Election of Directors. Persons qualified to be Directors may be nominated for election only by a nominating petition signed by Unit Owners representing at least 10% of the Units and either signed by the nominee or accompanied by a document signed by the nominee indicating his or her willingness to serve as a Director and submitted to the Secretary of the Association at least 35 days before the meeting at which the election is to be held. In the event no more than one person for each vacancy on the Board of Directors has been nominated by petition, additional nominations may be made from

the floor at the meeting at which the election is held. Such a nominee from the floor must either be present and consent to the nomination or have indicated in writing his willingness to serve. This subsection does not apply to persons appointed to the Board by Declarant.

- 3.5. Removal and Resignation of Directors. Except with respect to Directors designated by Declarant, at any regular or special meeting duly called, any one or more of the Directors may be removed with or without cause by a majority vote of the Unit Owners and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Unit Owners shall be given at least seven days' notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting. A Director may resign at any time and except for a Director designated by the Declarant shall be deemed to have resigned upon disposition of that Director's Unit or if not in attendance at three consecutive regular meetings of the Board, unless the minutes reflect consent to that absence.
- 3.6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Unit Owners Association shall be filled by a vote of a majority of the remaining Directors at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancies, even though the Directors present at that special meeting may constitute less than a quorum. Each person so elected shall be a Director until a successor shall be elected at the next annual meeting of the Association. During the Declarant Control Period, the Declarant shall designate the successor to any Declarant designated Director who resigns or is removed.
- 3.7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but these meetings shall be held at least once every four months during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telegraph or telephone, at 14 business days prior to the day named for that meeting.
- 3.8. Special Meetings. Special meetings of the Board of Directors may be called by the President on three business days' notice to each Director, given personally or by mail, telegraph or telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on written request of at least two Directors.
- 3.9. Waiver of Notice. Any Director may, at any time, in writing, waive notice of any meeting of the Board, and that waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director, in person or by telephonic communication, at any meeting of the Board of Directors shall constitute a waiver of notice by him of the time, place and purpose of that meeting. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at that meeting.
- 3.10. Quorum. At all meetings of the Board a majority of the Directors shall be a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting having a quorum present shall be the decision of the Board. If at any meeting of the Board 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 that might have been transacted at the meeting originally called may be transacted without further notice.

- 3.11. Compensation. No Director shall receive any compensation from the Condominium for acting as such.
- 3.12. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book of the Board recording in it all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. The current edition of Robert's Rules of Order shall govern the conduct of the meetings of the Board of Directors when not in conflict with the Condominium Act or the Condominium Instruments.
- 3.13. Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the Directors shall individually or collectively consent in writing to that action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.
- 3.14. Liability of the Board of Directors. Officers. Unit Owners and Unit Owners Association. The Officers and Directors of the Association shall not be liable to the Association or any Unit Owner for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the officers and Directors from and against any and all contractual liability to others arising out of contracts made by the officers or the Board on behalf of the Association, except to the extent that such liability is satisfied by liability insurance. The duty of the Association described in the preceding sentence shall not apply to any contract that has been made by the officers or the Board in bad faith or contrary to the provisions of the Condominium Act of the Condominium Instruments. Officers and Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he is or was an officer or Director of the Association against expenses (including attorney's fees), judgments, fines and amounts paid in settlement incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Condominium. The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for as a Common Expense, or for injury or damage to person or property caused by the elements or by the Unit Owner of any Condominium Unit, or any other person, or resulting from electricity, water, snow or ice that may leak or flow from or over any portion of the Common Elements or from or over any Unit Owner for loss or damage, by theft or otherwise, of articles that may be stored upon any of the Common Elements. No diminution or abatement of any assessments, as here and elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any governmental authority.
- 3.15. Common or Interested Directors. Each Director shall exercise his powers and duties in good faith and with a view to the interests of the Condominium. No contract or other

transaction between the Association and any of its Directors, or between the Association and any corporation, firm or association (including the Declarant) in which any of the Directors of the Association are directors or officers or are pecuniarily or otherwise interested, is either void or voidable because any such Director is present at the meeting of the Board of Directors that authorizes or approves the contract or transaction, or because his vote is counted for that purpose if the fact of common directorate or interest is disclosed or known to the Board or a majority thereof; if the common directorate or interest is disclosed or known to at least a majority of the Unit Owners, and the Unit Owners vote to approve or ratify the contract or transaction; or if the contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

