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**DECLARATION OF COVENANTS
AND RESTRICTIONS FOR
ASPEN HARBOR
[dated November 1, 2017]**

WHEREAS Aspen Harbor, LLC, a South Dakota limited liability company (the "Developer") is the owner of the following described land in Minnehaha County, South Dakota (sometimes the "Initial Lot" or the "Initial Lots"):

Lot 4 in Block 1 and Lot 5 in Block 2 in Aspen Harbor Addition to the City of Brandon

WHEREAS the Developer anticipates platting other lands (the "Additional Land") into blocks, lots, streets and other common areas to be used principally for residential purposes, but also reserving the right for other mixed uses serving the Initial Lots and Additional Land such as retail, hospitality, recreation, office and certain commercial uses (the "Development"), all as part of Aspen Harbor Addition in Tract 1 of the East Half of the Northwest Quarter (except Florell's Tract A) and Lot A of Tract 3 of the Northeast Quarter, all in Section 3, Township 101 North, Range 48 West of the 5th P.M., Minnehaha County, South Dakota (the "Land"), and desires to impress the Initial Lots and Additional Land with a master set of covenants and restrictions, obviating the necessity for filing a separate complete instrument for each separately platted Lot;

WHEREAS the Development subjected to the below-described covenants, restrictions, easements, reservations and requirements shall consist of the Initial Lots and the Additional Land expressly made subject to this instrument by: (i) a written statement to such effect identifying this instrument in any plat of Additional Land signed by the Developer or other owner and recorded with the Minnehaha Register of Deeds pursuant to ¶3.01(a) below; or (ii) a written Addendum pursuant to ¶11.05 below providing the legal description of such Additional Land,

signed by the Developer identifying this instrument and recorded with the Minnehaha Register of Deeds; and

WHEREAS this instrument shall not constitute or cause any conveyance of record title;

NOW, THEREFORE, the Developer hereby this 1st day of November, 2017 declares and establishes upon the Development the following covenants, restrictions, easements, reservations and requirements (together the "Covenants") upon the use and development of Lots within the Development to supplement any and all prior covenants and restrictions imposed by the Developer:

1. Purposes

Developer intends by these Covenants to encourage and assure:

1.01 *Consistency and Compatibility.* The most desirable and proper development of the Development with a compatible mix of residential uses in conformity with uniform standards modified only by those exceptions which are consistent with or promote the other intents of these Covenants.

1.02 *Value.* The highest value of Lots, Home sites and Homes in the Development.

1.03 *Quality of Improvements.* Protection against Homes and Improvements of poor construction, design or quality and usage of attractive and compatible architectural, engineering, planning and construction standards and materials of good quality and pleasing appearance appropriate to the uses of the Development.

1.04 *Benefits to Occupants.* An aesthetically pleasing, balanced and compatible place of living for owners, their families and invitees.

1.05 *Open Spaces.* Visibility and substantial green spaces, and avoidance of congestion, unattractive density of Homes, and on-street parking.

1.06 *Requirements of Law.* Compliance with all applicable federal, state and local laws, rules, ordinances and other governmental requirements.

1.07 *Maintenance.* The ongoing care and maintenance of developed and undeveloped portions of the Development.

1.08 *Protection of Adjoining Property.* That the development and maintenance of each Lot and structure thereon is appealing to, and does not interfere with, cause harm to or otherwise discourage existing or potential adjoining Lot owners.

1.09 *No Nuisances.* Protection of the Development from danger of fire, explosion, toxic and noxious matter and other hazards, offensive noise, vibration, smoke, dust, odorous matter, nuisances and other objectionable influences.

2. Definitions

The following terms shall have their assigned meanings when used in these Covenants:

2.01 *Home* shall mean any structure for the support, shelter, enclosure or occupancy of persons, animals or movable property and attached to a fixed location on land.

2.02 *The Lake* shall mean the body of water and bordering Land within the Development adjoining the Lots to the south and west, but excluding platted Lots, and so identified in any plat, development plan or Addendum, regardless whether owned by the Developer or separately owned.

2.03 *Common Property* shall mean any real or tangible personal property described in any plat of any portion of the Development, in any development plan filed with the City of Sioux Falls in any Addendum or identified in any Notice from the Developer to the Owners as intended for the common good and benefit of all Owners or for the benefit of the Development generally. Common Property shall include, without limitation, the types of property and improvements particularized in ¶7.02.

