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Lincoln County, South Dakota

Rebecca Vander Broek

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Return To: NIELSON DEVELOPMENT LLC



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made effective the 20 of December, 2024, by **Nielson Development, LLC**, whose principal office is located at 27297 Wetland Road, Harrisburg, South Dakota 57032 ("Developer"),

RECITALS

- A. Developer is the Owner of the property set forth in the attached Exhibit A.
- B. Developer is a South Dakota limited liability company, formed for the purpose of developing and offering for sale, improved real property within the State of South Dakota.

ARTICLE I DECLARATION

1.1 Declarations. The Developer, hereby declares, imposes upon and charges the property described in the attached Exhibit A, as may be amended from time to time, pursuant to Article III below, with the Restrictions set forth in this Declaration, all of which will constitute covenants running with the land and be binding upon all Owners.

1.2 Purpose. The purpose of the Restrictions is to (1) preserve and protect the Property for commercial and hobby shop purposes only; (2) exclude and prevent nuisances and prevent unreasonable impairment of the attractiveness and value of the Property; (3) protect the value and desirability of the Property; (4) enhance, preserve and protect the peace and tranquility of the shop buildings; and (5) assure to each owner the full benefit and enjoyment of his or her shop building investment with no greater limitations on the free and undisturbed use of his or her Unit than is necessary to assure the same advantages to the other Owners.

ARTICLE II DEFINITIONS

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

2.1 "Developer" is defined in the introductory paragraph and includes said entities, successors and assigns.

2.2 "Association" means the 220 Beech Association, a non-profit corporation established for the purposes of operating an owner's association.

2.3 "Board of Directors" is the Board of Directors of the Association.

2.5 "Additional Land" means all real estate, further described in Article III, below, which may, after the recordation of this Declaration, be made subject to, or removed from, this Declaration by the filing of a supplemental declaration.

2.6 "Unit" means a singular shop building located within the legal description set forth in Exhibit A.

2.7 "Improvement" means the construction of any building, structure, enclosure, fence, wall, hedge, pole, driveway, or any other external alteration of the color, shape or size of the same and any major landscaping performed on Unit or within the Association Property. "Improvement" does not include any garden shrub or tree replacement or other repairs or replacements which do not change the exterior appearance of the existing Improvements.

2.9 "Owner" means the record owner or owners of the fee simple title to any Unit which is part of the Property. It shall not include mortgagees or lien holders until such time as title is transferred by deed or foreclosure. Each Lot shall be deemed to have one owner for voting purposes, regardless of the number of actual owners.

2.10 "Plat" means the Landmark Industrial Park Addition, recorded in the office of the Register of Deeds of Lincoln County, South Dakota.

2.11 "Property" means the four shop buildings and common areas identified in Exhibit A.

2.12 "Restrictions" means all of the restrictions, covenants, conditions and easements set forth in this Declaration which shall be binding upon the Owners and occupants of each Unit.

2.13 "Common Area" shall be Lot 1 as set forth in Exhibit A or any exterior land or structure which is subject to the Party Wall Declaration recorded in conjunction with these Declarations.

ARTICLE III SUPPLEMENTAL DECLARATIONS

3.1 By the Developer. The Developer shall have the right, without obtaining the consent of the Owners, to add land to the Property and to render such additional land

subject to this Declaration by executing and recording a supplement to this Declaration. The Developer shall also have all rights applicable to the Class B owner as specified in the By Laws of the Homeowners Association.

3.2 Supplemental Declarations. A supplemental declaration to add land to the Property must contain the following:

- a. A description of the additional land to be made subject to, or removed from, this Declaration;
- b. A statement that all persons joining in the supplement constitute the entire fee simple ownership of the additional land; and
- c. A statement of any additional restrictions to which the additional land shall be subjected, if any.

Following the execution and recording of the supplemental declaration, the additional land and the owners of the additional land shall in all respects be fully subject to the Restrictions set forth in this Declaration.

