

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE PRAIRIE TWELFTH ADDITION

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TABLE OF CONTENTS

|  | PAGE |
|--|------|
| <b>I. DEFINITIONS</b>  |      |
| 1. Articles of Incorporation; Articles .....                                   | 1    |
| 2. Association .....   | 2    |
| 3. Board of Directors .....  | 2    |
| 4. By-Laws .....   | 2    |
| 5. Class "B" Control Period .....  | 2    |
| 6. Common Expenses .....   | 2    |
| 7. Community Improvement District .....  | 2    |
| 8. Dakota Dunes Community Association .....                                    | 2    |
| 9. Dakota Dunes Declaration of Covenants,<br>Conditions and Restrictions ..... | 2    |
| 10. First Mortgage .....   | 3    |
| 11. Member .....   | 3    |
| 12. Person .....   | 3    |
| 13. Properties .....   | 3    |
| 14. Site Plan .....  | 3    |
| 15. Supplemental Declaration .....   | 3    |
| 16. Unit .....   | 3    |
| 17. Unit Owner or Owners .....   | 4    |
| 18. Voting Member .....  | 4    |
| <b>II. GENERAL DESCRIPTION</b>   |      |
| 1. The Real Estate .....   | 4    |
| 2. The Building .....  | 4    |
| 3. Right-of-Ways .....   | 4    |
| <b>III. PROPERTY RIGHTS</b>  |      |
| 1. Real Estate .....   | 4    |
| 2. Country Club .....  | 4    |
| <b>IV. MEMBERSHIP AND VOTING RIGHTS</b>  |      |
| 1. Membership .....  | 5    |
| 2. Voting .....  | 5    |

|       |  |    |
|-------|--|----|
| V.    | MAINTENANCE  |    |
| 1.    | By the Owner .....   | 6  |
| 2.    | By the Association.....  | 6  |
| 3.    | Failure to Maintain.....   | 6  |
| 4.    | Rights of the Association .....                                      | 7  |
| VI.   | INSURANCE AND CASUALTY LOSSES  |    |
| 1.    | Association Insurance.....   | 7  |
| 2.    | Individual Insurance .....   | 9  |
| 3.    | Insurance Deductibles .....  | 9  |
| VII.  | ASSESSMENTS BY ASSOCIATION   |    |
| 1.    | Creation of the Lien and Personal Obligation<br>for Assessments..... | 9  |
| 2.    | Annual Assessments and Charges .....                                 | 10 |
| 3.    | Special Assessments .....  | 11 |
| 4.    | Specific Assessment .....  | 11 |
| 5.    | Delinquent Assessments.....  | 11 |
| 6.    | Date of Commencement of Annual Assessments .....                     | 12 |
| 7.    | Class "B" Control Period.....  | 12 |
| 8.    | Statement of Account.....  | 12 |
| 9.    | Covenant to Pay Assessment .....                                     | 12 |
| 10.   | Lien for Assessments .....   | 13 |
| 11.   | Exempt Property .....  | 13 |
| 12.   | Assessments by Dakota Dunes.....                                     | 13 |
| VIII. | ANNEXATION AND WITHDRAWAL OF PROPERTY                                |    |
| 1.    | Annexation Without Approval of Class A.....                          | 13 |
| 2.    | Acquisition of Additional Common Area.....                           | 14 |
| 3.    | Withdrawal of Property .....   | 15 |
| 4.    | Amendment.....   | 15 |
| 5.    | Annexation with Approval of Class A Membership .....                 | 15 |
| IX.   | ARCHITECTURAL STANDARDS AND USE RESTRICTIONS                         |    |
| 1.    | Residential Use .....  | 15 |
| 2.    | Leasing .....  | 16 |
| 3.    | Pools .....  | 17 |
| 4.    | Patios and Decks .....   | 17 |

|                     |   |    |
|---------------------|---|----|
| 5.                  | Landscaping & Exterior Decoration ..... | 17 |
| 6.                  | Noxious Activity .....                  | 18 |
| 7.                  | Declarant's Use .....                   | 18 |
| 8.                  | Enforcement .....                       | 18 |
| X. AMENDMENT        |   |    |
| 1.                  | By the Declarant .....                  | 18 |
| 2.                  | By the Association .....                | 19 |
| XI.                 | TERM .....                              | 19 |
| XII. EASEMENTS      |   |    |
| 1.                  | Easements of Encroachment .....         | 19 |
| 2.                  | Easements for Utilities, etc. ....      | 20 |
| 3.                  | Easement for Golf Balls .....           | 20 |
| XIII.               | OTHER PROVISIONS .....                  | 20 |
| XIV. PROPERTY TAXES |   |    |
| 1.                  | By the Owner .....                      | 21 |

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE PRAIRIE TWELFTH ADDITION

THIS DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS is made this 15<sup>th</sup> day of October, 2008, by Brookline  
Development L.L.C., a South Dakota Limited Liability Company (hereinafter  
referred to as "Declarant").

The Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions as provided herein and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof.

This Declaration is made pursuant to the provisions and authority of S.D.C.L. Chapter 43-12 entitled Real Property Covenants. This Declaration does not and is not intended to create a condominium within the meaning of the South Dakota Condominium Act, S.D.C.L. Chapter 43-15A.

ARTICLE I  
Definitions

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

1. "Articles of Incorporation" or "Articles" The Articles of Incorporation of Brookline Homeowners' Association, Inc., as filed with the Secretary of the State of South Dakota.

2. "Association" The Brookline Homeowners' Association, Inc. is a non-profit corporation, incorporated under S.D.C.I. Chapter 47-22, a South Dakota corporation, its successors or assigns.
3. "Board of Directors" The Board of Directors of Brookline Homeowners' Association, Inc., having its normal meaning under South Dakota corporate law.
4. "By-Laws" The By-Laws governing the conduct of Brookline Homeowners' Association, Inc., attached hereto as Exhibit "B" and incorporated herein by reference, as they may be amended from time to time.
5. Class "B" Control Period" The period of time during which the Class "B" member is entitled to appoint a majority of the members of the Board of Directors, as provided in the Associations By-Laws.
6. "Common Expenses" The actual and estimated expenses incurred by the Association for the general benefit of all Unit Owners, including any reasonable reserve found to be necessary, but not including any expenses incurred during the Class "B" control period for initial development, original construction or installation of infrastructure, original capital improvements, or other original construction costs, unless approved by Voting Members representing a majority of the total Class "A" vote of the Association. Common expenses shall be funded by assessments levied against all Units in the Properties.
7. "Community Improvement District" (CID) The Dakota Dunes Community Improvement District is a local unit of special purpose government created in accordance with South Dakota laws, 1989 SB 320, to provide certain community services to the areas in which the Properties are located.
8. "Dakota Dunes Community Association, Inc." A South Dakota Corporation as defined in the Dakota Dunes Declaration of Covenants, Conditions and Restrictions.
9. "Dakota Dunes Declaration of Covenants, Conditions and Restrictions" (hereinafter "Dakota Dunes Declaration"). Those restrictive covenants intended to benefit all of the Owners in Dakota Dunes by providing guidelines for construction of homes and guidelines for the maintenance and use of those homes and the Properties surrounding them, which are on file with the Union County, South Dakota Register of Deeds in Book 29 of Miscellaneous at Page 149. All Properties described in Exhibit "A" and those Properties which may be added hereto by Supplemental Declaration are subject to the Dakota Dunes Declarations, in addition to this Declaration.

10. "First Mortgagee" A person owning a mortgage on any unit, which mortgage is first in priority upon foreclosure to other mortgages which may affect such unit.

11. "Member" A person entitled to membership in the Association as provided herein.

12. "Person" A natural person, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

13. "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

14. "Site Plan" The conceptual land use plan attached hereto marked Exhibit "C" prepared by Howard R. Green Company, the engineer hired for the project by the Declarant. The Site Plan is subject to amendment by the Declarant. The Site Plan depicts the development of the properties.

15. "Supplemental Declaration" An amendment or supplement to this Declaration executed by or consented to by Declarant which, by way of example and not limitation, subjects additional property to this Declaration, or imposes, expressly or by reference additional restrictions and obligations on the land described therein, by recorded instrument.

16. "Unit" That part of the properties intended for development, use and occupancy as an attached residence for a single family on separately described real estate, as well as vacant land intended for development as such. The terms shall include all portions of the real estate owned as well as any structure thereon. Although the structures contemplated contain multiple dwellings, each dwelling shall be deemed a separate unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Site Plan approved by the Declarant, until such time as a certificate of zoning compliance is issued on all or a portion thereof by the local governmental entity having jurisdiction. After issuance of a certificate of occupancy on any portion thereof, the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

17. "Unit Owner or Owners" The person or persons whose estates or interests, individually or collectively, aggregate fee simple and absolute ownership of a Unit.