2.04 *Lot* shall mean any parcel of the Development drawn and identified by separate number or letter in any plat of the Development or any portion thereof which is now or hereafter signed by the Developer, other than Common Property.

2.05 *Improvement* shall mean any physical alteration of, change or addition to any Lot, excluding any Home, but including, without limitation, Landscaping, sidewalks, parking, ramps, driveways, curbs, signs and Yard lighting.

2.06 *Owner* shall mean any person or firm acquiring or contracting to acquire fee simple title to any Lot, other than the Developer.

2.07 *Landscaping.* "Landscaping" shall mean any systematic or designed combination, grouping or arrangement of plants, trees, other vegetation [except lawn grass], mulch, rock, bricks, timbers or other decorative stone or aggregate.

3. Platting and Easements

3.01 Authority. The Developer shall have the exclusive authority and discretion:

(a) to include Additional Land as part of the Development governed by these Covenants by a written statement to that effect signed by the Developer in any plat of such Additional Land filed with the Minnehaha County Register of Deeds;

(b) to plat and replat the Development into Lots, roadways, easements and Common Property and to replat or subdivide Lots and to vacate any such plat or portion thereof;

(c) to grant any easements or rights-of-way for utilities, drainage or other services necessary or convenient to the Development or any Lot in the Development;

(d) to prepare, submit for approval and obtain approval for any planned unit development, zoning, rezoning, site plans or any other plan, document or procedure customary, required or desirable to accomplish the Developer's intent for the Development;

(e) to dedicate for public or governmental use all streets, highways, rights-of-way and detention facilities.

3.02 Means. Any or all of the foregoing may be accomplished solely by the act, instrument, signature and consent of the Developer without necessity for joinder, consent, approval or signature of any Owner. Neither this paragraph or paragraph 3.01 shall authorize the Developer to do any of the foregoing solely or specifically as to a particular Lot without the consent of the then Owner of that Lot.

3.03 Restrictions on Owners. No Owner may subdivide, replat or sell in parcels any Lot without the prior express written consent of the Developer.

3.04 Owners' Cooperation. Each Owner acquiring an interest in one or more Lots shall cooperate with the Developer in any way reasonably requested by the Developer including, but not limited to, the execution of all written instruments which may be necessary or desirable for any of the purposes described herein.

4. Uses and Improvements

4.01 Land Use and Building Type. Except as may be set forth in an Addendum applicable to Additional Land or as Developer otherwise approves for twinhome or multi-family use in its sole absolute discretion, (i) no Lot shall be used except for single-family owner-occupied residential purposes exclusively, and (ii) no building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single family dwelling, which

dwelling shall not exceed two stories in height from the street level. Notwithstanding the foregoing, a Lot and Home may be rented on a temporary basis by an Owner who is temporarily absent or during active efforts to sell the Lot and Home.

4.02 Zoning Ordinances and Setbacks. No building, accessory building or other structure shall be erected, placed or altered on any Lot (i) nearer to the street than a minimum of 25 feet, (ii) nearer a side Lot boundary than 7 feet and (iii) nearer a rear Lot boundary than 25 feet. There shall be a required front yard setback on each street side of a double frontage Lot. There shall be a required front yard setback on each street side of a corner Lot.

4.03 Minimum Standards and Specifications. The minimum standards and specifications for any dwelling exclusive of garage, porches, etc., for Lots in the Development, shall be as follows:

Lots 1-9 Block 1	1,200 square feet for single story 1,500 square feet for two-story 1,000 square feet for multi-level
Lots 1-14 Block 2 (Lakefront Lots)	1,600 square feet for single story 2,000 square feet for two story 1,350 square feet for multi-level
Lots 15-21 Block 2	1,400 square feet for single story 1,750 square feet for two-story 1,200 square feet for multi-level

No Home structure shall be taller than 35 feet above grade. The Developer reserves the absolute, unfettered and sole discretion to permit deviance from these minimums in instances where deemed justified in light of other desirable factors presented by design of a particular Home structure.

4.04 Garages and Driveways. All garages shall provide sufficient space for at least three automobiles, , and the driveway approaches thereto shall be of concrete or its equivalent. No concrete or paved drives in the sideyard setback area will be allowed. Unless the Developer otherwise gives prior written approval in its sole discretion, all garages shall be located on the high side of the Lot.

