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OF 02 INST# 351

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**Amended and Restated Declaration of Covenants, Conditions, Restrictions,  
and Easements of the Big Sandy Lake and Subdivision,  
located in Saunders County, Nebraska**

This Declaration of Covenants, Conditions, Restrictions, and Easements of the Big Sandy Lake and Subdivision, located in Saunders County, Nebraska (the "Declaration") is made by the Big Sandy Development Company, LLC, a Nebraska limited liability company (the "Declarant").

**PRELIMINARY STATEMENT**

The Declarant is the Owner or entity having the rights of the Declarant with respect to that certain real property, known as the Big Sandy Lake and Subdivision (the "Subdivision"), located within Saunders County, Nebraska and described as follows:

Big Sandy Development Lots 1-3, 5-14, 18-44, Outlots B, C, D, F and J Original Addition; Lots 16-17, 45-49, 51-85, Outlots A, B, L, M, N, O, P and Q 1<sup>st</sup> Addition; Lots 4, 86-107, Outlots A, B, F, K, Q, R, S, T, U and V 2<sup>nd</sup> Addition; Saunders County, Nebraska.

This Subdivision is divided into 105 residential lots (the "Lot" or "Lots"), as identified in the Subdivision's plat. The Declarant desires to provide for the preservation of the values and amenities of the Subdivision, as well as for the maintenance of the character and residential integrity of the Subdivision. After the filing and acceptance of this Declaration, from time to time, the Declarant may convey the following areas to the Association:

Outlots A, B, D, F, J, K, L, M, N, O, P, Q, R, S, T, U and V located in the Big Sandy Development Original, 1<sup>st</sup> Addition, 2<sup>nd</sup> Addition and Big Sandy Development re-plat, Saunders County, Nebraska (the "Lake and Common Facilities").

The Declarant declares that each Lot shall be held, sold, distributed, and conveyed subject to the following covenants, conditions, restrictions, and easements (collectively, the "Covenants" or the "Declaration"), all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These Covenants shall run with such Lots and shall be binding upon all parties having or acquiring any right, title, or interest in each Lot, or any part thereof. **These Covenants may be amended from time to time by Declarant and its Managers**, as deemed necessary and as described below. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record Owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lots merely as a lessee or as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). In order to manage the Lake and Common Facilities within the Subdivision, the Declarant will cause the incorporation of Big Sandy Homeowners Association, Inc., a Nebraska

Nonprofit Corporation (the "Association"). Each Lot shall be subject to all of the following conditions and other terms as stated herein and as may be adopted in the future by the Declarant or Association as allowed herein:

