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MISTY WATERS STORAGE CONDOMINIUMS

DECLARATION OF RESTRICTIVE COVENANTS

WHEREAS, Construction Financial Services, LLC ("Developer") is the Owner and Grantor of the following described real property lying and being in Burleigh County, North Dakota: **ALL OF LOT ONE (1), BLOCK ONE (1), MISTY WATERS SECOND REPLAT BEING A PART OF THE SOUTHWEST QUARTER (SW¼) OF SECTION ELEVEN (11), TOWNSHIP ONE HUNDRED THIRTY-NINE (139) NORTH, RANGE EIGHTY-ONE (81) WEST, BURLEIGH COUNTY, NORTH DAKOTA** ["Premises"]; and

WHEREAS, upon the Premises there shall be constructed seven (7) buildings, namely Building A, Building B, Building C, Building D, Building E, Building F and Building G, [the "Buildings"] which shall be divided into thirty-two (32) individual storage condominium units ("Units") described as follows:

Building A:	Unit 1, Unit 2, Unit 3, Unit 4 and Unit 5
Building B:	Unit 1, Unit 2, Unit 3, Unit 4 and Unit 5
Building C:	Unit 1, Unit 2, Unit 3, Unit 4 and Unit 5
Building D:	Unit 1, Unit 2, Unit 3, Unit 4 and Unit 5
Building E:	Unit 1, Unit 2, Unit 3, and Unit 4
Building F:	Unit 1, Unit 2, Unit 3, Unit 4 and Unit 5;
Building G:	Unit 1, Unit 2 and Unit 3; and

WHEREAS, as reflected on the DECLARATION TO SUBMIT PROPERTY TO A CONDOMINIUM PROJECT AND DECLARATION OF RESTRICTIONS, MISTY WATERS STORAGE CONDOMINIUMS, of even date herewith ("Declaration"), the Developer submitted the Premises to the terms and conditions of a condominium project ("Project"), including use restrictions and covenants which pertain thereto; and

WHEREAS, the Developer deems it appropriate to develop and establish additional covenants and conditions of use with respect to the Project and the individual condominium Units (as defined by the Declaration) located therein;

NOW THEREFORE, in consideration of the Premises, the undersigned hereby establishes and declares the following building and use restrictions and protective covenants which shall be applicable to the premises:

PURPOSE

Excepting only Building G, Units 2 and 3, which Unit may be used for marine and marine related purposes, the purpose of these restrictions is to ensure the use of the Premises solely for personal storage and other personal purposes, only, to prevent all commercial and residential purposes and to minimize nuisances, to prevent the impairment of the attractiveness of the Premises, and to maintain the desired tone of the facility and thereby to secure to all present and future Project Unit Owners the full use and enjoyment of each Owner's Unit, with no greater restriction on the free and undisturbed use of the Unit and the Common Elements than is reasonably necessary to insure the same advantages to the other Owners. All capitalized terms herein shall have the meaning ascribed to them by these Restrictive Covenants or by the Project Declaration. With respect to Building G, Units 2 and 3, such Units may be used for marine and marina related commercial purposes including, without limitation, the maintenance and repair of marina related property, the detailing, repairing, maintenance, sale, winterizing, shrink wrapping and storage of boat docks, boats, pontoons, and other marine and marina related property.

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PERSONS BOUND BY THE COVENANTS AND RESTRICTIONS

All persons, corporations or other entities, who shall hereafter acquire any interest in and to a Project Unit, hereinafter referred to as Owners, shall be taken to hold and agree and covenant with the other Owners of Project Units, and with their respective heirs, successors and assigns, to conform and adhere to and to observe the following covenants, restrictions and stipulations as to the use thereof, and as to the construction and use of improvements thereon. By purchasing an interest in and to a Project Unit, the Owners consent and agree to be bound by the terms and conditions set forth in this Declaration of Restrictive Covenants, and any amendments thereto.