4.05 Limits on Outbuildings. No buildings of any sort other than one living structure and an attached garage meeting the standards described in these covenants shall be permitted on any Lot without prior written approval of the Developer. The Developer reserves the right to prohibit detached outbuildings. Owners should not expect to receive approval of any such outbuildings. Approved structures must be on a permanent foundation and must be stick-built

with material and coloring to match the primary structure, and placed so as not to obstruct view of the Lake.

4.06 Temporary Structures. No structures of temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

4.07 Removal of Soil. No soil may be removed from the Development resulting from any excavation without the prior approval of the Developer.

4.08 Fences. The existence, location, size and material of all fencing is subject to the Developer's prior approval in its absolute, unfettered, and sole discretion.

4.09 Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot except that dogs, cats or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. In the event dogs are kept in any Lot, the Lot shall contain invisible fencing or other fencing structures adequate to restrain all dogs from all streets, sidewalks and neighboring Lots. Each Owner shall be responsible to keep dogs from excessive or incessant barking. Pet kennels shall be adjacent to the Home structure and shall be constructed with materials having the Developer's approval under §4.08.

4.10 Nuisances. No noxious or offensive trade or activity, as defined by law, shall be carried on upon any Lot in said subdivision, nor shall anything be done which may be or become an annoyance or nuisance, as defined by law, to the neighborhood or individuals residing or owning property therein.

4.11 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

4.12 Signs. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five square feet advertising a residence for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

4.13 Trees and Lawn. No box elder, cottonwood, or elm shall be planted on any Lot in the addition. Each Lot must have: (i) an established sodded lawn within three months of substantial completion of the Home on such Lot, subject to seasonal feasibility; (ii) an installed lawn sprinkler system on the full Lot within that same timeframe; and (iii) at least two planted trees at completion of construction.

4.14 Construction Methods. All Homes shall be constructed completely on site, except for portions (such as roof and floor trusses and wall sections) that are typically manufactured or assembled by a truss manufacturer. Modular, manufactured or factory-built homes are not permitted. Package homes assembled on site must have the Developer's prior approval.

4.15 Completion. Each Home must be completed within six months of the beginning of its construction, unless the Developer otherwise agrees.

4.16 Home Exterior Details. Each Home shall employ the exterior wall materials, roofing materials and roof pitch having the Developer's approval under §5. Vinyl siding will not be allowed. Each Home exterior finishing must employ a minimum of two material types, in addition to foundation material. A minimum of 150 square feet of such exterior on the front of the Home must be stone or other hard surface.

4.17 Large Vehicles. No buses, campers, large recreational vehicles, commercial trailer or oversized commercial or business vehicles shall be stored outside on any Lot or on any Common Property or street in the Development or on Aspen Boulevard. Outside presence for more than 3 consecutive days or any repetition presence in one year shall be considered storage. Outside storage of boats should be limited to a total of 30 days per year.

5. Construction of Homes and Other Improvements

5.01 Approval of Plans. No Home building, fence, wall, dock, other structure, Landscaping or other Improvement shall be commenced, erected or maintained, nor shall any rebuild, replacement, exterior structure remodel, addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, location and approximate cost thereof shall have been submitted to and approved in writing by the Developer.

5.02 Approval Criteria. Approval or disapproval shall be based, among other things, upon: the adequacy of Home site dimensions and setbacks; the conformity and harmony of exterior design with neighboring or expected Homes; balance, proportion and material transitions; exterior materials colors; use, location, height, elevations and alignments in relation to topography, neighboring Lots, neighboring structures and nearby streets; adequacy and attractiveness of Landscaping; and compliance with these Covenants.

5.03 Approval Procedure.

(a) In the event the Developer fails to approve or disapprove the Plans in writing within 60 days after the same have been submitted to the Developer, then such Plans shall be deemed to have been approved.

(b) Unless any deviation from, violation of, or nonconformity with these Covenants is specifically described in a separate writing included with the Plans, no approval of, or failure to disapprove, any submitted Plan shall constitute a waiver of any of these Covenants.

(c) The Developer shall have the right, but shall not be obligated, to approve a variance from these Covenants which does not, in the sole reasonable judgment of Developer, violate the spirit and intent of these Covenants. No such approval shall be binding unless in writing signed by the Developer.

5.04 *Effect of Approval.*

(a) After approval of the Plans by Developer, no deviation shall be made during construction which would change the nature or scope of the Home or Improvements or alter their exterior or visible quality or appearance without the prior written approval of Developer.