ARTICLE I  
Restrictions and Covenants

1.
  - a. Each Lot shall be used exclusively for lakeside residential use, unless a variance is previously obtained from Declarant. If Declarant has failed to assign or name a successor to their rights as Declarant, and in the event of the dissolution of Declarant, the Association's Board of Directors (the "Board of Directors") shall have the right to issue variances under this subsection. The design of all residences shall be approved by the Association's Design Review Board (the "DRB"). The approval period is likely to last sixty (60) days; therefore, designs should be presented to the DRB as early as possible.
  - b. Design proposals for construction of the residence must be submitted within two years of the date that the Lot was distributed or purchased unless waived by the Declarant.
  - c. If a Lot owner receives a bonafide offer to purchase their undeveloped Lot that the Lot owner originally purchased from the developer, then the Declarant shall have the right to purchase the Lot from the Lot owner for the original purchase price plus 4% per annum from the date of the original purchase. At least thirty days prior to closing, Lot owners shall notify Declarant in writing that they have received a purchase offer. All written notices to Declarant pursuant to this Declaration shall be provided by certified mail to Big Sandy Development Company, LLC, 233 S. 13<sup>th</sup> Street, Suite 1400, Lincoln, Nebraska, 68508. Declarant shall then have thirty days to notify the Lot owner whether Declarant's purchase option will be exercised. If the Lot Owner does not receive a response from Declarant within thirty days, it may be assumed that Declarant has chosen not to exercise the purchase option. The purchase option shall lapse on August 31, 2008 for lots distributed by the Declarant prior to November 1, 2007. For lots distributed by the Declarant after November 1, 2007, this purchase option shall not lapse until December 31, 2010.
2. All improvements within the Subdivision shall be approved by the DRB. An improvement includes, but is not limited to, a building, driveway, patio, patio enclosure, swimming pool, pool house, fence, dock, seawall or other external improvement, above or below the ground. Owners desiring to erect improvements shall deliver plans to the DRB. The DRB shall have absolute discretion to waive, alter, or modify the restrictions and guidelines in these covenants.
3. The DRB shall review and approve or disapprove the plans based upon whether the submitted documents conform to the general design parameters, as described in Section 9 of this Article (the "General Design Parameters"). The DRB shall have the exclusive right, in its sole discretion, to approve or reject any such building plans. The DRB shall make a good faith attempt to reach a decision within 60 days. Construction of the residence shall not commence unless, and until, written approval of the building plans for such residence have first been obtained from the DRB. Owners may, at their own risk, commence with construction of improvements (other than the primary residence) before approval. However, should the DRB later reject the design of the improvement, the DRB may order removal of said improvement at the Owner's expense.
4. Prior to the construction of any residence or subsequent addition to any residence on any Lot, a set of building plans for said residence shall be submitted by the Lot Owner to the DRB in an easily readable electronic format for written approval. Plans are required to show the site plan depicting all improvements and landscaping, floor plans declaring associated square footage, and exterior materials. Plans shall also include any alterations of the site topography and, when necessary, must include erosion control measures, which will contain the erosion of soil from the Lot onto the beachfront area or abutting properties. Use of

railroad ties for erosion control is not permitted. Additionally, each set of building plans must include calculations for percentage of glass and percentage of masonry, where required.

5. **Damage to roads by trucks and equipment used in construction is the responsibility of the Lot owner.** To minimize damage to the road, we are requiring that all construction vehicles and equipment shall have a hard surface staging area provided by each Lot owner. This hard surface staging area can be asphalt, concrete, crushed rock or mud-rock. Each Lot owner shall provide the location, in the site plan, of this hard surface staging area for the approval by the DRB. This staging area must connect to the asphalt road in a manner as to eliminate the potential for damage to the Big Sandy roadway structure. After the completion of construction, material used for this staging area, must be removed from the Lot. A location for placement of this used material will be provided by the DRB. The Lot owner will also be required to pay any design review fees established by the DRB prior to commencing construction of any improvements on a Lot.
6. No part of any residence, accessory building, or any other temporary or permanent structure of any kind may be erected or maintained on any of the Lots nearer to the front Lot line than 40 feet, nor nearer to the rear Lot line than 80 feet, nor nearer to the side Lot line than 15 feet. Provided, however, that the DRB shall, as it deems appropriate in its sole discretion, have the power to change any building line on any Lot upon written request of the Owner. The first 40 feet of the rear Lot line or from the waters edge, whichever is greater, shall be maintained in the existing sand conditions, including topography. Although sea walls may be necessary or required in rare circumstances, in general, they are highly discouraged. Designs for sea walls must be approved by the DRB. **Each Owner shall grant an easement to all other Lot owners and guests allowing said persons to pass across the first 30 feet of the beachfront back from the waterline.** The purpose of this easement is to allow for pedestrian traffic similar to a sidewalk in a residential neighborhood.
7. Every lot at Big Sandy is required to have a ditch in the front yard unless waived by the DRB. The ditch shall be located a minimum of 10 ft. up to a maximum of 20 ft. from the edge of the road. Based upon the location of the ditch, the depth shall be a minimum of 8 inches up to a maximum of 18 inches deep. Any variation from the standard ditch location must be approved by the DRB. The road ditch shall be maintained in a "natural" state of sand and rock OR sand and rock with natural grasses.
8. Each Lot owner is responsible for all sediment and erosion control on their Lot. Material (dirt or sand) shall not be allowed to wash into the lake. Each Lot owner shall direct all drainage on their Lot to the lake and not onto the adjacent lot or road ditches. Any issues with water pooling in the front yard/road ditch areas shall be address by the Lot owner. In most cases that water should be directed to the lake.
9. Exterior Materials.