ARTICLE IV RESTRICTIONS AND PROTECTIVE COVENANTS

4.1 Use of Units. All Units in the Property shall be used solely for commercial or hobby shop purposes.

4.2 Building Exterior Siding Material and Colors. No Owner may modify the exterior of their Unit, including but not limited to, the siding, lights, windows, roofs, sidewalk, patio, driveways, without the written consent of the Developer or Board of Directors. Notwithstanding the foregoing Owners shall not be required to obtain approval for maintenance and repairs that substantially conform to original construction materials.

4.3 Removal of Soil and Grade Levels. No soil shall be removed from the Property without the written approval of the Developer or Board of Directors. Owners are prohibited from making material changes to the grade levels of the Property without the approval of the Developer or Board of Directors.

4.5 Driveways and Parking Areas. All driveways and parking areas shall be hard surfaced and shall constitute Common Area. Each Owner shall refrain from interfering with access to a Unit or abusive, excessive of obstructive parking within the Common Area.

4.6 Re-platting and Subdividing. No Unit shall at any time be re-platted or subdivided without the prior written approval of the Developer.

4.7 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Unit permanently. Unit owners may have pets present while using their Units so long as they are not lodged at the Unit and they are not a danger to other Owners or their guests.

4.8 Nuisances. No noxious or offensive activity shall be carried on in a Unit or on the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighboring Units or that would increase the insurance on the property.

4.9 Signs. Signage shall be used only upon approval of the Developer or Board of Directors and subject to such rules or conditions as either may establish from time to time.

4.10 Machinery and Equipment. All machinery, equipment, snow blowers, lawn mowers, woodpiles or storage areas shall be kept inside the Unit.

4.11 Rules and Restrictions. Each Owner shall be subject to such rules and regulations as may be adopted by the Association from time to time.

4.12 Fixtures. To the extent permitted by the FCC, no antenna, tower, satellite dish or similar device shall be erected, constructed or placed outside of any residence on the Property. Any and all lines and/or wires for communication services or transmissions of sound or current and propane tanks not within a building, shall be constructed or maintained underground. Outdoor clotheslines are prohibited on the Property, except in fenced-in areas, which cannot be viewed from streets or adjoining Lots.

4.13 Vehicles. Trucks, buses, trailers, boats, mobile homes, campers, snowmobiles, motorcycles, and similar motor vehicles are not permitted on the Property unless stored and maintained inside the Unit. Neither Owners nor their occupants, guests or invitees shall park their vehicles in such a way to restrict their free flow of traffic in the driveway or parking area or in any way impede traffic. No motor vehicle of any kind shall remain in the same location in the parking area or driveway for more than 14 days in any consecutive 30-day period.

ARTICLE V EASEMENTS AND RIGHTS OF WAY

5.1 Blanket Easement. In addition to the easements shown on the Plat, the undersigned hereby reserves and creates in favor of the Developer, the Association or their agents, a perpetual blanket easement, upon, over, through, across and under the Property and each Unit, for purposes of installing, replacing, repairing and maintaining all utilities; including, without limitation, water, sewer, gas, telephone, cable, electricity and television and for other purposes. By virtue of this easement, it shall be permissible for any government body, Developer, Association, public utility, private utility, telephone, cable,

television or other communication services company supplying services to the Property to install, erect replace, repair and maintain any and all equipment necessary or appropriate for providing utility services within the Property and upon each Unit located in the Property.

5.2 NO WARRANTIES. THE DEVELOPER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PRELIMINARY INFRASTRUCTURE IN COMMON AREAS OR SHARED STRUCTURE, THEIR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE, THEIR DESIGN, THEIR CAPACITY, OR ITS QUALITY, OTHER THAN THAT THE PRELIMINARY INFRASTRUCTURE MEETS THE STANDARDS AND REQUIREMENT OF THE CITY OF TEA, IN EFFECT AS OF THE DATE OF THIS DECLARATION OR THEREAFTER.