(b) Once the Owner has complied with the requirements of this section and the Developer has approved Plans in writing for a Home or other Improvement and such Home or Improvement has been constructed in conformity with such Plans, the approval shall not be withdrawn and such Home or Improvement shall thereafter be deemed to be in compliance with these Covenants as then in effect or thereafter amended.

(c) No approval of the Developer shall constitute any warranty, representation or assurance as to the quality, performance, safety, feasibility, durability, or suitability of the Home or Improvement for the Owners, their families, invitees or any other third parties.

5.05 *Drainage and Topography.* Each Lot Owner, and each person or firm performing work on or improving a Lot that affects drainage, shall be solely responsible, at the Owner's expense: (i) for taking all action and executing all documents to comply with all erosion control and drainage laws, rules and ordinances; (ii) for connecting to any sump pump collection system for the Development or a portion of the Development that includes the Owner's Lot; (iii) for inspecting the Lot and adjoining Lots as to all drainage patterns and issues; (iv) for causing all construction and grading to be accomplished so as to avoid altering city-approved drainage of the Lot in a manner that is detrimental to any other Lot; (v) for avoiding any landscaping, grading, modification, improvement, addition, installation, topographical change or other activity or construction that alters city-approved drainage patterns, flow or plan to the detriment of any other Lot; (vi) to indemnify, defend and hold the Developer and its successors, owners, agents, employees and assigns harmless from and against all claims, demands, actions, liability, damages, costs, fees and expenses including attorney's fees and expenses arising directly or indirectly from the Lot Owner's breach of any obligation hereunder; and (vii) pay all reasonable costs, fees or expenses of the Developer in exercising discretion to rectify any breach on such

Lot or in any other portion of the Development affected by any of the foregoing. The Developer makes no warranties or representations, and assumes no responsibility, with respect to the foregoing.

5.06 Construction.

(a) All materials and equipment used or incorporated into construction on any Lot shall be stored on the Lot only for such periods as are reasonably necessary during diligent progress of construction, shall be adequately protected, shall be arranged in an orderly fashion, shall be kept off streets, Common Property and other Lots, shall not block any access and shall not be permitted to be carried by the elements or human activity to any other portion of the Development. All Trash shall be placed in adequate containers and be removed from the Lot on a timely basis.

(b) Each constructed Home shall be shingled, enclosed and sided within six (6) months of initial excavation. In the event of a violation of this requirement, the Developer may cause the completion of such omitted items at the Owner's expense upon 30 days prior written notice to the Lot Owner and any mortgagee. Such expense shall be a lien on the Lot, Home and Improvements prior to any mortgage or other lien recorded after these Covenants.

(c) Any damage to, defacing or destruction of roadways, curbs, gutters, properties and adjoining Lots and Home and Improvements thereon, including Landscaping, existing during or upon completion of such construction activity shall be promptly repaired at the sole expense of the constructing Lot Owner, unless pre-existing the Owner's Lot purchase as reported in writing by the Owner to the Developer at or before Closing of the Lot purchase.

(d) The portions of all yards not landscaped shall be sodded and served by below-ground sprinkler systems.

6. Maintenance

6.01 Homes and Improvements. The exterior surfaces of Homes and other Improvements, including all paved areas, must be kept in a good condition and state of repair, reasonably free from snow and ice and otherwise in conformity with the intent of these Covenants. Such exteriors shall be maintained and renewed or replaced as necessary to keep them consistent with the Plans originally approved by the Developer. The color or finish of exterior surfaces shall not be materially changed except upon the prior express written approval of the Developer.

6.02 Landscaping. All landscaped Yards shall be maintained in a neat and adequate manner, which shall include mowing of lawns, trimming of hedges, fertilizing, watering when needed, removal of weeds from planted areas, replacement of all plant material and trees

included in any approved Plan. The Developer shall have the right to restrict or regulate fertilizer use on Lots bordering the Lake.

6.03 *Undeveloped Lots.* Weeds and undergrowth on all unimproved Lots must be kept mowed to a height of not more than 6 inches, or such shorter length as required by city ordinance or other weed control ordinances, rules or laws.