18. "Voting Member" The Member registered to cast the vote for the Unit as provided in the By-Laws.

ARTICLE II  
General Description

1. The Real Estate. The Properties legally described in Exhibit A will include twenty-two units comprised of eleven duplex Townhouses. Each Unit Owner will own the real estate beneath the Unit and surrounding the Unit as platted and shown on Exhibit "A".

2. The Building. The Townhouses are one story, with or without basements. Townhouses, if later contemplated, are either one or two story, with or without basements. The buildings are constructed of concrete, wood frame with brick veneer and wood siding combination. All Units have an exterior deck or patio with direct access from the building. The individual buildings have living room, dining area, two or more baths and two or more bedrooms. Each Unit has individual forced air heating and air conditioning.

3. Right-of-Ways. The streets and right-of-ways within the Properties have been or will be dedicated to the Community Improvement District (CID). The CID, its successors or assigns, will provide repair and maintenance of all streets, utilities and other areas within the platted right-of-way.

ARTICLE III  
Property Rights

1. Real Estate. Each Owner shall have fee title ownership of the Unit purchased by the Owner, subject to all restrictive covenants.

2. Country Club. The Declarant and the Association have no ownership rights in the Dakota Dunes Country Club, Inc. Access to the Country Club within or adjacent to the Properties is strictly subject to the terms and conditions, rules and procedures established by the Owners of the Country Club. No Unit Owner or Occupant gains any right to membership or to enter or use the Country Club facilities by virtue of ownership or occupancy of a Unit. Additional covenants regarding the Country Club can be found in the Dakota Dunes Declaration, Article XVI.

ARTICLE IV  
Membership and Voting Rights

1. Membership. Every Unit Owner, as defined in Article I shall be deemed to have a membership in the Association. When more than one person is Owner of a single Unit, all such persons shall be members of the Association, but multiple ownership of a Unit shall not increase the number of votes appurtenant to such Unit. The membership rights of a Unit owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Unit Owner in a written instrument provided to the Secretary of the Association, subject to the provisions of this Declaration and the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B" as follows:

(a) Class "A" members shall be all Owners with exception of the Class "B" member, if any.

Class "A" members shall be entitled to one equal vote for each Unit in which they hold the interest required for membership under Section 1 hereof. There shall only be one (1) vote per Unit. The vote for each Unit shall be exercised by the Registered Voter for the Unit, or a proxy, as provided for in the By-Laws.

The Unit's vote shall be suspended if more than one person seeks to exercise it.

(b) Class "B" member shall be the Declarant. The rights of the Class "B" member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in this Declaration or the By-Laws. The Class "B" member shall be entitled to one vote per unit owned and in addition, shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" control period as specified in Article III, Section 2 of the By-Laws. After termination of the Class "B" control period, the Class "B" member shall have the right to disapprove actions of the Board of Directors and any committee as provided in Article III, Section 3 of the By-Laws. The Class "B" member shall terminate when the Class "B" member no longer owns any property in the Site Plan as may be Amended or when the Class "B" member voluntarily terminates its membership by providing written notice to the Board of Directors.

ARTICLE V  
Maintenance

1. By the Owner. 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 this Unit. This includes, but is not limited to, glass surfaces, windows, window frames, doors, doorways, frames, hardware, walls, yard lights, mail boxes, decks, patios, heating and cooling systems and components thereof, plumbing and related systems and components thereof, electrical and related systems and components thereof including appliances, fixtures and lights, all gas, water, or sewer systems, fireplaces, pipes, lines, ducts, conduits or other apparatus serving only the Unit. 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 and the Dakota Dunes Modifications Committee, as described in the Dakota Dunes Declaration, Article XI (2), is first obtained. The Owner shall maintain party walls and party fences as governed by the Dakota Dunes Declaration, Article IV (4). 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.