By purchasing a Unit in the Project, both the Owner and all subsequent Owners agree, that at the time of sale or other conveyance of a Project Unit, the Grantor will have previously delivered or caused to be delivered to the Grantee, a copy of the Project Declaration, the Declaration of Restrictive Covenants and the Bylaws of the Association (hereinafter collectively "the Project Documents"). At or prior to closing, the Grantee, and all future Grantees, shall execute and deliver to the Association a written document reflecting receipt of the "Project Documents" and shall acknowledge that the Grantee shall be subject to the terms and conditions of said Project Documents.

BUILDING AND USE RESTRICTIONS

1. **USE OF PROPERTY.** Excepting only Building G, Units 2 and 3, which Units may be used for marine and marina related commercial purposes, all Units shall be used solely for personal storage and personal purposes that fall within the applicable provisions of the local zoning ordinances, the local Planned Unit Development ("PUD"), this Declaration and the Declaration of Restrictive Covenants herein. The following uses are excluded: residential housing (whether permanent or temporary in nature), all commercial activities, including, without limitation, commercial storage purposes, manufacturing, compounding, processing, packaging, treatment or assembly of consumable products including but not limited to baked goods, candy, dairy products, food products, yeast, and the rendering or refining of fats and oils, commercial welding, commercial automotive, boat, watercraft and trailer repair and maintenance, animal butchering and processing, pet or animal kennel or housing purposes, or any other use the Association, in its reasonable discretion, deems objectionable. All Owners have been notified that, except as otherwise provided herein with respect to Building G, Units 2 and 3, the City of Bismarck and the Association shall narrowly define the phrases "personal use" and "personal storage" so as to eliminate the commercial and the residential use of all Project Units. It is necessary that all Project Unit Owners and prospective Project Unit Owners contact the Owners' Association and the City of Bismarck to determine whether a potential Owner's intended use of a Project Unit will comply with the City of Bismarck ordinances and the terms of this Declaration and the terms of the Declaration of Restrictive Covenants.

No part of the subject Premises shall be used for human, animal or insect storage or occupancy, whether said occupancy or storage is short term or long term in nature.

To ensure that no Project Unit is used for residential purposes, no kitchens and no showers shall be allowed in any Project Unit. One toilet and one sink are allowed.

To minimize noise and to eliminate "excessive" noise, exterior speakers/stereo systems shall not be allowed. Further, as provided elsewhere herein, the Association shall be authorized and empowered to enact further and additional rules and regulations related to noise emanating

from a Project Unit or from Project common or limited common elements from vehicle or equipment use, music and other sources. What is or is not "excessive" noise will be in the sole and absolute discretion of the Association Board of Directors.

Except as otherwise provided herein, the parallel parking areas located on the Project shall be reserved and used for "temporary" general vehicular parking by the Owner of the directly adjacent Project Unit, only, on the condition that such parked vehicle(s) are attended. No unattended vehicles shall be parked adjacent to any Unit in Buildings A, B, C, D, E and F. Such parking areas shall be deemed as a limited common element for use by the directly adjacent Unit Owner. The parking areas and spaces located on the Project shall not be used for maintenance, storage, "unattended parking" or repair of any personal property including, without limitation, semi tractors and trailers, snow mobiles, off-road vehicles, containers, trash receptacles, vehicles, boats, watercraft, campers, recreational vehicles, equipment, inventory, non-operational vehicles, unlicensed vehicles, tools, or building materials and the like. With respect to Buildings A, B, C, D, E and F, no overnight parking shall be allowed. However, the Association shall be authorized to grant variances with respect to the foregoing parking and storage provision to facilitate Building or Unit construction, remodeling, renovation, maintenance or repair procedures.

No vehicles, trailers or other personal property shall be parked or placed within Project driveway areas.

The Association shall be empowered and empowered and authorized to enact and to establish and to amend, from time to time, in the sole discretion of the Association, rules related to parking and to the use of the Common and Limited Project Elements and to enforce all rules concerning the use and enjoyment of the driveways and common elements; provided, however, that under no circumstances shall the Limited Common Elements be made available for use by anyone other than the Owners of the directly adjacent Unit to which they are allotted or designated under the Declaration.

No part of the Premises shall be used in a manner which violates any local, county, state or federal code, ordinance, regulation or statute. Specifically, no Unit shall be used for a purpose which violates the City of Bismarck PUD for the Project. No Owner shall store or allow to be stored anywhere on the subject Premises any item which would constitute a violation of any fire, health, or safety code or order imposed by the state, the federal government, the City of Bismarck, North Dakota, or a local board of health, sanitation or police department, sheriff's department, or a fire department.