6.04 *Trash, Etc.* No trash, debris, litter or other objectionable materials ("Trash") shall be permitted on any Lot, except as stored for removal and conformity with these Covenants. No open burning of Trash shall be permitted. Use of any incinerator must have the prior express written consent of the Developer. Each Lot Owner is responsible for keeping other Lots and Common Property free of Trash originating from the Owner's Lot. Any necessary cleanup expense shall be reimbursed by the neglecting Owner. The Developer reserves the right to designate, and to require all Lot Owners to use exclusively, a single regular garbage collector and recycler for the entire Development. This requirement shall not be applicable to large, unique circumstances, such as mature tree removal.

6.05 *Damage.* All Homes, structures, Landscaping and other improvements that are damaged by the elements, by fire or other casualty or occurrence, or by vehicles or human cause shall be repaired or completely demolished (and the Home site on the Lot leveled) as promptly as possible.

6.06 *Expense.* The maintenance of each Lot in conformity with these Covenants shall be the sole responsibility of each Owner, jointly and severally, of each Lot at each Owner's sole expense. No occupation or tenancy of any Lot or portion thereof by any third party shall relieve any Owner of its responsibilities hereunder.

6.07 *Easements.* Each Owner of each Lot in the Development shall at his own cost and expense keep and preserve that portion of all easements and rights of way within his own property line at all times in a good condition of repair and maintenance and neither erect nor permit erection of any building or structure of any kind, nor permit any growth or accumulation of any kind, within said easement which might interfere in any way with the proper maintenance, use, operation, repair, reconstruction and patrolling of any of the utility services located therein.

7. Common Property

7.01 *Designation.* The Developer may from time to time designate portions of the Development as Common Property to be held for the use and benefit of all Owners, their employees and invitees in the Development and others as may be determined by the Developer. Common Property may be held by the Developer in fee simple, by easement or in any other manner approved by the Developer, or may be dedicated in whole or in part to the City of Brandon or other appropriate government agency.

7.02 Description. Common Property may include streets, walkways, detention ponds and other drainage structures, medians, signs, gates, boulevards, parks, common meeting facilities, benches, trash receptacles, lighting, the Lake, docks for common use not located within or to the rear of any Lot, boats, canoes, kayaks and other apparatus for use of the Lake, private roadways, bike paths, beaches, Lake access, gazebos, pavilions, playgrounds, playground equipment, gates, fences separating common areas from Lots, Landscaping not part of a Lot, entrance signs, monument signs not associated with an individual Lot, directional and safety signs, security equipment, maintenance and improvement equipment, dikes and berms not within an individual Lot and storage facilities or other real or personal property like or unlike any of the foregoing intended by the Developer for the common good and benefit of all Lots or the Development generally.

7.03 Additions or Removal. The Developer may add to or may remove from the Common Property from time to time as it determines in its sole discretion, but no platted Lot identified for purchase shall be considered Common Property except upon written consent of all Owners.

7.04 Maintenance. The Developer shall have the authority and responsibility to maintain all Common Property in a manner consistent with maintenance obligations imposed upon Owners of Lots; provided, however, that the Developer may for such purposes delegate such obligation to the Homeowners' Association or contract with any private third party or governmental authority, all subject to the obligations of Owners to pay their proportionate share of such expenses. The Developer shall have no obligation for maintenance of any Common Property dedicated to public use.

7.05 The Lake.

(a) The Lake, is hereby specifically designated as Common Property for the permanent use and enjoyment of Lot Owners, their immediate families, permitted lessees, and their guests. In addition, the Developer may grant Common Property use privileges to owners or occupants of residences outside the Development, but near or bordering the Development.

(b) Unless otherwise determined and permitted by rules and regulations adopted pursuant to these Covenants, no motorized vehicle may be used on or in the Lake.

(c) The discretion of the Developer to remove property from Common Property shall not include the Lake or any easement access to the Lake.

7.06 Rights of Lot Owners. The rights to and benefits of Common Property, while designated as such, granted to and enjoyed by Lot Owners, their immediate families, lessees and guests, may not be terminated, subordinated or superseded by any title transfer, lien, encumbrance, except that transfer of an individual Lot by the Owner or Owners thereof shall

eliminate such rights and benefits to the transferring Owner(s) and vest the same in the transferee(s). The Developer reserves the right to exclude Lot owners, their families and guests from use of Common Property during any period in which a Lot is occupied by a lessee. The rights and benefits of Common Property may be governed, regulated and restricted by rules and regulations, and use and access may be denied in particularly instances or to particular persons as a remedy for violation of those rules and regulations.