The following General Design Parameters will guide the Owners and the DRB as to what is acceptable:

The descriptive character desired to typify BSD residences includes informal, natural, rustic, and open.

Materials consistent with the desired character include timber, stone, and a pronounced use of trim and glass.

Styles that embody the BSD ideals are Nantucket, Mountain Rustic, Log, Southwestern, Mediterranean and International.

Traditional urban styles (Colonial, Tudor, Georgian, etc.) or conventional suburban styles (Ranch, Colonial Revival, etc.) will not be considered for approval unless adapted to incorporate the materials and character described within the covenants.

Materials required / permitted on the exterior surface of all residences:

Natural Timber or Timber Siding

Log homes or homes with wood siding are permitted and, in fact, encouraged.

Masonry

All residences are required to be finished with a minimum of twenty five percent (25%) brick or stone (cultured or natural), established as a percent of the total exterior wall surface of the residence. The masonry must be present on the front and back facades. Masonry is not required if residence is constructed of timber logs, timber siding, wood siding or cement board siding (hardi-plank) stained to look like wood siding. Additionally, masonry will not be required where a style dictates the use of an alternative material.

Stucco/EIFS

Shall be permitted in combination with the minimum requirements for masonry.

Cement Board Siding

Shall be permitted in combination with the minimum requirements for masonry and trim. Cement board siding shall be applied with a maximum 8" exposure.

Exterior Trim

Shall include fascia, frieze boards, and window and door trim. Trim around all wall openings shall be a minimum of 1"x 6" nominal. The use of heavy timber is strongly encouraged as part of the Residential design features.

Windows/Doors

Windows and doors must be of aluminum clad wood construction. Windows are to be organized with regulating lines to form well-proportioned compositions. Facades oriented to the Lake are required to incorporate window and door groupings that constitute a minimum area equal to 25% (33% recommended) of the total lake façade.

Roofs

The roof of each residence may incorporate a pitch as dictated by the style of the home, utilizing heavy asphalt (min. 35 yr warranty) or #1 cedar shingles, or galvalum metal standing seam. Other quality materials may be used if approved by the DRB.

Garages & Accessory Buildings

Garages and accessory buildings must be finished in materials complementary to the residence, as approved by the DRB. Traditional Morton buildings, for example, are unlikely to be approved.

10. All residences must have a minimum square footage of at least 1500 square feet.
11. Any landscape plan must include a minimum of three (3) one and one-half inch caliper deciduous trees to be located in the front yard.
12. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on any Lot except one sign per Lot, consisting of not more than six square feet, advertising a Lot as "For Sale."
13. Repair of any boats, automobiles, motorcycles, trucks, or other vehicles between 10:00 p.m. and 6:00 a.m. shall be prohibited. Offensive vehicles shall not be visibly stored, parked, or abandoned on any Lot. No

unused building material, junk, or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

14. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container shall be permitted, except for pickup purposes. No garden, lawn, or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling, except when in actual use. No garbage, refuse, rubble, or cutting shall be deposited on any street, road, or Lot.
15. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb other Lot owners or those using the lake at night.
16. No stable or other shelter for any animal, livestock, fowl, or poultry shall be erected, altered, placed, or permitted to remain on any Lot, except for a doghouse. Doghouses shall not be allowed in front or back of the residence. No dog runs or kennels may be constructed or installed on any Lot without the written permission of the DRB.
17. No grass, weeds, or other vegetation will be grown or otherwise permitted to commence or continue on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. No dangerous, diseased, or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots and outlots shall not be used for dumping of earth or any waste materials, unless designated by Declarant, and no grasses, weeds, or similar vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.
18. While lawns are permitted, applying fertilizer to lawns is not permitted. Runoff/Seepage from fertilizer can accelerate growth of algae in the lake.
19. No structure of a temporary character, carport, trailer, or outbuilding shall be erected upon or used on any Lot at any time, either temporarily or permanently. Pool and bathhouses may be constructed only if approved by the DRB.
20. The Declarant grants each waterfront Lot owner a revocable easement to install a dock in the Lake in front of their respective Lot, after dock plans are approved by the DRB. Docks shall not extend more than 35 feet into the Lake unless a waiver is granted by the DRB (in some cases, where a potential conflict exists, the DRB may require shorter docks). Docks and Boat Lifts shall not be placed within 15 feet of either Lot line, unless two adjoining Owners have joint docks or unless written approval is received from the adjoining Lot owner. An exception to this rule is if a Lot has less than 100' of shoreline. In this case the Dock or Boat Lift may be located at the Lot line. The easement may be revoked by the Association or the Declarant for repeated violations of the Association's Rules and Regulations as explained therein.
21. All persons and their watercraft and motorized vehicles using the Lake and other Common Facilities must comply with the Association's rules and regulations, known as the Rules and Regulations of the Big Sandy Lake and Subdivision (the "Rules and Regulations"), as may be amended from time to time. Additionally, all watercraft operating on the Lake must comply with applicable laws, regulations, and ordinances, including, but not limited to, the rules of the Nebraska Boating Guide.
22. Watercraft speeding on the Lake is prohibited. The Association may establish the speed limit on the Lake as set forth in the Rules and Regulations. All watercraft operating on the Lake must comply with all applicable laws, regulations, ordinances, and the Association's Rules and Regulations.

23. All Members and any other person or entity using or entering the Subdivision shall be responsible for taking reasonable steps to ensure the safety of all Members and guests. Any condition or obstruction within the Subdivision that may pose a risk of safety to the Members or their guests shall be reported to Declarant and the Association's Board of Directors immediately. Furthermore, each Member shall take reasonable steps to warn or otherwise abate the condition or obstruction until the Board of Directors has had time to address the situation.
24. The Board of Directors shall have the authority to adopt and enforce rules and regulations that are in the best interests of the Members, even though not explicitly set forth herein. No Member shall face any discipline under a new rule or regulation until such rule or regulation has been adopted by a majority of the Board of Directors, and the Member has been informed of such a new rule or regulation.
25. No camper, auto-drawn or mounted trailer of any kind, mobile home, truck, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than within the residence or other approved buildings) for more than twenty (20) days within a calendar year. An exception to this rule is boat and other watercraft trailers. No motor vehicles may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot or their guests. No grading or excavating equipment, tractors or semi-tractors/trailers shall be stored, parked, kept, or maintained in any yards, driveways, or streets. However, this shall not apply to trucks, tractors, or commercial vehicles that are necessary for the construction of residential dwellings or other improvements during the period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the County or the Association.
26. Camping overnight, whether in a tent, mobile home, or otherwise, is prohibited on all Lots that do not have a finished residence on the Lot.
27. Daytime use of the Lake and Common Facilities by the Lot owners is permitted as a revocable privilege. However, Declarant or the Association may revoke this privilege as to specific Owners or any other person or entity for violations of the Covenants or Rules and Regulations, as provided in these documents and as circumstances necessitate.
28. Each Lot Owner will be required to carry an umbrella liability policy, as outlined in the Association's Rules and Regulations.
29. The central fresh water system shall only be used for normal household consumption. This includes drinking water, and water for sinks, toilets, and showers. The central fresh water system should not be used for watering lawns or to facilitate the operation of a heat pump.
30. The central sanitary sewer system shall only be used for normal household waste. This includes drain water for sinks, toilets, dishwashers, and showers. The central sanitary sewer system should not be used for sump pump draining or to facilitate the operation of a heat pump.
31. No residences or Lots shall be rented or leased for any consideration whatsoever to any other person, firm, or corporation. Additionally, no lot shall be sub-divided or otherwise modified without prior approval from the Declarant.
32. In order to keep a stable ecosystem in the lake, please don't dump bait or introduce any foreign fish such as minnows into the lake.