No Unit shall be used for any purpose which violates the terms of the insurance policies required to be maintained under the Declaration. In the event any Unit is used for a purpose which requires an insurance rider or which results in an increase in insurance premiums under the insurance policies required by the Declaration, the entire incremental cost of such rider and/or premium increase shall be the sole responsibility of and shall be paid by the Owner of the applicable Unit, as an additional assessment.

2. **ENVIRONMENTAL REGULATIONS.** All Owners will abide by and shall comply with all applicable federal, state, county and municipal laws, ordinances, statutes, environmental restrictions and regulations that apply to the Premises.

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3. **CONSTRUCTION.** No existing or prefabricated structures, sheds or storage buildings shall be moved, placed or permitted on the Premises. The Board of Directors of the Association shall have sole and total discretion concerning the approval or rejection of construction plans and the location of all structures to be constructed on the Premises, if any.
4. **SUBDIVISION OF A CONDOMINIUM UNIT.** Except as provided in the Declaration, no Unit shall be further subdivided without the prior written consent of the Association.
5. **LEASING OF A CONDOMINIUM UNIT.** No Owner shall lease a Project Unit to a third party or person without the prior written consent of the Association, which consent shall not be unreasonably withheld, conditioned or delayed. Each Owner who intends to lease such Owner's Unit to a third party shall a) memorialize the proposed tenancy in written Lease Agreement executed by both Landlord and Tenant, b) deliver a copy of the proposed written lease to the Association for Association approval prior to execution, and c) deliver copies of the "Project Documents" to the proposed Tenant. A copy of the Project PUD, as issued by the City of Bismarck, North Dakota, shall be referenced in and shall accompany the Lease Agreement as executed by the proposed Tenant. Each Owner shall be and remain solely responsible to carefully supervise such Owner's Unit and the Owner's Tenant(s) to ensure the Tenant, and the Tenant's agents, guests and invitees, use and maintain the Unit in strict compliance with the terms of the "Project Documents", including but not be limited to, the Project PUD, the Project Declaration, the Project Restrictive Covenants, and the Association Bylaws and any and all rules promulgated by the Association. Upon receipt of the proposed written and fully executed Lease Agreement, the Association shall have fourteen (14) business days to issue notice to the Owner, at Owner's last known address, rejecting or accepting the Lease, and, in the event the Association shall fail to issue a decision on the proposed tenancy or Tenant in a timely manner, the proposed lease shall be deemed approved. A written Lease approved by the Owners' Association shall not be amended or revised without the prior written consent of the Owners' Association.

The Association shall have the right to require an Owner to evict any Tenant that violates the terms of the "Project Documents", the Association's rules or regulations, or any statute, ordinance or code, including the Project PUD, adopted by the City of Bismarck, Burleigh County or the State of North Dakota. Owners who intend to lease a Unit to a third party shall include a provision in the written Lease Agreement stating that the Lease may be terminated and the Tenant evicted if the Tenant or the Tenant's guests or invitees violate the terms of the Project Declaration, this Declaration of Restrictive Covenants, the Bylaws, the Association's rules or regulations, or any code or statute adopted by the City of Bismarck, Burleigh County, or the State of North Dakota. The Owner shall be fully and solely responsible for any damage to the Unit or the Project as inflicted or caused by a Tenant or the Tenant's agents, guests or invitees.

6. **EXTERIOR STORAGE.** Except as described at Section 1, USE OF PROPERTY, above, no vehicles, trailers, mobile homes, boats, pontoons, watercraft, motor homes, equipment, refuse containers, barrels, tanks, building materials, inventory items, or refuse or other personal property shall be parked, placed or stored outside of a Project Unit or Building, including on driveway pads, driveways, streets and common or limited parking areas. Overnight and unattended parking shall be allowed on the perpendicular parking areas adjacent and to the south of Units 31 and 32 of Building G, only.