7.07 Release, Waiver and Assumption of Risk. Access to and use of all Common Property shall be at the sole and complete risk of the individuals using them and neither Developer nor the Homeowners' Association nor any of their officers, directors, shareholders or members, nor any individual Lot Owner shall have any liability whatsoever for any damage, injury or death to or of any person so using any Common Property. Each individual using the Common Property assumes all such risk and fully and forever releases and discharges all such persons and firms from any liability for property damage, injury or death arising from the use or condition of Common Property.

8. Assessments

8.01 Imposition. Each Owner and each Lot, Home and Other Improvements shall be subject to monetary assessments, apportioned on a per-Lot basis, for all taxes, maintenance and expenses applicable to the Common Property and for the expenses of enforcing these Covenants. At the discretion of the Developer, owners of Additional Land or other permitted users of Common Property may share in and be allocated a proportionate monetary assessment on a basis different from a strict per-Lot allocation, where other factors may become applicable for such Additional Land, including without limitation townhomes, condominiums and nonresidential uses, or for other permitted users. The Developer reserves the reasonable discretion to determine that certain unique or one-time expenses in a given instance are disproportionately attributable to less than all Lots or other segment of the Development and to allocate such expenses accordingly.

8.02 Eligible Expenses. Costs, fees and expenses shall include, without limitation, taxes, governmental or public authority assessments, property, casualty and liability insurance, grass and landscaping maintenance, insect control, trash removal, snow removal, road and path maintenance, Lake improvements and maintenance (including dredging), storage facilities, fish stocking, mowing, fertilization, watering, signage, lighting, capital expenditures approved by the Homeowners' Association, recreational and maintenance equipment, security, enforcement, management, legal and accounting fees, and all other out-of-pocket expenses incurred by the Developer or Homeowners' Association with respect to Common Property.

8.03 Procedures. Notice of the levy of all assessments shall be given to each Owner no more frequently than monthly or may be given by posting a brief written notice of the assessment in some visible place on the Lot. Each assessment shall become due and payable

upon the date set forth in the notice which shall not be less than 30 days after the date of such notice. From and after the payment due date, the assessment shall bear interest at the highest legal rate.

8.04 Lien. Each assessment, with interest and attorney's fees and costs in enforcing payment, shall constitute a lien on each affected Lot, and the Developer may file with the real estate records for such property an appropriate written notice of such lien. Such lien shall be junior to any prior recorded, valid, binding and enforceable mortgage.

9. Right of Repurchase

9.01 Construction Delay. If, after the expiration of 18 months from the date of the original fee simple conveyance by the Developer of any Lot within the Development, any Owner (or anyone claiming under such Owner) shall not have commenced diligently and in good faith to construct an acceptable Home and Improvements upon such Lot, in conformity with these Covenants, the Developer may, within a 2-year period thereafter, at its option, require the Owner to reconvey the Lot to the Developer, free and clear of all liens, charges, encumbrances, tenancies and other title exceptions. Any party claiming an interest in such Lot, including any mortgagee or other encumbrancer, shall take subject to the provisions of this paragraph, and any interest in the Lot claimed by such parties, shall be fully subordinate to the rights of the Developer hereunder. At any time, however, the Developer may extend, in writing, the time in which such Home and Improvement will be commenced.

9.02 Price. At closing of such repurchase, the Developer shall refund to the Owner the original purchase price less any damages sustained by the Developer due to the Owner's failure to comply herewith, including attorney's fees, and any sums otherwise due the Developer hereunder. Upon tender of payment, the Developer may enter into sole possession of the repurchased Lot.

9.03 Enforceability. Such right to repurchase shall be an additional material consideration to the Developer for conveyance of any Lot. No deed or contract for sale shall supersede, eliminate or extinguish by merger the Developer's rights hereunder, regardless of whether notice of this right is included in any such contract or deed.