- 3.16. Rules and Regulations. The Board of Directors shall establish Rules and Regulations to assure that the Condominium shall be maintained in a manner providing for visual harmony, and soundness of repair; avoiding activities deleterious to the aesthetic or property values of the Condominium; furthering the comfort of the Unit Owners, their guests and tenants; and promoting the general welfare and safety of the Condominium community. The Board shall regulate the external design, appearance, use and maintenance of the Common Elements. The Board shall have the power to impose reasonable fines upon, and issue a cease and desist request to, a Unit Owner, whose guests, invitees, or lessees whose actions are inconsistent with the provisions of the Condominium Act, the Condominium Instruments, the Rules and Regulations, or resolutions of the Board of Directors.

#### ARTICLE 4. Officers

- 4.1. Designation. The principal officers of the Association shall be the President, the Vice President, and the Secretary/Treasurer whom shall be elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as in its judgment may be necessary. The President, Vice President, and Secretary/Treasurer shall be residents of the Condominium (except those appointed by the Declarant during the Declarant Control Period) and members of the Board of Directors.
- 4.2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at its first meeting following the annual meeting of the Association.
- 4.3. Removal of Officers. An officer may be removed in the same manner as a Director may be removed. Vacancies in offices shall be filled in the same manner as vacancies on the Board are filled.
- 4.4. President. The President shall be the chief executive officer of the Association; preside at all meetings of the Association and of the Board; have general and active management of the business of the Association subject to the control of the Board; see that all orders and resolutions of the Board are carried into effect; and appoint committees from among the Unit Owners from time to time as the President in his discretion may decide is appropriate to assist in the conduct of the affairs of the Association.
- 4.5. Vice President. The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act.

The Vice President shall also perform any other duties as shall from time to time be imposed by the Board or by the President.

- 4.6. Secretary/Treasurer. The Secretary/Treasurer shall keep minutes of all meetings of the Association and the Board; have charge of such books and papers as the Board may direct; give or cause to be given all notices required to be given by the Association; maintain a register setting forth the place to which all notices to Unit Owners, Mortgagees and the like shall be delivered; shall be responsible for the Association's funds and securities; shall keep full and accurate financial records and books of accounts showing all receipts and disbursements; prepare all required financial data; deposit all moneys and other valuable effects in the name of the Board, the Association, or the Managing Agent, in any depositories as may from time to time be designated by the Board and, in general, perform all duties incident to the office of Secretary and Treasurer.
- 4.7. Execution of Documents. All agreements, contracts, deeds, leases, checks, licenses and easements for expenditures or obligations in excess of \$2,000, and all checks drawn upon reserve accounts, shall be executed by two persons designated by the Board. All instruments for expenditures or obligations of \$2,000 or less, except from reserve accounts, may be executed by any one person designated by the Board.
- 4.8. Compensation of Officers. No officers shall receive any compensation from the Association for acting as such.

#### ARTICLE 5.

#### Operation of Property

- 5.1. Determination of Common Expenses and Assessments Against Unit Owners.
  - a. Fiscal Year. The fiscal year of the Association shall be the calendar year. The first fiscal year of the Unit Owners Association shall commence at the expiration of the Declarant Control Period and terminate on December 31 of that same year.
  - b. Preparation and Approval of Budget.
    1. At least 90 days before the beginning of each fiscal year, the Board shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units as to which it is the responsibility of the Association to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Condominium Act, the Condominium Instruments or a resolution of the Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Property and the rendering to the Unit Owners of all related services. The budget shall reflect the separate assessment of Limited Common Expenses, if any.
    2. The budget shall also include such reasonable amounts as the Board considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements. At least 45 days before the beginning of each

fiscal year, the Board shall send to each Unit Owner a copy of the budget in a reasonably itemized form that sets forth the amount of the Common Expenses and any special assessment payable by each Unit Owner. This budget shall constitute the basis for determining each Unit Owner's assessment for the Common Expenses of the Condominium.