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7. **PETS.** Absolutely no dogs, cats, horses, cows, hogs, goats, chickens, poultry, snakes, reptiles, birds or other animal or insects shall be kept or maintained anywhere on the subject Premises.
8. **PEST CONTROL.** If a pest issue develops on the Premises, the Owner of the Unit determined responsible for such pest infestation shall engage, at such unit Owner's sole cost and expense, a pest extermination contractor for the Premises, Unit and/or Building to maintain satisfactory pest control. If no Owner or Owners are found to be responsible for the pest infestation, the cost of all pest extermination shall be paid by the Association as a common expense.
9. **TRASH AND REFUSE.** Except as provided below, no trash, ashes or other refuse may be thrown, dumped, or stored on a Project common or limited common area. All trash or other refuse shall be stored in trash cans or dumpsters and shall be promptly removed from the Premises. Under no circumstance shall any trash container be allowed to emit or produce putrid, rank, fowl or disgusting smells or odors. Trash/refuse cans and containers shall be regularly and frequently emptied and cleaned so as to eliminate such putrid, rank, foul or disgusting odors. The Association shall be authorized to determine when and if a trash/refuse can or container is emitting foul or disgusting odors and shall be authorized to require the Unit Owner to immediately remove the contents of the trash/refuse can or container from the Project and to clean foul smelling trash receptacles. All such trash canisters, containers and cans shall be and remain within the interior of the individual Condominium Units. Except as otherwise provided herein, no trash receptacle or trash cans shall be stored outside of a Project Unit or on the driveway pads, the driveways or on any parking area in the Project. Subject to restrictions established or to be established, from time to time, by the Owners' Association, in its sole discretion, dumpsters may be allowed on the south side of Building G. The Association may also maintain a common trash receptacle on the Premises for the use of the Owners, the expenses for which shall be borne by the Owners in accordance with their Allocation Percentage.
10. **FENCES.** Except as provided herein, and excluding fences installed by the Owners' Association, if any, no fence shall be erected or constructed on the Premises, without the prior written consent of the Association. The Association may install and operate a gate on the entrance to the Premises.
11. **POLLUTION CONTROL.** In the interest of public health and sanitation, and so that the land above-described and all other land in the same locality may be benefitted by a decrease in the hazards of stream pollution and by the protection of water supplies, recreation, wildlife, and other public uses, grantee will not use the above described property for any purpose that would or may result in the pollution of any waterway by refuse, sewage or other material that might tend to pollute the waters of any stream or impair the ecological balance of the surrounding land. All garbage and refuse must be contained and maintained in steel, metal, plastic or concrete constructed containers. No cooking oils, gasoline, petroleum oil or any other petroleum products and no insecticides shall be dumped down or allowed to enter the Project sewer or storm sewer system.
12. **HEATERS AND FURNACES.** No coal, wood, grain, wood pallet or propane heaters or furnaces shall be utilized or operated within the Project, or any portion thereof. Natural gas and/or electrical heaters and furnaces may be utilized within a Project Unit. All such heaters/furnace units must be located and installed within the boundaries of the Unit. All such electric/natural gas heaters and



furnaces shall be installed by a professional licensed electrician and/or plumber, and be professionally inspected, at least annually.

13. **SNOW REMOVAL AND YARD MAINTENANCE.** Except as provided herein, the cost of snow removal, if any, yard maintenance and lawn mowing services for the Project shall be deemed a common expense and shall be shared by all condominium unit Owners in accordance with the allocation percentage described in the Declaration document. Snow removal shall be at the discretion of the Owners' Association. Each Unit Owner shall be responsible to move snow and ice a minimum of six (6) feet, away, from the front walk through door and overhead door on each respective Unit.