ARTICLE VI MAINTENANCE

6.1 By the Owner.

a. Owners Obligation. Except to the extent provided in paragraph 2 below, each Owner shall have the obligation to maintain, replace and keep in good repair all portions of his Unit. This includes, but is not limited to, glass surfaces, windows, window frames, interior and exterior doors, doorways, frames, hardware, walls, fixtures, heating and cooling systems and components thereof, plumbing and related systems and components thereof, electrical and related systems and components thereof including appliances, lights, all gas, water, or sewer systems, pipes, lines, ducts, conduits or other apparatus serving only the Unit.

b. Repair Standards. All structural repair or replacement shall be made by the Unit Owner. The Owner shall perform his responsibilities in such manner so as to not unreasonably disturb other persons residing in adjacent Units, shall not paint or otherwise decorate or change the exterior appearance of any portion of a Unit, and not make any major interior alterations unless written consent of the Association is first obtained.

c. Party Wall Provisions. Each Unit is owned subject to, and together with the mutual easements of support and shelter over and to the party walls provided for party walls by law. In the event, by virtue of reconstruction, repair or removal of structures, affecting elements supported or sheltered by the party wall, the removing Unit Owner shall shore, reconstruct and weather proof such party wall so it can perform its function of support and shelter, and if such reconstruction, repair or removal is to be permanent, finish all surfaces exposed to weather in an architecturally finished manner consistent with the rest of the building. The Unit Owner shall have an easement upon or into adjoining Units and/or a right-of-entry as is necessary to perform such work and shall not be liable for trespass for such entry or work.

6.2 By the Association.

a. Repairs Made by the Association by Election. The Association's obligation extends only to maintenance and repair of items as is necessary to create a uniform exterior appearance of the Units and the Common Areas and Facilities. In the event a maintenance responsibility is not clearly shown by this Declaration, the Board of Directors shall have the authority to determine whether the Unit Owner or the Association shall bear the responsibility.

b. Common Area Improvements. The Association shall maintain, replace and repair, as a common expense, the Common Areas and Facilities. In the event the Association determines to maintain certain individually owned property, each Unit owner will promptly cooperate and take such reasonable necessary steps to allow for timely maintenance of individual property, as part of Association-wide maintenance. In no event will the Association be responsible for repair and maintenance costs for individual owned property resulting from or incident to, special service call or other work that does not benefit the Association members as a whole, resulting from a Unit Owner's failure to promptly make individual properties ready, available or otherwise accessible for routine maintenance during a time of Association-wide maintenance.

c. Association Repairs Made to Individual Property. The Association, in its sole reasonable discretion may, if reserves allow, repair additional individually owned property.

d. No Owner Credit. In no event will the Unit Owner receive a credit or deduction from its Association dues for work or services rendered by the Unit Owner, which would otherwise be provided for by the Association.

e. Right-of-Way Improvements by the Association. The Association will provide repair and maintenance of all driveways, not otherwise repaired and maintained by the municipal, utilities, and other areas within the platted right-of-way. The Association shall provide for reasonable lawn care (if any), snow removal and maintenance services.

6.3 Failure to Maintain. If the Board of Directors determines that:

a. Owners Failure to Maintain. any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair or replacement of items of which he or she is responsible hereunder; that the need for maintenance, repair, or replacement in the Common Areas or Facilities is caused through the willful or negligent act of any Owner, his or her family, guests, lessees or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense. Such cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Unit as hereinafter provided.

Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary by the Board of Directors. In the case of (i) above, when the Owner has not discharged his or her responsibility, unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten days. If the board determines that an emergency exists, that an Owner has not complied with the demand given by the Association as herein provided, or that the need for maintenance or repair is in a Common Area or Facility as in (ii) above, then the Association may, but is not obligated to, provide any such maintenance, repair or replacement in the manner described above. The Association or its agents or employees shall have a right of entry upon or into the Unit as necessary to perform such work and shall not be liable for trespass for such entry or work.

6.4 Rights of the Association. After expiration of the Class B control period and establishment of the Class A Board, the Class A Board shall have, by a 75% vote, the power to convey, dedicate or otherwise transfer portions of the Common Areas and Facilities, as reasonably necessary and consistent with the principals of eminent domain, to any local, state, or federal governmental entity subject to easement rights of Unit Owners set forth in Article III. The Association may maintain other property which it does not own including, without limitation, property dedicated to the public, if the Class A Board of Directors determines that such maintenance is necessary or desirable. With respect to the Common Areas and Facilities and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational or other agreements with trusts, condominiums, cooperatives or neighborhood and other owners or residents associations. Such agreements shall require the consent of two-thirds of all Directors of the Association.