33. In the event of a fire emergency, Lot owners will allow the fire department access to the lake via their property. Fire hydrants in the development are capable of providing some fire protection, but most likely cannot deliver the same fire fighting capacity as typical urban fire hydrants.
34. Residences shall be built using the latest Specification for Utility Service Materials available from the Declarant or the Homeowners Association.
35. Much of this development is in a floodplain. While a few lots on the property may provide for walkout basements, minimum elevation requirements are likely to prevent walkout basements on most Lots. The lot pads at the property have been graded in an attempt to bring a portion of the Lot above the "proposed" 100 year flood level set by the Army Corps of Engineers as of 2004. Lot owners may be required to raise the elevation level of their Lot in order to build their residence. Lot owners should also be aware of other issues associated with building in the floodplain.

## ARTICLE II.

### Big Sandy Homeowners Association, Inc.

1. The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the Big Sandy Lake and Subdivision for the benefit of the Lot owners, residents, and their family. The Association shall have all lawful authority, including, but not limited to, the following:
  - a. To promulgate, enact, amend, and enforce the Rules and Regulations relating to the use and enjoyment of the Lake and Common Facilities. The Rules and Regulations may permit or restrict use of the Lake and Common Facilities by Members, their families, their guests, and/or by other persons. Guests and other persons may be required to pay a fee or other charge in connection with the use or enjoyment of the Lake and Common Facilities;
  - b. To promulgate, enact, amend and enforce the Rules and Regulations relating to collecting dues for the operation and maintenance of the Lake and Common Facilities;
  - c. To acquire, construct, landscape, improve, equip, maintain, operate, repair, keep up, and replace the Lake and Common Facilities for the general use, benefit, and enjoyment of the Members. The Lake and Common Facilities may include but are not limited to the Lake, playgrounds and parks, dedicated and non-dedicated roads, pathways, entry areas, green areas, and signs and entrances for the Subdivision. The Lake and Common Facilities may be situated on property owned or leased by the Association, on private property subject to an easement in favor of the Association, or on public property; and
  - d. To enforce this Declaration and the Rules and Regulations, with authority to bring the appropriate court action, including an action for a temporary restraining order, preliminary injunction, or permanent injunction enjoining such violations.
2. Membership and Voting. There shall be only one Owner for each Lot. The Owner of each Lot shall automatically be a member of the Association. Should more than one person or entity hold fee title to a Lot, a majority of the co-owners must designate a single voting member, in writing, and provide said designation to the secretary of the Association. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The Association shall have two classes of voting membership:

Class A. Class A membership shall include all members of the Association except Declarant and any successor in interest. Each Class A member of the Association shall be entitled to all the rights of membership and to one vote for each Lot.

Class B. Class B membership shall include only the Declarant and any successor in interest. The class B member shall be entitled to five (5) votes for each Lot of which the Declarant is the record Owner. However, the Class B membership shall be converted to Class A membership when the total number of votes entitled to be cast by Class A members equals the total number of votes entitled to be cast by the Class B member.

No Owner shall be entitled to vote if all dues and assessments levied against the Owner are not fully paid. Furthermore, the Association's Board of Directors may suspend a Member's voting privileges for violations of the Association's Rules and Regulations.