14. **CAPITAL IMPROVEMENTS AND MAINTENANCE.**

- A. **CAPITAL IMPROVEMENTS.** It is covenanted by all Owners of Project Units in the Project, and their successors and assigns, that Capital Improvements with a net aggregate cost equal to or in excess of \$30,000, per project, shall require a sixty percent (60%) vote/consent of the available Condominium Project votes, with each Unit bearing and paying its allocated fractional or percentage share of the cost of such improvements. Capital improvements with costs of less than \$30,000, per Project, may be approved by a majority vote of the Owners' Association.
- B. **MAINTENANCE, REPAIR AND REPLACEMENT.** It is covenanted by all Project Unit Owners, for themselves, their successors and assigns, that the Association shall be authorized to consider, approve and implement general upkeep and repairs of the roads, common areas, or other improvements of the Project, with a net aggregate cost of \$30,000, per project, or less, and that each Condominium Unit shall bear its allocated fractional or percentage share of the cost of such general upkeep, repairs and Capital Improvements. Capital Improvements with an aggregate cost equal to or in excess of \$30,000, per project, shall require the prior approval of a sixty percent (60%) majority vote of the available Association votes.
- C. **MAINTENANCE AND IMPROVEMENT COVENANTS TO RUN WITH THE LAND.** These covenants shall run with the land, and the cost of the improvements, upkeep and repair referred to herein shall be the joint and several personal debt of the unit Owner(s) and a lien and charge on the Unit and whatsoever hands it shall be at the time of such improvements. If payment of a Unit's share of the above referenced costs is not received within thirty (30) days of written notice requesting payment thereof, the Board of Directors of the Association shall be authorized to file a lien on said Project Unit to secure the payment of such costs and shall be authorized to take such actions as are deemed reasonable by the Owners' Association, including the filing of liens, to collect unpaid assessments and to foreclose any such liens. In all events, any and all legal fees and costs accrued or incurred by the Association to enforce these Covenants, to collect assessments due and owing, or to create or enforce a lien, or to collect delinquent assessments shall be awarded the Association, with such legal fees and costs being the personal obligation of the Unit Owner and a lien against the subject Unit. All late payments shall accrue interest at the rate of 1.5% per month.
15. **SIGNAGE.** Excepting signage installed by the Developer and/or the Owners' Association, no signs, photographs, decals shall be attached to or placed on a Unit, including on exterior windows, without the express prior written consent of the Owners' Association.

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16. **COMMON ELEMENTS.** The common elements of the Project are described in the Project Declaration. The common elements shall be used for the common benefit of all Project Condominium Unit Owners. Except as provided below, the Board of Directors of the Association shall have sole power, authority and discretion regarding the use of the common areas and shall be authorized to institute, implement and enforce rules and regulations concerning the use of common areas, including, without limitation, all driveways, parking areas and walkways.
17. **ANTENNAS, SATELLITE DISHES AND ROOF AND WALL PENETRATIONS.** No antennae or satellite dishes shall be allowed on the exterior of any Unit without the express prior written consent of the Association Board of Directors. No roof or wall penetrations shall be made without the prior express written consent of the Owners' Association.
18. **COLLECTION OF REAL ESTATE TAXES ON COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.** The Board of Directors of the Association shall have the right, power and authority to assess and to collect real estate taxes and special assessments assessed against Project common elements and limited common elements. The assessment for such real estate taxes and special assessments shall be allocated to and paid by the Unit Owners in accordance with their respective Allocation Percentage.
19. **FUTURE RULES AND REGULATIONS.** The Board of Directors of the Association reserves the right and shall have the authority to make and implement such other rules and regulations, from time to time, as the Board may deem reasonable and appropriate by the Owners' Association, in the Association's sole discretion, for the safety, care, appearance and cleanliness of the Project and for securing the comfort and convenience of all occupants thereof, including, without limitation, restrictions related to parking on Project common and limited common areas.
20. **INSURANCE:** The Owner(s) of each Project Unit shall be solely responsible for and shall in fact secure, at such Owner's sole and own cost and expense, all peril (fire, wind, storm and theft) insurance for contents of each Owner's respective Unit(s), together with all improvements attached thereto or located therein, including, without limitation, the sheeting of all perimeter walls and the ceilings; all walls installed by the Owner; all floor and wall coverings; all ceiling coverings and panels; interior and exterior doors (including overhead doors) and windows, along with the casing of such doors and windows; cabinets; plumbing, light and electrical fixtures and systems, and all Owner added or installed improvements. In addition, each Owner shall secure and maintain public liability insurance in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and \$50,000 for property damage. Both the all peril and liability insurance policies shall specifically identify and name the Misty Waters Storage Condominiums Owners' Association as an additional insured. Proof of insurance, including, without limitation, copies of a Unit Owner's insurance policy and/policy binder, shall be promptly delivered to the Owner's Association upon request. Such policies shall require thirty (30) days advance written notice to the Misty Waters Storage Condominium Owners' Association of the proposed or actual termination, lapsing or expiration of the policy. If any Owner fails to retain and maintain such required insurance coverage, the Owners' Association may secure such coverages on behalf of the Owner with the entire cost thereof being deemed the personal debt of the Unit Owner and as a lien on the subject Unit.