10. Authority and Remedies

10.01 Developer's Authority. The Developer shall have the authority and discretion:

(a) to exercise authority explicitly granted to the Developer elsewhere in these Covenants;

(b) to enforce these Covenants by resort to legal and equitable remedies described elsewhere in these Covenants, the expenses and costs of which shall be paid or reimbursed by assessments;

(c) to interpret these Covenants, to establish rules and regulations of further specificity for implementation and enforcement of these Covenants; and to grant variances, waivers or approvals in instances determined by the Developer in its reasonable discretion to be consistent with, or not violative of, the spirit and intent of these Covenants;

(d) to establish, amend and enforce rules and regulations for use, maintenance and protection of Common Property and for other aspects of the Development (the "Rules"); to levy assessments against the Lots for purposes permitted by these Covenants; to maintain bank accounts and make deposits and debits to such accounts for the same purposes as assessments are permitted hereby;

(e) to exercise all powers, rights and remedies now or hereafter granted to a developer by city ordinance with respect to planned development districts generally or to any such district comprising or including the Development;

(f) to exercise all powers and remedies necessary or desirable to carry out the spirit and letter of these Covenants, even though such powers and remedies are not specifically granted herein;

(g) to amend, supplement, vacate, terminate or replace these Covenants from time to time as to Lots or unplatted portions of the Development for which record title has not been transferred by the Developer, or otherwise has the consent of the Owner or Owners of the Lot or Lot affected thereby;

(h) to delegate or assign the Developer's authority under these Covenants; provided, however, that no deed, lease or other record instrument or document shall constitute any such delegation or assignment unless it expressly so states.

10.02 *Limitations on Enforcement by Others.* No family member, occupant, invitee, agent, contractor or employee of any of the foregoing shall have any right, individually or in concert with any others, to enforce these Covenants; but, instead, these Covenants may be enforced solely by the Developer or any Owner unless otherwise permitted by the Developer in the exercise of reasonable discretion.

10.03 *No Liability.* The Developer shall not be liable for damages to any Owner or any other person or firm whomsoever as is affected by these Covenants, by reason of mistaken judgment or interpretation, negligence, omission or nonfeasance or arising out of or in connection with the exercise or failure to exercise any authority, right or remedy under these Covenants.

10.04 Remedies. Upon violation or threatened or expected violation of any of these Covenants or Rules, the failure to make any payment or perform any obligation or covenant hereunder or the Rules, the Developer may, as against the Owner or any other person or firm causing or liable for any such violation or breach:

- (a) Cure any such default, make any such payment or perform any such obligation or covenant and recover as damages all costs, fees and expenses, including attorney's fees, relating to the same;
- (b) Obtain any court order or judgment to enjoin or restrain the same, before or after its occurrence, it being expressly agreed and understood that every act, omission to act, or condition which violates or likely will violate these Covenants or Rules shall constitute a nuisance;
- (c) Exercise any other right or remedy available at law or in equity;
- (d) Recover all attorney's fees and expenses in the enforcement of the foregoing.

10.05 Cumulative Remedies. All rights, remedies, authority and powers shall be cumulative and not exclusive. No failure to enforce any discretion, right or remedy in any instance as to any Owner shall estop the Developer or constitute a waiver, as to enforcement in any other instance or as to any other Owner.

11. Duration, Scope and Binding Effect

11.01 Duration. These Covenants shall run with the land for a period of 25 years from the date of recordation with the Minnehaha County Register of Deeds and thereafter shall be of no further effect unless the Owners of not less than 3/4 of the Lots in the Development by recorded declaration or agreement alter, amend or extend any one or more of these Covenants; provided, however, that so long as the Developer shall own any Lot or portion thereof, the consent of the Developer shall also be required. The mere lapse of time shall not affect or alter the application of this section.

11.02 Superiority. These Covenants shall be deemed prior and superior (except as described in ¶8.04) to all mortgages, contracts for deed, options, leases and other instruments hereafter executed with respect to any land subject to these Covenants and shall survive any foreclosure, transfer, trust, devise, intestate succession, platting, replatting or vacation of a plat, and shall be fully binding upon all successors, assigns and transferees to the same extent as any original Owner.

11.03 *Nonwaiver.* The failure of the Developer, or other party entitled to enforce these Covenants, to take any action to enforce any of these Covenants or to enjoin their violation shall in no event, regardless of passage of time, be deemed an estoppel or waiver of its right to subsequently do so, nor shall it be deemed a waiver of any subsequent default or violation or the continuation of any existing default or violation.

11.04 *Invalidation.* Invalidation of any part or parts of these Covenants by court action or otherwise shall in no way affect any other provision which shall remain in full force and effect.