- c. Assessment and Payment of Common Expenses. The total amount of the estimated funds required from assessments for the operation of the Property set forth in the budget adopted by the Board shall be assessed against each Unit Owner in proportion to his respective interest and shall be a lien against each Unit Owner's Unit as provided in these Bylaws. Effective the first day of the first month when a Unit in the Condominium building is capable of habitation, and the first day of each of the succeeding eleven months in that fiscal year, each Unit Owner shall be obligated to pay to the Board of Directors or the Managing Agent (as determined by the Board) one-twelfth of the assessment. If habitation occurs on a day other than the first of the month, the Unit Owner shall be obligated to pay a prorated monthly assessment. Within 90 days after the end of the each fiscal year, the Board of Directors shall supply to all Unit Owners (and to each Mortgagee requesting the same) an itemized accounting of the Common Expenses for that fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board for that fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Board, be placed in reserve accounts, be placed in a special account to be expended solely for the general welfare of the Unit Owners, or be credited according to each Unit owner's interest to the next monthly installments due from Unit Owners under the current fiscal year's budget, until exhausted. Any net shortage shall be assessed promptly against the Unit Owners in accordance with their interests and shall be payable either in full with payment of the next monthly assessment due or in not more than six monthly equal installments, as the Board may determine.
- d. Reserves. The Board shall build up and maintain reasonable reserves for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget that may become necessary during the year shall be charged first against these reserves. If the reserves are inadequate for any reason, including nonpayment of any Unit Owner's assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Unit Owners according to their respective interests and which may be payable in a lump sum or in installments as the Board may determine. The Board shall serve notice of any such further assessment on Unit Owners by a statement in writing giving the amount and reasons therefor, and this further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment that is due not more than ten days after the delivery of notice of further assessment. All Unit Owners so notified shall be obligated to pay the adjusted monthly amount or, if the further assessment is not payable in installments, the amount of the assessment. Such assessment shall be a lien as of the effective date as provided herein.

At the time each unit is first occupied, or thereafter occupied pursuant to a transfer of the ownership of the Unit, the Unit Owner shall pay (in addition to the first monthly assessment) to the manager or managing agent, or as otherwise directed by the Board, a non-refundable amount equal to two (2) times the first full monthly assessment for

such unit owner, which amount shall be held in a separate interest bearing account as the "Replacement and Repair Reserve Account" for major repairs or capital improvements. The use of these reserve funds shall require the approval of 51% of the existing Units Owners.

- e. Declarant Control Period. Until termination of the Declarant Control Period, in lieu of paying regular assessments on its unsold Units, the Declarant shall be obligated for the difference between the amount of the assessments levied on all Units subject to the assessment and the amount of actual expenditures required to operate the Association during the fiscal year. This obligation may be satisfied in the form of a cash subsidy, or by contribution of needed services or materials or a combination of these. The Association is specifically authorized to enter into subsidy contracts or contracts of in-kind contribution of services or materials, or a combination of services or materials with Declarant or other entities for the payment of some portion of the Common Expenses.
- 5.2. Payment of Common Expenses. Each Unit Owner shall pay the Common Expenses assessed by the Board of Directors pursuant to the provisions hereof. No Unit Owner may be exempted from liability for the assessment of Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his or her Unit subsequent to the date of recordation of a conveyance by him in fee of that Unit. Prior to or at the time of any such conveyance, all liens, unpaid charges, and assessments shall be paid in full and discharged. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of that recordation, without prejudice to the purchaser's right to recover from the selling Unit Owner amounts paid by the purchaser therefor; provided, however, that any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling Unit Owner within five business days following a written request therefor the Board of Directors or Managing Agent and such purchaser shall not be liable for, nor shall the Unit conveyed by subject to a lien for, any unpaid assessments in excess of the amount therein set forth; at Closing, the purchaser of a Unit shall reimburse selling Unit Owner the monthly common expense payment described herein prorated to Closing if Closing occurs after the first day of the month, and Unit Owner has paid such fee; and provided, further, that each Mortgagee who comes into possession of a Condominium Unit by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Condominium Unit free of any claims for unpaid assessments or charges against that Unit which accrue prior to the time that Mortgagee comes into possession thereof, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Condominium Units including the mortgaged Condominium Unit.
- 5.3. Collection of Assessments. The Board or the Managing Agent at the request of the Board, shall take prompt action to collect any assessments for Common Expenses due from any Unit Owner that remain unpaid for more than 30 days from the due date for any payment thereof. Any assessment, or installment thereof, not paid within ten days after it is due shall accrue a late charge in the amount of \$10 or such other amount as may be established from time to time by the Board.