2. By the Association. The Association's obligation extends only to maintenance and repair of items as is necessary to create a uniform exterior appearance of the Units. 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. The Association shall also maintain, replace and repair as a Common Expense some portions of the individually owned property, such as roof shingles, or other roof coverings, exterior doors, exterior trim, exterior siding, windows, sidewalks, all surface parking areas, landscaping and other flora and irrigation. The maintenance provided by the Association shall include painting, snow removal from the paved driveways and sidewalks, mowing and other landscape maintenance, excluding gardens or flower beds planted by the Unit Owner or Occupant. Maintenance provided by the Association shall not include routine cleaning.

3. Failure to Maintain. If the Board of Directors determines that 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 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. 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 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.

4. Rights of the Association. The Association may maintain other property which it does not own including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the community wide standards required by the Dakota Dunes Declaration. 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. See Article III, Section 21 of the By-Laws.

#### ARTICLE VI

##### Insurance And Casualty Losses

1. Association Insurance. The Association shall obtain and maintain at all times as a common expense, insurance as required by the Dakota Dunes Declaration, Article V and as required herein, including a casualty insurance policy or policies affording fire and extended coverage in an amount that at least equals the exterior of the individually owned Units (identified by the insurance industry as being from the studs out, including from the outside through the exterior framing, everything within the exterior framing including the electrical and plumbing within the walls, and to, but not including, the sheetrock); and a liability insurance policy or policies in an amount not less than \$2 million (\$2,000,000.00) general aggregates; \$1 million (\$1,000,000.00) for injury or injuries, including death, arising out of each

occurrence, and in addition a \$1 million (\$1,000,000.00) umbrella policy, or such additional amounts as the Board may deem advisable from time to time covering the Association, the Board of Directors, officers and all agents, and employees of the Association.

The policies may contain reasonable deductibles and the amount thereof shall be added to the face amount of the policies in determining whether the insurance equals at least full replacement cost.

In addition to the insurance required hereinabove, the Board shall obtain as a common expense:

- (a) Workmen's compensation insurance if and to the extent necessary to meet the requirements of applicable law.
- (b) Public liability and officers and directors liability insurance in such amounts as the Board may determine, but in no event less than \$1,000,000 per occurrence (such insurance shall obtain a cross-liability endorsement);
- (c) Fidelity bonds covering officers, directors, employees and other persons who handle or are responsible for handling Association funds. If reasonably available such amounts shall be in an amount at least equal to no less than six months operating expenses plus reserves on hand as of the beginning of the fiscal year and shall contain waivers of any defense based upon the exclusion of persons serving without compensation;
- (d) Flood insurance, if required by law; and
- (e) Other insurance as the Board of Directors may determine to be necessary.

The Board of Directors shall secure policies that meet the requirements set forth in the Dakota Dunes Declarations, Article V, Page 16, subparagraph a - f, incorporated herein by this reference.

The Association further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising the Units, the Association shall proceed promptly to repair or reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved by the Association and in accordance with the Architectural Standards at Article XI of the Dakota Dunes Declaration.

2. Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry insurance as required by the Dakota Dunes Declaration, Article V, which shall include a casualty insurance policy or policies affording fire and extended coverage in an amount that at least equals the full replacement value for the interior of the Unit, (identified by the insurance industry as being from the sheetrock in, including the sheetrock, all interior framing, fixtures, and finishes, contents and personal property), or for any and all portions of the Unit not covered by the Association as set forth in Paragraph 1 above.

Every Unit Owner shall be obligated to obtain and maintain insurance covering consequential damages to any other Unit due to occurrences originating within the Owner's unit caused by negligence of the Owner, Owner's family, guests of Lessee or the failure of the Owner to maintain the Unit, or any other casualty within the Unit that causes damage to the Units.

3. Insurance Deductibles. If maintenance is required under Article V as a result of an insured loss, the amount of the deductible shall be considered a maintenance expense to be paid by the person or persons (including the Association) who would be responsible for such repair in the absence of insurance. If the loss affects more than one Unit or a Unit, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in accordance with the total cost of repair. Each Owner shall be responsible for any deductible applicable to this Unit, should the Association obtain per Unit/per occurrence deductible.