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The Association shall acquire and maintain a) liability insurance in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage; and b) special form insurance, with standard exclusions, on the Project to one hundred percent (100%) of the replacement cost of the Building Common Elements, Limited Common Elements and other capital improvements; c) and E&O insurance on the Association's Board of Directors in the minimum amount of \$500,000. In the event of a loss, the proceeds of said insurance shall be required to be applied to the reconstruction and repair of the damaged Unit(s) and/or the Unit party wall(s) as applicable. The Association's Board of Directors, in the Board's discretion, shall have absolute and final authority to retain and maintain insurance policies and coverages in excess of the minimum dollar amounts set forth above. Owners shall be named as additional insureds on the Association's insurance policies under this Section.

In the event a Unit Owner should fail or refuse to secure and maintain the insurance coverages required of a Unit Owner as provided herein, then, and in that event, the Association shall be authorized, but not required, to secure such insurance coverage on behalf of the Unit Owner, and shall be authorized to assess the cost thereof as a personal debt and obligation of the Unit Owner(s) and as a lien against the subject Project Unit.

- 21. COVENANTS TO RUN WITH THE LAND.** These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date these covenants and restrictions are recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by sixty-six and two thirds percent (66 2/3%) of the available Owners Association votes has been recorded, agreeing to change said covenants in whole or in part. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect. However, until such time as the later of the date a) Construction Financial Services, LLC no longer owns Project Units representing six (6) Association votes or b) five (5) years from the date these Restrictive Covenants are filed with the Burleigh County Recorder's Office, Construction Financial Services, LLC shall be and remain as the sole and only member of the Association Board of Directors. Further, these Covenants shall not be amended without the written consent of Construction Services, LLC until such time as the later of a) the date Construction Financial Services, LLC no longer owns a Units in the Project, or b) five (5) years from the date these Restrictive Covenants are recorded with the Burleigh County Recorder's office.

RIGHT TO ENFORCE

The covenants and restrictions herein set forth shall run with the land and bind present and future Owners, their respective heirs, devisees, trustees, successors and assigns, and any and all other parties claiming by, through, or under them, shall be taken to hold, agree and covenant with the Owners of said Units, their heirs, devisees, trustees, and assigns.

As provided in the Declaration of Project, the Board of Directors of the Owners' Association shall be the sole and final arbitrator of any and all disputes or disagreements between Unit Owners.

The Association and/or the Owner or Owners of any Project Units shall have the right to sue for and obtain an injunction prohibitive or mandatory to prevent the breach of, or to enforce the observance of the covenants and restrictions above set forth, in addition to ordinary legal action



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for damages; and the failure of the Association or of an Owner(s) of a condominium Unit to enforce the covenants and restrictions herein set forth shall not be deemed as a waiver of the right to do so. In the event an action is commenced to enforce or interpret these Restrictive Covenants, the Court shall award actual reasonable attorney fees and costs to the substantially prevailing party.

Dated this 20th day of September, 2024.

CONSTRUCTION FINANCIAL SERVICES, LLC

BY:

[Signature]
Managing Member

STATE OF NORTH DAKOTA)
) SS.
COUNTY OF BURLEIGH)

On this 20th day of September, 2024 before me, a notary public within and for said county and state, personally appeared STEVE McCORMICK Managing Member of **Construction Financial Services, LLC**, known to me to be the person described in and who executed the within and foregoing instrument and severally acknowledged to me that they executed the same in behalf of said limited liability company.

BY:

Teresa L. Marquart
Notary Public

TERESA L MARQUART
Notary Public
State of North Dakota
My Commission Expires Nov 16, 2025



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Steve McCann

Teresa L. Marquart