3. Purposes and Responsibilities. The Association shall have all of the powers conferred upon nonprofit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the purposes and to administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the officers of the Association (the "Officers"), shall include but shall not be limited to the following:
- a. The acquisition, development, maintenance, repair, replacement, operation, and administration of the Lake, Lake amenities, and any other Common Facilities, and the enforcement of the Rules and Regulations regulating the Lake and Common Facilities;
  - b. The landscaping, mowing, watering, repair, and replacement of parks and other Common Facilities property, and improvements on parks, medians, thoroughfares, or other Common Facilities property within or near the Subdivision;
  - c. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments;
  - d. The expenditure, commitment, and payment of Association funds to accomplish the purposes of the Association, including payment for purchase of insurance covering any Common Facility against property damage and casualty and purchase of liability insurance coverages for the Association, the Board of Directors of the Association, and the Members;
  - e. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time;
  - f. The acquisition by purchase or otherwise, holding or disposition of any right, title, or interest in real or personal property, wherever located, in connection with the affairs of the Association;
  - g. The deposit, investment, and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit, or the like;
  - h. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association. The Board of Directors shall have the right to hire a management company to manage and operate all or part of the Lake and Common Facilities and to assist in the collection of dues;



- i. The nomination of such committees as deemed necessary to carry out the purposes of the Association.
  - j. General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management;
  - k. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association; and
  - l. The exercise of any and all rights assigned to the Association by Declarant including but not limited to the architectural control of the improvements constructed in the Subdivision.
4. Imposition of Dues and Assessments. The Association may fix, levy, and charge the Owner of each Lot with dues and assessments under this Declaration as now existing or as revised and amended in the future as permitted herein. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.
  5. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant.
  6. Liens and Personal Obligations for Dues and Assessments. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. All successors or assigns of the Owner shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues. Failure to pay dues and assessments may result in foreclosure proceedings against the Owner, revocation of all Lake and Common Facilities privileges, and any other legal remedies or punishments allowed by the Association's Rules and Regulations.
  7. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish any of the lawful purposes of the Association.
  8. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 10, below, the regular annual dues which may become due and payable in any year shall not exceed the greater of:
    - a. One Thousand and no/100 dollars (\$1,000.00) per Lot per year, or
    - b. One hundred five percent (105%) of the dues charged in the previous calendar year.
  9. Special Assessments for Extraordinary Costs. In addition to the annual dues and assessments, the Board of Directors may levy special assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of the Lake, Lake improvements and amenities, and of any other Common Facility, including fixtures and personal property related thereto, access roads, and related facilities. The aggregate special assessments

in each calendar year shall be limited to One thousand and no/100 dollars (\$1000.00) per Lot. This amount shall increase by 5% each year, regardless of whether an assessment was made the prior year.

10. Excess Dues and Assessments. With the written approval of sixty-six and two-thirds percent (66 2/3%) of the votes of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.
11. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 5 of this Article, above.
12. Effect of Nonpayment of Assessments - Remedies of the Association. Any installment of dues or assessments that are not paid when due shall be delinquent. Delinquent dues or assessments shall bear interest from the due date at the rate of twelve percent (12%) per annum, compounded annually. The Association may bring an action at law or equity against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs, and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability of the charge and lien provided for herein by nonuse of the Lake or Common Facilities or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs, and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any right of the Association.

### ARTICLE III.

#### Association Rules and Regulations

The Association will establish the initial Rules and Regulations of the Big Sandy Lake and Subdivision. At the time an Owner purchases a Lot, the Owner shall request the then current Rules and Regulations for the use of the Lake, and will acknowledge receipt of such Rules and Regulations by executing the appropriate receipt. All Owners are hereby notified that they, and their guests, are bound by the Rules and Regulations established by the Association, as such rules are now stated and hereafter amended from time to time.

### ARTICLE IV.

#### Easements

A perpetual license and easement is hereby reserved to erect and operate, maintain, repair, and renew buried or underground sanitary sewers, storm sewers, roads and common driveways, water and gas mains and cables, lines or conduits and other electric current for light, heat, and power; for all telephone, telegraph, and message services; for the transmission of signals and sounds of all kinds, including signals provided by a cable television system; and for the reception on, over, through, under, and across land abutting boundary lines of the Lots, as platted and recorded.