#### ARTICLE VII Assessments By Association

1. Creation of the Lien and Personal Obligation for Assessments. 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: (i) annual assessments or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Unit which are established pursuant to the terms of this Declaration or the By-Laws. All such assessments, together with charges, interest, costs and reasonable attorney's fees actually incurred, in the maximum amount permitted by law, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment is made, and shall become a lien on the date due, if unpaid. Such amounts shall also be the personal obligation of the person or persons who owned the Unit at the time when the assessment fell due. Each Owner shall be liable for his or her portion of each assessment coming due

while he or she is the Owner of the Unit and his or her grantees shall be jointly and severally liable for a portion thereof as may be due and payable at the time of any conveyance. At all times said assessments shall be a continuing lien upon the Unit. Assessments shall be paid in such manner and on such dates as shall be fixed by the Board of Directors. Unless otherwise provided by the Board, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month.

2. Annual Assessments and Charges.

(a) Computation of Operating Budget and Assessment. The Board of Directors shall, at the beginning of the Association's Fiscal Year, prepare a budget covering the estimated cost to operate the Association during the coming year. It shall be the duty of the Board of Directors at least thirty (30) days prior to beginning of the Association's fiscal year, to prepare a budget covering the estimated cost of operating the Association during the coming year. The Board shall cause a copy of the budget and notice of assessments to be levied against each Unit for the following year to be delivered to each Member at least thirty (30) days prior to the beginning of the Association's fiscal year. The budget and the assessment shall become effective unless disapproved at a duly called and constituted meeting of the Association by a vote representing a majority of the total Class A vote and by the Class B member if such exists; provided, unless a meeting is requested by the Members, as provided in the By-Laws, the budget and assessment may take effect without a meeting of the Members. Notwithstanding the foregoing, however, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year and the Board may propose a new budget at any time during the year by causing the proposed budget and assessment to be delivered to the Members at least thirty (30) days prior to the proposed effective date thereof.

(b) Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget that shall take into account the number and nature of replaceable assets, the expected life of such asset and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget with respect both to the amount and timing by equal annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment as provided in this Article.

A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

3. Special Assessments. In addition to the annual assessment the Board may, at any time, levy a special assessment against all Owners for expenses determined by the Board to be for the benefit of the Association as a whole; provided, however, prior to becoming effective any special assessments shall be approved by the affirmative vote of at least two-thirds of the votes represented in person or by proxy at a special or annual meeting of the Members duly called for the purpose. The affirmative vote or consent of the Class "B" Member shall be required before the Association may levy a special assessment, if such membership exists.

4. Specific Assessment. The Association may levy a specific assessment against any Member individually or against such Member's Unit for whose benefit an expense was incurred which benefited less than the Association as a whole, and for the purpose of reimbursing the Association for the costs incurred in bringing a Member and his Unit into compliance with the provisions of this Declaration, any amendments hereto, the Articles, the By-Laws, the Association Rules, or the Dakota Dunes Declaration. The assessment may be levied upon the vote of the Board after notice to the Member and opportunity for hearing in the manner set forth in the By-Laws in Article III, Section 23.

5. Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner of the Unit against which such assessment is made shall be in default.

(a) If any installment of an assessment or charge is not received by the 10th day of the month or if any other charge is not received within ten days of its due date, a late charge equal to the greater of \$10.00 or 10% of the amount not received or such higher amount as may be authorized by law may be imposed without further notice or warning to the delinquent Owner and interest not to exceed the maximum rate afforded by law shall accrue from the due date.

(b) If assessments or other charges or any part thereof due from an Owner remain delinquent for a period greater than fifteen (15) days from the date due, a notice of delinquency may be given to that Owner stating that if the assessment or charge is not received within ten days from the date of notice of delinquency, the Board of Directors may accelerate and declare immediately due all of the Owner's unpaid installments of the annual assessment for that fiscal year.

(c) If assessments or other charges or any part thereof remain outstanding for more than thirty (30) days after first becoming delinquent, the Association, acting through its Board of Directors, may institute suit to collect all amounts due, whether or not a notice of delinquency has been sent as provided above.

6. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Unit on the earlier to occur of (i) ninety days after the date on which a building permit is issued for the Unit; or (ii) at the time the Certificate of Occupancy is issued for the Unit by the appropriate governmental authority. Assessments shall be due and payable in a manner and on a Schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commenced on the Unit.

7. Class "B" Control Period. Until termination of the Class "B" control period, in lieu of paying regular assessments on its unsold units, the Declarant shall be obligated for the difference between the amount of the assessments levied on all units subject to the assessment and the amount of actual expenditures required to operate the Association during the fiscal year. This obligation may be satisfied in the form of a cash subsidy, or by contribution of needed services or materials or a combination of these. The Association is specifically authorized to enter into subsidy contracts or contracts of in-kind contribution of services or materials, or a combination of services or materials with Declarant or other entities for the payment of some portion of the Common Expenses.