- 5.4. Statement of Common Expenses. The Board shall promptly give any Unit Owner, contract purchaser or Mortgagee who so requests a written statement of all unpaid assessments for Common Expenses due from that Unit Owner. The Board may impose a reasonable charge for the preparation of this statement.
- 5.5. Maintenance. Repair. Replacement and Other Common Expenses.
- a. By the Unit Owners Association. The Association shall be responsible for the maintenance, repair and replacement (unless, in the opinion of a majority of the Board such expense was necessitated by the negligence, misuse or neglect of a Unit Owner) of all of the Common Elements (including the Limited Common Elements) as defined herein or in the Master Deed, whether located inside or outside of the Units, the cost of which shall be charged to all Unit Owners as a Common Expense; provided, however, that each Unit Owner shall perform normal maintenance on the Limited Common Elements appurtenant to his Unit and any portion of the remaining Common Elements that the Board pursuant to the Rules and Regulations has given him permission to utilize.
- b. By the Unit Owner.
1. Each Unit Owner shall keep his Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing that may at any time be necessary to maintain the good appearance and condition of his Unit. In addition, each Unit Owner shall be responsible for all damage to any other Units or to the Common Elements resulting from his failure or negligence to make any of the repairs required by this Section. Each Unit Owner shall perform his responsibility in a manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Board or the Managing Agent any defect or need for repairs for which the Association is responsible.
  2. The Unit Owner of any Unit to which a Limited Common Element deck is appurtenant shall perform the normal maintenance for that Limited Common Element, including keeping it in a clean and sanitary condition, free and clear of snow, ice and any accumulation of water and shall also make all repairs thereto caused or permitted by his negligence, misuse or neglect. All structural repair or replacement shall be made by the Association as a Common Expense.
  3. Any Unit Owner permitted by the Board to use a specific portion of the Common Elements for storage is responsible for the maintenance and care of that portion and shall use that portion in a safe and sanitary manner.
- c. Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be done with contemporary building materials and equipment.
- 5.6. Additions. Alterations or Improvements by the Board. Except during the Declarant Control Period, whenever in the judgment of the Board the Common Elements shall require additions, alterations or improvements costing in excess of \$10,000 during any period of 12 consecutive months, the making of such additions, alterations or

improvements shall be approved by a majority vote and the Board shall proceed with such additions, alterations or improvements and shall assess all Unit Owners benefited for the cost thereof as a Common Expenses. Any additions, alterations or improvements costing \$10,000 or less during any 12 consecutive months may be made by the Board without approval of the Unit Owners and the cost thereof shall constitute a Common Expense.

- 5.7. Additions, Alterations or Improvements by the Unit Owners. No Unit Owner shall make any structural addition, alteration or improvement in or to his Unit without the prior written consent of the Board. No Unit Owner shall paint or alter the exterior of his Unit, including the doors and windows, nor shall nay Unit Owner paint or alter the exterior of any building without the prior written consent of the Board. The Board shall be obligated to answer any written request by a Unit Owner for approval of a proposed structural addition, alteration or improvement in the Unit Owner” Unit within 45 days after that request and the failure to do so within the stipulated time shall constitute a consent by the Board.
- 5.8 Restriction on Use of Units and Common Elements—Rules and Regulations. Each Unit Owner shall conform to Rules and Regulations for use of Units and Common Elements adopted by the Board. Copies of the Rules and Regulations shall be furnished by the Board to each Unit Owner. Changes to the Rules and Regulations shall be posted prior to the time when the same shall become effective and copies thereof shall be furnished to each Unit Owner upon request.
- 5.9 Right of Access. By acceptance of his deed of conveyance, each Unit Owner hereby grants a right of access to his Unit to the Board, the Managing Agent, or any other person authorized by the Board or the Managing Agent, for the purpose of enabling the exercise and discharge of their respective powers and responsibilities, including, without limitation, making inspections, correcting any condition originating in his Unit or in a Common Element to which access is obtained through his Unit and threatening another Unit or the Common Elements, performing installations, alterations or repairs to the mechanical or electrical systems or the Common Elements in his Unit or elsewhere in the Property or to correct any condition that violates any Mortgage; provided, however, that requests for entry are made in advance and that any such entity is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate, whether or not the Unit Owner is present.
- 5.10. Utility Charges. The costs of utilities serving the Condominium not individually metered to a Unit shall be Common Expenses.
- 5.11. Parking. Parking spaces in the enclosed, underground parking shall be designated to each particular Unit and shall not be used by other Unit Owners for other purposes. Parking spaces on the exterior of the building not designated by the Board of Directors as reserved for any particular use or Unit, shall be used by the Unit Owners and their guests for self-service parking purposes on a first-come, first-served basis. No Unit Owners shall park on the Common Element parking spaces more than two vehicles (owned or leased by such Unit Owner, a member of his family, an employer or tenant leasing his Unit) without the prior written consent of the Board. No Unit Owners, (owned or leased by such Unit Owner, a member of his family, an employer or tenant leasing his unit or persons visiting the Unit Owner) shall park a Motor Home, Boat,