11.05 *Additional Land.* The Developer or any affiliate, successor or assignee of Developer may from time to time subject other Additional Land to these Covenants by the execution and recordation of an instrument so indicating, which also describes the Additional Land to be added and a statement of, or identifying reference to, the covenants to which such land is subjected together with any other additional or varying restrictions, if applicable. If the Addendum identifies these Covenants, then the identified Additional Land is subject to all the terms, conditions, requirements and restrictions of these Covenants, unless and to the extent the Addendum or any Exhibit thereto provides otherwise. Where these Covenants and an Addendum address the same subject inconsistently or at variance, the Addendum shall be deemed to supersede these Covenants on that subject as applicable to the Additional Land identified in the Addendum.

11.06 *Amendment.* The Developer retains the exclusive right in its sole discretion to amend or modify these Covenants unless (i) the Developer has made a record delegation or assignment under ¶10.01(h), (ii) the Developer has sold all Lots and, if applicable, all unplatted portions of the Development, or (iii) the Developer has delegated such authority to the Owners' Association created under ¶13 of these Covenants. Subject to this provision, these Covenants may not be amended in any way that applies to sold Lots without consent of the Owners of 3/4 of all affected platted Lots in the Development. Each Lot shall be separately counted even though the same party or parties may own more than one Lot.

12. Notices

12.01 *Methods.* All notices, consents, approvals or other communications (a "Notice") required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if delivered personally or by courier or sent by telex, telegraph, cable, telecopy or regular, registered or certified mail, postage prepaid.

12.02 *Addresses.* Notices to the Developer shall be delivered to the address described below. Notices to any Owner shall be sent or delivered to the address specified in the deed from the Developer to the Owner or at such other address as is furnished to the Developer in a Notice complying with the requirements of this section or to the street address of the Lot. Any party

may change the address to which Notices are to be sent or delivered by giving Notice in a manner complying with this section. The Developer shall not be bound by any change in record ownership of any Lot until it has been given Notice of such change.

12.03 *Effective Date and Time of Notice.* Notice by personal delivery or courier shall be effective when delivered. Notice by telegraph, telex, cable or telecopy shall be effective upon completion of transmission, so long as a copy is also sent that day by pre-paid U.S. mail. Notice by U.S. mail, postage prepaid, shall be effective upon two days following the properly post-marked date of mailing.

13. Owners' Association

13.01 *Creation.* The Developer has created and organized Aspen Harbor Owners' Association, a South Dakota nonprofit corporation. All references herein to "Owners' Association" shall be deemed to mean that entity. Subject to this Article 13, the Developer shall have the right to adopt by-laws for the Owners' Association and amendments thereto to implement the provisions of these Covenants.

13.02 *Membership.* All record Owners of Lots in the Development shall be members of the Owners' Association, and shall be bound by its by-laws, rules, regulations, decisions and assessments. The Developer may create additional special classes of voting or non-voting membership for persons permitted to use Common Property without being Lot Owners.

13.03 *Management.* The Developer shall have the right and responsibility to manage the Owners' Association and to exercise all authority thereunder until Developer in his discretion determines to transfer, assign and delegate such management authority to the Lot Owners; provided, however, that the Developer shall be required to turn over such management authority and responsibilities when 100% of the residential Lots have been sold, contain fully-constructed homes and are occupied by homeowners. Thereupon, except as provided in ¶13.04, all rights, responsibilities and authority of the Developer hereunder shall be automatically deemed transferred to and assumed by Lot Owners through the Owners' Association, and the Developer shall be thereby completely relieved and discharged from all such responsibilities.

13.04 *Retained Rights.* In the event that after such transfer, the Owners' Association shall neglect to perform its responsibilities, the Developer shall have the discretion to do so and shall be indemnified for all liability and expense associated therewith. Until all Lots in the Development are sold, improved and occupied, and notwithstanding any other provision of these Covenants or applicable to the Owners' Association, the Developer reserves the right to exercise all authority and discretion under Article 5 of these Covenants.

IN WITNESS WHEREOF, Developer has executed these Covenants as of the day and year first above written.

ASPEN HARBOR, LLC,
a South Dakota limited liability company

By [Signature]
Its: Authorized Manager

Address for Notices:
312 E. Holly Blvd., #2
Brandon, SD 57005

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF Minnehaha)

On this the 1st day of November, 2017, before me, the undersigned officer, personally appeared Justin Oakland, who acknowledged himself to be the authorized manager of Aspen Harbor, LLC, a South Dakota limited liability company, and that he, as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as such officer.

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



[Signature]
Notary Public - South Dakota
My commission expires: 4/21/22