8. Statement of Account. Any Owner, Unit Purchaser, Mortgagee, or interested person or lender considering a loan to be secured by a Unit shall be entitled upon written request to a statement from the Association setting forth the amount of assessments due and unpaid including any late charges, interest, fines or other charges against a Unit. The Association may require the payment of a fee not to exceed \$50.00 as a prerequisite to the issuance of such a statement.

9. Covenant to Pay Assessment. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No Owner may waive or otherwise exempt himself from liability for the assessments provided herein including, by way of illustration and not limitation, by abandonment of the Unit. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required by this Declaration, the By-Laws, the Dakota Dunes Declaration, or any governmental requirement.

10. Lien for Assessments. Upon recording of a notice of lien on any Unit there shall exist a perfected lien for unpaid assessments prior and superior to all other liens except (i) all taxes, bonds, assessments or other levies which by law would be superior thereto and (ii) the lien or charge of any first mortgage of record made in good faith and for value. Such lien when delinquent may be enforced by suit, judgment and foreclosure.

The Association acting on behalf of the Owner shall have the power to bid for the Unit at foreclosure sale and to acquire, hold, lease, mortgage and convey the same. After foreclosure the Association as Owner shall have no right to vote, and no assessment shall be levied on the Unit, said assessment to be charged equally to each other Unit in addition to its usual assessment.

Where a First Mortgagee obtains title, pursuant to judicial or nonjudicial foreclosure of the mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition and title. Such unpaid share of Common Expenses or assessments shall be deemed to be a Common Expense collectible from the Owners of all the Units including such acquirer, its successors and assigns.

11. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of assessments:

(a) all Property dedicated to or accepted by any governmental authority or public utility.

12. Assessments by Dakota Dunes. In addition to the foregoing assessments, the Owner of each Unit shall be subject to assessments by the Dakota Dunes Community Association, Inc., as set forth in Article X of the Dakota Dunes Declarations.

#### ARTICLE VIII

##### Annexation And Withdrawal Of Property

1. Annexation Without Approval of Class A. The Declarant expressly reserves the option and right, for itself and any successor Declarant, but not the obligation, to expand the real estate subject to this Declaration. Except as contained in this paragraph there are no limitations on this Option to Expand.

(a) This Option to Expand shall expire on December 31, 2018, provided that the time may be extended by the affirmative vote or written consent of two-thirds of the total vote of the Association, excluding any votes held by the

Declarant at any time during the year preceding the time the option would otherwise expire.

(b) The Site Plan, Exhibit "C" attached hereto is shown as a conceptual land use plan, but the Declarant is not bound to develop the property as shown therein. The maximum number of Units that may be created on the property depicted in Exhibit "C" is twenty-two (22) Units comprised of eleven (11) duplex Townhouse buildings or a functional equivalent. These restrictions do not apply to paragraph 5 of this Article. Additional property may be added as a whole at one time or in one or more portions at different times, or it may never be added and there are no limitations upon the order of additions or boundaries thereof.

(c) There are no limitations on the locations or dimensions of improvements to be located on the additional property. No assurances are made as to what, if any, further improvements will be made on any portion of any additional property.

(d) Additional property, when and if added shall be subject to the use restrictions contained in this Declaration or subsequently promulgated in accordance herewith.

(e) Any structures and improvements placed, constructed, replaced or reconstructed on the additional property will be compatible with and the same as or similar to the existing Units as to quality of construction and architectural style. No assurance is made with respect to materials to be used in improvements placed on the additional property. No assurances are made that Units constructed on the additional property will be substantially identical to existing Units.

(f) This option reserved shall be exercisable unilaterally by the Declarant and the consent of Unit Owners shall not be required. Declarant shall have the unilateral right to reallocate liability for payment of Common Expenses, and allocation of votes in the Association, all to be done in accordance with the limitations above described. The Declarant shall exercise the option by its adoption, execution and recordation of a Supplemental Declaration to this Declaration and by recording such plats, certifications and plans as may be required by law, and by the Dakota Dunes Declaration.