Trailer or other like vehicles in the Common Element parking stalls unless approved by the board. The cost of maintenance and repair of all parking areas shall be a Common Expense.

- 5.12 Storage: Disclaimer of Bailee Liability. The storage cubicles are Common Elements and may be assigned by the Board to Units as Reserved Common Elements by appropriate resolution of the Board. The Board, the Association, any Unit Owner and the Declarant shall not be considered a bailee, however, of any personal property stored on the Common Elements (including property located in storage cubicles and vehicles parked on the Common Elements) whether or into exclusive possession of the parking area is given to a Unit Owner for storage or parking purposes, and shall not be responsible for the security of that personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.
- 5.13 Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Property, except that dogs, cats, or other usual and common household pets weighing less than twenty-five (25) pounds and one foot in height, and not to exceed two (2) may be permitted per Unit. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the Owner of any portion of the Property shall be removed upon the request of the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall at all times whenever they are outside a Unit be confined on a leash held by a responsible person.
- 5.14 Staff Services. It is the intent of the Board to hire a full time individual to perform valet, concierge, errands, and maintenance for Unit Owners. These services will be available to all Unit Owners at a pre-determined fee. Such services will be billed to Unit Owners on a monthly basis and will be due at the time of their next monthly assessment.

## ARTICLE 6. Occupancy and Leasing

- 6.1 Occupancy. Except as expressly permitted as set forth in this section and in Section 6.2 below, each Unit must be occupied by the Unit Owner or, if the Unit is held in a trust, by a grantor or beneficiary of such trust. A Unit Owner may permit a Unit to be occupied for a period not exceeding four weeks per calendar year by a family member of the Unit Owner or, if the Unit is held in a trust, by a family member of a grantor or beneficiary of such trust. A Unit Owner may not receive rent or any other compensation in exchange for the limited occupancy permitted by the preceding sentence.
- 6.2 Leasing. A Unit Owner may not lease or rent a Unit to any other person or entity, unless approved in writing by the Board prior to execution of the lease agreement. Any lease arrangement approved by the Board must comply with the following requirements, along with any additional requirements that may be imposed by the Board:
- a. The lease must be in writing.