### ARTICLE V.

#### Property Rights

Each Owner and the family members of the Owner residing on the Owner's Lot shall have a nonexclusive right and easement to use and enjoy the Lake and Common Facilities in common with other Owners, subject to the following:

- a. The Rules and Regulations of the Association relating to the use and enjoyment of the Lake and Common Facilities. Such rules and regulations shall apply uniformly to all Owners, and shall not authorize exclusive use of any part of the Lake and Common Facilities by any Owner.
- b. The right of the Association or Declarant to suspend the right and easement to the use of the Lake and Common Facilities by an Owner: (i) during any period in which any dues or assessments against his Lot remain unpaid; (ii) as deemed necessary by the Declarant, and (iii) as further described in the Rules and Regulations of the Association.
- c. Rules and Regulations relating to use and enjoyment of the Lake and Common Facilities by invitees and guests of an Owner.
- d. The covenants, conditions, restrictions, and easements set forth in this Declaration.

#### ARTICLE VI.

##### General Provisions

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any Owner of a Lot named herein shall have the right to enforce by any proceeding at law or in equity, all covenants, conditions, restrictions, and easements now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover dues or damages for such violation. The sole remedy for a violation of Article I, Section 1.b. is as follows: Declarant may, in its discretion, repurchase the affected Lot at the price the Lot Owner paid for the Lot or the price the Lot Owner paid for its membership interest in BSD.
2. FAILURE BY THE DECLARANT OR BY ANY OWNER TO ENFORCE ANY COVENANT, CONDITION, RESTRICTION, OR EASEMENT HEREIN CONTAINED SHALL IN NO EVENT BE DEEMED A WAIVER OF THE RIGHT TO DO SO THEREAFTER.
3. THE COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS OF THIS DECLARATION SHALL RUN WITH AND BIND THE LAND IN PERPETUITY. **THIS DECLARATION MAY BE AMENDED BY DECLARANT IN ANY MANNER WHICH IT MAY DETERMINE TO BE NECESSARY IN ITS FULL AND ABSOLUTE DISCRETION, UNTIL ALL LOTS HAVE BEEN SOLD, OR FOR A PERIOD OF TWELVE (12) YEARS FROM THE DATE HEREOF, WHICHEVER FIRST OCCURS.** LOTS SOLD BY DECLARANT SHALL NOT INCLUDE LOTS SOLD TO CONTRACTORS FOR FUTURE CONSTRUCTION OF HOMES. THEREAFTER THIS DECLARATION MAY BE AMENDED BY AN INSTRUMENT SIGNED BY THE OWNERS OF NOT LESS THAN SEVENTY-FIVE (75) PERCENT OF THE LOTS COVERED BY THIS DECLARATION.
4. Big Sandy Development Company, LLC, its successors, or assigns shall have the right to transfer status as Declarant to a successor or assign. Big Sandy Development Company, LLC, its successors, or assigns may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. If Declarant has not transferred its status as Declarant to a successor, and upon the filing of a Notice of Termination, the Association's Board of Directors shall appoint the Association or another entity, association, or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant. Until the Board of Directors appoints a successor Declarant, the Association shall automatically accept and serve as the interim Declarant. If the Declarant has not appointed a successor under this Declaration, upon the dissolution of Declarant, the Association shall serve as the Declarant.

5. INVALIDATION OF ANY COVENANT, CONDITION, RESTRICTION, OR EASEMENT SHALL IN NO WAY AFFECT ANY OF THE OTHER PROVISIONS HEREOF, WHICH SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 27 day of December, 2007.

BIG SANDY DEVELOPMENT COMPANY, LLC,  
a Nebraska limited liability company

By: [Signature], Manager

STATE OF NEBRASKA            )  
  )ss.  
COUNTY OF LANCASTER        )

On this 27<sup>th</sup> day of Dec., 2007, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Chuck Norris to me personally known, who being by me duly sworn, executed the foregoing instrument.

[Signature: Meri Sue Pepper]  
Notary Public