ARTICLE VII ASSOCIATION

7.1 Purpose. The purpose of the Association is to maintain, operate, improve and manage the Common Areas and the Property, and to enforce the Restrictions for the mutual benefit of all present and future Owners of the Property.

7.2 Powers and Authority. The Association, by vote as provided herein, or as determined by the Class A Board of Directors, shall have the power and authority to make and implement all decisions concerning the Association and Owners, including but not limited to:

a. Providing or contracting for the development, construction, maintenance and repair of all Common Areas, Improvements, and equipment used in

common by various Units as originally constructed, easements, utilities, sidewalks and parking areas, including mowing lawns, planting and trimming trees and shrubs, common taxes and utilities, maintenance and snow removal.

- b. Fix, levy, collect and enforce payment of all charges and assessments therefore.
- c. Pay all charges and expenses connected therewith.
- d. Subject to the Association By-Laws, to delegate authority and to terminate the association or cancel this Declaration of Covenants, Conditions and Restrictions upon a 75% vote.
- e. Maintaining proper and sufficient reserves for anticipated expenses and upkeep.
- f. The commencement of legal action to recoup costs incurred as a result of the acts or omissions of any third parties, including but not limited to, other Owners.

7.3 Common Services. Except for those provisions which are expressly reserved to the Class A Board of Directors, upon a vote by the Association Members as specified by these Covenants and the corresponding Bylaws, the Association shall provide, via contracted services or otherwise, mowing, lawn care, , and snow removal services for all of the Common Areas. The Class A Board of Directors may, in its discretion, contract with vendors to perform the foregoing services. Payment for snow removal, lighting, maintenance and repair of private streets shall be assessed equally against all members. The provisions set forth herein regarding what services the association shall provide, may be modified only by a 90% vote of the Owners and only after all of the Properties have been sold by the Developer or are held in the name of the Association.

7.4 Membership. Every Unit Owner which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

7.5 Voting. Subject to the provisions of the Articles of Incorporation of the Association and its bylaws, each Owner shall be entitled to one vote per Unit. When more than one person holds an interest in a Unit, all such persons shall be considered one Owner.

7.6 Lien and Personal Obligation of Assessment.

a. The Developer, for each Unit owned within the Property, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

1. Annual or monthly assessments or charges including Common Area tax;

2. Special assessments for capital improvements, such assessments to be established and collected as provided herein and in the By-Laws of the Association and herein. Any unpaid annual and special assessments, together with interest, costs and reasonable attorney's fees incurred relative to the same, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them but shall remain on said property until paid in full.

b. Developer shall not be liable or responsible for any assessment on any Unit that isn't occupied.

7.7 Purpose. The assessments levied by the Association shall be used exclusively to promote the development, management, recreation, health, safety and welfare of the Owners and the Property as a whole and for the improvement and maintenance of the Common Areas within the same.

7.8 Maturity Assent. At such point as Developer is no longer an Owner every assessment shall have the assent of the Board of Directors of the Association or a majority of all Owners at a meeting duly called for this purpose.

7.9 Covenant for Assessments. Each party to this Declaration who qualifies as a Class A Member of the Association, for each Unit owned by such party, covenants to pay, and each purchaser of any Unit by acceptance of a deed thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association regular assessments or charges and special assessments to be determined, assessed and collected in accordance with the provisions herein.

7.10 Collection/Lien. If any Owner shall default in the payment of any charge or assessment imposed by the Board of Directors as herein provided, the Board of Directors, or its agent, shall have the authority to exercise and enforce any and all rights and remedies available at law or in equity, for the collection of all such unpaid charges or assessments. In addition, the amount of any delinquent and unpaid charges or assessments, interest, costs and fees shall be and become a lien or charge against the Lot involved when payable and may be foreclosed by and action brought in the name of the Association as in the case of foreclosure of liens against real estate.

7.11 Additional Remedies. Any assessment not paid within 30 days after the due date shall bear interest from the due date at six (6) points above the Prime Rate as provided in the Wall Street Journal. The Association or Developer may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the

property. No Owner may waive or otherwise avoid the liability for the assessments provided for herein by non-use of the Common Area, or a Unit.