- b. The lease must be for the entire Unit.
- c. The lease must be for a minimum period of not less than one year. Any renewal or extension of the lease term must be approved by the Board in accordance with this section.
- d. The use of the Unit is subject to the Master Deed, these By-Laws, and any Association Rules and Regulations. By becoming a tenant, each tenant agrees to comply with the Master Deed, these By-Laws, and any Association Rules and Regulations, and accepts the right and power of the Association to evict and pursue any other remedies against the tenant for any violation thereof as described in these By-Laws; and the Board may require that the lease contain an acknowledgment of these obligations of the tenant and rights of the Association, including the Association's rights as a third party beneficiary to enforce the same. Notwithstanding the foregoing, a Unit Owner who leases or rents a Unit pursuant to this section is also responsible and liable to the Association and other Unit Owners for all acts and omissions of the tenant, including any violation of the Master Deed, these By-Laws, and any Association Rules and Regulations.
- e. Within ten days of occupancy by any tenant, the name and telephone number of the tenant, together with a complete and signed copy of the lease agreement must be furnished to the Secretary of the Association.
- f. The Unit cannot be used as a motel or hotel or otherwise for transient tenants.
- g. If any Unit Owner or tenant is in violation of any of the provisions of this Association's Master Deed, By-Laws, or Rules and Regulations, the Association may bring an action in its own name or in the name of the Unit Owner or both to have the tenant evicted or to recover damages or both. If the Court finds that the tenant is or has violated any provisions of the Master Deed, the By-Laws, or the Rules and Regulations, the Court may find the tenant guilty of forcible detainer, despite the fact that the Unit Owner is not a part to the action and/or that the tenant is not otherwise in violation of the tenant's lease agreement with the Unit Owner. For purposes of granting the forcible entry detainer, pursuant to S.D.C.L. Chapter 21-16, against the tenant, the Court may consider the Unit Owner a person in whose name a contract (the lease agreement) was made for the benefit of another (the Association). This remedy is in addition to any other remedies available at law. If permitted by law, the Association may recover all of its costs, including court costs and reasonable attorney's fees, and these costs shall be a continuing lien on the Unit, the Unit Owner, and the Unit Owner's successor and assigns. The Association shall serve the tenant and the Unit Owner written notice of the nature of the violation and allow thirty (30) days to cure the violation before the Association may file for eviction. The time period after service of a notice to quit may run concurrently with the 30-day period to cure, if allowed by law.
- h. The terms of subsections (b) and (c) above will not apply in the event the Unit Owner is a first mortgage lender who obtains title to the Unit through foreclosure or deed in lieu of foreclosure, pending resale of the Unit.

## ARTICLE 7.

### Insurance

- 7.1 Insurance. The Board shall obtain and maintain the insurance required by the Master Deed as a Common Expense. The provisions of the Master Deed relating to adjusting of claims and use of insurance proceeds shall be followed by the Board.
- 7.2 Separate Insurance. Each Unit Owner shall have right, at his own expense, to obtain insurance for that Unit Owner's benefit, covering the Unit and his personal property and personal liability, as well as any improvements he makes to the Units, under coverage normally called "Improvements and Betterments Coverage"; provided, however, that no Unit Owner shall be entitled to exercise this right to acquire or maintain that insurance coverage so as to decrease the amount that the Board, on behalf of all Unit Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by a Unit Owner. No Unit Owner shall obtain separate insurance policies on the Condominium except as provided in this section.

## ARTICLE 8.

### Mortgages

- 8.1 Notice to Board of Directors. A Unit Owner who mortgages his Unit shall notify the Board of the name and address of his Mortgagee and shall file a conformed copy of the mortgage with the Board.
- 8.2 Notice of Default. The Board, when giving notice to any Unit Owner of a default in paying an assessment for Common Expenses, which remains uncured for 60 days, or any other default, shall simultaneously send a copy of that notice to the Mortgagee of that Unit.
- 8.3 Notice of Amendment of Condominium Instruments. The Board shall give notice to all Mortgagees, at least 7 days prior to the effective date in which the Unit Owners, in accordance with the provisions of these Bylaws, materially amend the Condominium Instruments.
- 8.4 Notice of Change in Managing Agent. The Board shall give notice to all Mortgagees requesting such a notice at least 30 days prior to changing the Managing Agent.
- 8.5 Mortgagee's Approvals.
- a. Two-Thirds Vote. Unless at least 67% of the Mortgagees and at least 60% of the Unit Owners have given their written approval, the Association shall not:
1. Except following destruction or condemnation, change any Unit's Common Element Interest;
  2. Except following destruction or condemnation, partition, subdivide, abandon, encumber, sell or transfer the Common Elements of the Condominium, except for the granting of utility easements;

3. Except following destruction or condemnation, by act or omission withdraw the submission of the Property to the Condominium Act, except as provided by the Master Deed or the Condominium Act;
  4. Modify the method of determining and collecting assessments or allocating distributions of casualty insurance proceeds or condemnation awards; or
  5. Use hazard insurance proceeds for losses to the Condominium for any purpose other than repair, replacement or restoration except as permitted in the Master Deed.
- b. Majority Vote. Unless at least 51% of the Mortgagees and at least 67% of the Unit Owners have given their prior written approval, the Association shall not:
1. Following destruction or condemnation, change any Unit's Common Element Interest;
  2. Following destruction or condemnation, by act or omission, withdraw the submission of the Property to the Condominium Act, except as provided in the Condominium Act or in the Master Deed; and
  3. Add or amend any material provisions of the Condominium Instruments that establish, provide for, govern or regulate any of the following: (A) voting; (B) assessments, assessment liens or subordination of such liens; (C) reserves for maintenance, repair or replacement of the Common Elements, or Units as applicable; (D) insurance or fidelity bonds; (E) right to use of the Common Elements; (F) maintenance responsibilities; (G) expansion or contraction of the Condominium; (H) boundaries of any Units; (I) the interest in the Common Elements or Limited Common Elements; (J) the convertibility of Units into Common Elements or of Common Elements into Units; (K) leasing of Units; (L) the imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey the Unit; or (M) any provisions that are for the expressed benefit of Mortgagees.
- c. Non-Material Amendments; Presumptive Approval. Any addition of amendment to the Condominium Instruments shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. A Mortgagee who is notified of additions or amendments and who does not deliver or post to the requesting party a negative response within 30 days shall be deemed to have approved that request.

8.6 Other Rights of Mortgagees. All Mortgagees or their representatives shall have the right to attend and to speak at meetings of the Association. All such Mortgagees shall have the right to examine the Condominium Instruments, the Rules and Regulations and books and records of the Association, and to require the submission of annual financial reports and other budgetary information.

## ARTICLE 9. Compliance and Default

9.1 Relief. Each Unit Owner shall be governed by, and shall comply with, all of the terms of the Condominium Instruments and the Condominium Act as any of the same may be

amended from time to time. In addition to all other remedies provided by law, a default by a Unit Owner shall entitle the Association, acting through its Board or through the Managing Agent, to the following relief:

- a. Additional Liability. Each Unit Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any member of his family, his guests, or his employees, agents or licensees, but only to the extent that the expense is not covered by the proceeds of insurance carried by the Association. This liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its right to subrogation.
- b. Costs and Attorney's Fees. In any proceedings arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of that proceeding and such reasonable attorney's fees as may be determined by the court.
- c. No Waiver of Right. The failure of the Association, the Board or of a Unit Owner to enforce any right, provision, covenant or condition that may be granted by the Condominium Instruments or the Condominium Act shall not constitute a waiver of the right of the Association, the Board or the Unit Owner to enforce that right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board or any Unit Owner pursuant to any term, provision, covenant or condition of the Condominium Instruments or the Condominium Act shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedy, nor shall it preclude the party exercising the same from exercising any other privileges that may be granted to that party by the Condominium Instruments or the Condominium Act or at law or in equity.
- d. Interest. In the event of a default by any Unit Owner in paying any sum assessed against his Condominium Unit other than for Common Expenses that continues for a period in excess of 15 days, interest at a rate not to exceed the lower of the maximum permissible rate that may be charged by a Mortgagee under a mortgage at such time or 18% per annum may be imposed in the discretion of the Board on the principal amount remaining unpaid from the due date until paid.
- e. Abating and Enjoining Violations by Unit Owners. The violation of any of the Rules and Regulations adopted by the Board of Directors or the breach of any provision of the Condominium Instruments or the Condominium Act shall give the Board the right, in addition to any other rights set forth in these Bylaws:
  1. To enter the Unit in which, or as to which, the violation or breach exists and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein in contravention to the intent and meaning of the provisions hereof; and the Board shall not thereby be deemed guilty in any manner of trespass; or
  2. To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

- f. Legal Proceedings. Failure to comply with any of the terms of the Condominium Instruments and the Rules and Regulations shall be grounds for relief including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in these Bylaws or any combination thereof and any other relief afforded by court of competent jurisdiction, all of which relief may be sought by the Association, the Board, the Managing Agent or, if appropriate, by any aggrieved Unit Owner and shall not constitute an election of remedy.
- g. Fines. The Board may levy reasonable fines against Unit Owners for violation of the Rules and Regulations, the Condominium Instruments or the Condominium Act. No fine may be levied for more than 1% of the Unit Owner's annual assessment for any one violation; but each day a violation continues, after notice is given to the Unit Owner, is a separate violation. If a Unit Owner requests in writing a hearing before the fine is imposed, the imposition of the fine shall be suspended until the hearing is held. Fines or special assessments shall be collectible as such.