ARTICLE VIII ARCHITECTURAL REVIEW

8.1 Architectural Review by the Board of Directors. All plans for improvements, that will effect or change the exterior of any unit must be approved by the Board of Directors.

8.2 No Waiver. No approval of or consent to any improvement or the plans and specifications thereof shall be deemed to constitute a waiver of any right to withhold approval or consent as to any similar Improvements, plans and specifications or matters subsequently or additionally submitted for approval or consent.

ARTICLE IX COMMON AREAS AND FACILITIES

9.1 Generally. All portions of the project not included within a Unit except as delineated herein in this Section 9 or otherwise herein, shall be deemed common areas and facilities.

9.2 Undivided Ownership. By virtue of their membership in the Association each Owner shall be deemed to own an undivided 1/4th interest in the Common Areas and Common Equipment. This percentage shall be the basis/allocation upon which assessments are made against each Unit by the Association unless otherwise agreed to in writing by the Association or otherwise specified herein. All Common Areas and Common Equipment shall be utilized only for the benefit of the members of the Association and may not be sold, pledged, partitioned, or disposed of in any manner without a unanimous vote of the Owners.

9.3 Use by Owners. Subject to applicable law, the By-Laws, and the Rules and Regulations, all Owners may use the Common Areas and facilities. Such use shall be made by the Owners in such manner as will not restrict, interfere with, or impede the use of thereof by other Owners or occupants. No Person shall use any part of the Common Areas and facilities in any manner contrary to the Rules and Regulations. .

9.4 Maintenance. The maintenance, repair, management and operation of the Common Areas, Improvements, and Facilities shall be the responsibility of the Association, but nothing herein contained shall be construed so as to preclude the Association from delegating to person, firms or corporations of its chose such duties as may be imposed upon

the Association by the terms of this Declaration and as are approved by the Developer or Board of Directors.

ARTICLE X GENERAL PROVISIONS

10.1 Term. This Declaration and all Restrictions herein shall be binding on all Owners and shall run with the land and continue as such for 25 years from the date this Declaration is recorded. Thereafter, this Declaration shall automatically be extended for successive periods of 20 years, unless it is terminated in accordance with the provisions of Article VII. Notwithstanding anything to the contrary herein, however, all utility, cable and sewer easements and easements for the City of Tea contained herein shall be permanent and shall run with the land.

11.2 Amendment or Termination. With the exception of the supplemental declarations provided for in Article VII of this Declaration, this Declaration may only be amended or terminated by recording an amendment or termination signed by at least 75% of the then record Owners of the Property with the Lincoln County Register of Deeds. Notwithstanding the foregoing, in no event shall this Declaration be amended by a vote of Owners during the Class B control period.

11.3 Enforcement. This Declaration and its Restrictions may be enforced by the Developer during the Class B Control Period, and thereafter by the Association Board, or any Owner. A person seeking to enforce this Declaration and its Restrictions shall be entitled to bring an action at law or in equity and to obtain injunctive relief, specific performance and /or damages including, but not limited to, reasonable attorney's fees. This Declaration shall be construed in accordance with the laws of the State of South Dakota.

11.4 Joint Venture. This Declaration shall not be deemed, held or construed as creating a joint venture or partnership between or among the undersigned parties.

11.5 Severability. Invalidation of any one of these covenants, conditions or restrictions, whether by judgment or court order, shall not affect any of the remaining provisions, which shall remain in full force and effect.

11.6 Assignment. Developer may assign its rights under these Declarations to any Association or entity exercising control over the Property.

NIELSON DEVELOPMENT, LLC

Dated: 12-20-24



Kelly Nielson, Member

I, Sandra A. Wolswinkel, a Notary Public, hereby certify that on the 20 day of December, 2024, personally appeared before me Kelly Nielson who, being by me first duly sworn, declared that he is the person who signed the foregoing document as Member, and that the statements contained therein are true and correct to the best of this information and belief.

Notary Public - State of South Dakota
My Commission Expires: 2.16.2030



EXHIBIT A

Current as of September 1, 2024

Lots 1-5 of the Tract 35 of the Landmark Industrial Park Addition to the City of Tea, Lincoln County, South Dakota, according to the recorded plat thereof.