## 9.2 Lien for Assessments.

- a. Lien. The total annual assessment of each Unit Owner for Common Expenses or any special assessment or any other sum duly levied, including without limitation fines, interest and late charges made pursuant to these Bylaws, is hereby declared to be a lien levied against the Condominium Unit of the Unit Owner, which lien shall, with respect to annual assessments, be effective on the first day of each fiscal year of the Condominium and, as to special assessments and other sums duly levied, on the first day of the next month that begins more than seven days after delivery to the Unit Owner of notice of the special assessment or levy. The Board or Managing Agent may file or record any other or further notice of any such lien, or any other or further document, as may be required to confirm the establishment and priority of the lien.
- b. Acceleration. In any case where an assessment against a Unit Owner is payable in installments, upon a default by that Unit Owner in the timely payment of any two consecutive installments the maturity of the remaining total of the unpaid installments of the assessment may be accelerated at the option of the Board and the entire balance of the annual assessment may be declared due and payable in full by the service of notice to that effect upon the defaulting Unit Owner and the Unit Owner's Mortgagee by the Board or the Managing Agent.
- c. Enforcement. The lien for assessments may be enforced and foreclosed in the manner provided by the laws of the State of South Dakota by power of sale or action in the name of the Board, or the Managing Agent acting on behalf of the Association. The plaintiff in such proceedings shall have the right to the appointment of a receiver, if one is available under the laws of the State of South Dakota.
- d. Remedies Cumulative. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

## 9.3 Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to these Bylaws upon any

Unit (and any penalties, interest on assessments, late charges or the like) shall be subordinate to and shall no way affect the rights of the holder of a mortgage made in good faith for value received; provided, however, that such subordination shall apply only to assessments that have become due and payable prior to a sale or transfer of that Unit pursuant to decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser of the Unit at the sale from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided herein.

ARTICLE 10.  
Amendments to Bylaws

- 10.1 Amendments. These Bylaws may not be modified or amended without a 67% vote of Unit Owner interest. Until the expiration of the Declarant Control Period, these Bylaws may not be amended without the prior written consent of the Declarant.
- 10.2 Approval of Mortgagees. These Bylaws contain provisions concerning various rights, priorities, remedies and interest or Mortgagees. Such provisions in these Bylaws are to be construed as covenants for the protection of those Mortgagees on which they may rely in making loans secured by mortgages. Accordingly, no amendment or modification of these Bylaws impairing or affecting such rights, priorities, remedies or interest of a Mortgagee shall be adopted without the prior written consent of that Mortgagee.

ARTICLE 11.  
Miscellaneous

- 11.1 Notices. All notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by United States mail, postage prepaid, or if notification is of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid, (a) if to a Unit Owner, at the address that the Unit Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Unit of such Unit Owner, or (b) if to the Association, the Board or to the Managing Agent, at the principal office of the Managing Agent or at such other address as shall be designated by notice in writing to the Unit Owners pursuant to this Section. If a Unit is owned by more than one person, each such person who so designates an address in writing to the Secretary shall be entitled to receive all notices hereunder.
- 11.2 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 Bylaws or the intent of any provision thereof.
- 11.3 Gender. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

11.4 Construction. These Condominium Instruments are intended to comply with all the applicable provisions of the Condominium Act and South Dakota law regarding non-profit corporations and shall be so interpreted and applied.

IN WITNESS WHEREOF these Third Amended and Restated Bylaws have been executed by the principal officer of the Unit Owners Association this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

By: \_\_\_\_\_  
President

The undersigned certifies that the foregoing Bylaws were adopted by resolution of the Board of Directors of the Vista Towers Condominium Unit Owners Association Inc., effective \_\_\_\_\_, 2022.

By: \_\_\_\_\_  
Secretary