2. Acquisition of Common Area. Declarant may convey to the Association some of the additional property, improved or unimproved, which upon conveyance or dedication to the Association, shall be accepted by the Association as Common

Areas and Facilities and thereafter shall be maintained by the Association at its expense for the benefit of all of its Members.

3. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand pursuant to this Article without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by the Declarant, provided such withdrawal does not materially affect the overall uniform scheme of development for the Properties.

4. Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property subject to this Declaration.

5. Annexation with Approval of Class A Membership. Subject to consent of the Owner thereof, the Association may annex real property other than that contemplated in the Site Plan, Exhibit "C" above, and following the expiration of the right in paragraph 1 of this Article. Such annexation shall require the affirmative vote of the Unit Owners representing a majority of the Class "A" votes of the Association (other than those held by the Declarant) present at a meeting duly called for such purpose, and of the Declarant, so long as Declarant owns property subject to this Declaration.

Annexation shall be accomplished by filing of record in Union County, South Dakota a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association and by the Owner of the property being annexed and any such annexation shall be effective upon filing, unless otherwise provided therein.

#### ARTICLE IX

##### Architectural Standards And Use Restrictions

The Properties and all Units thereon are subject to the architectural standards and use restrictions set forth in Article XI and XII of the Declarations of Covenants, Conditions and Restrictions for Dakota Dunes, its By-Laws, and Rules and Regulations. In addition, the Properties shall be governed by the following provisions:

1. Residential Use. The property shall be used for single family residential purposes only, which purposes shall include parking and recreation, and

such other purposes by the Owners and their families, guests and tenants, as may be permitted by the By-Laws or by the Association, through its Board of Directors. No Unit may be subdivided into smaller Units. Notwithstanding the foregoing, the Declarant may maintain a business and sales office and/or model units on the Properties so long as the Declarant owns any properties subject to this Declaration, and may display signs offering the same for sale. The Association may also maintain an office on the property for management purposes.

2. Leasing. The lease or rental of a Unit shall not be deemed a violation of this restriction. All leases are subject to Article XII, Section 28 of the Dakota Dunes Declaration, which must be reviewed prior to leasing. In addition, every lease on every unit is subject to the following rules and regulations regardless of whether in the written lease.

- (a) The lease must be in writing.
- (b) The lease must be for the entire Unit.
- (c) The lease must be for a minimum period of not less than six months. Renewal can be for any length.
- (d) The use of the premises is subject to this Declaration, the Association By-Laws and the Association Rules and Regulations.
- (e) Within ten days of occupancy by the Tenant (Occupant), the name and telephone number of the Tenant, together with a complete copy of the Lease must be furnished to the Secretary of the Association, along with the registration form required for voting as set forth in the By-Laws.
- (f) The Unit cannot be used as a motel or hotel or otherwise for transient tenants.
- (g) If any Owner (landlord) or Tenant (Occupant) is in violation of any of the provisions of The Dakota Dunes Declaration or this Association's Declarations, By-Laws, or Rules and Regulations, the Association may bring an action in its own name or in the name of the Owner or both to have the Tenant evicted or to recover damages or both. If the Court finds that the Tenant is or has violated any provisions of the Declaration, the By-Laws or the Rules and Regulations, the Court may find the Tenant guilty of forcible detainer, despite the fact that the Owner is not a part to the action and/or that the Tenant is not otherwise in violation of the Tenant's Lease or other rental agreement with Owner. For purposes of granting the forcible entry detainer, pursuant to S.D.C.L. Chapter 21-16, against the Tenant, the Court

may consider the Owner a person in whose name a contract (the Lease or Rental Agreement) was made for the benefit of another (the Association). This remedy is in addition to any other remedies available at law. If permitted by law, the Association may recover all of its costs, including Court costs and reasonable attorney's fees, and these costs shall be a continuing lien on the Unit, the Unit Owner and the Unit Owner's successor and assigns. The Association shall serve the Tenant and the Owner written notice of the nature of the violation and allow thirty (30) days to cure the violation before the Association may file for eviction. The time period after service of a notice to quit may run concurrently with the 30 day period to cure, if allowed by law.

(h) By becoming a Tenant, each Tenant agrees to be bound by the Declaration, the By-Laws and other Rules and Regulations of the Association and accepts the right and powers of the Association to evict the Tenant for any violation.

(i) To protect first mortgage lenders, only subsections (d) and (e) of Section 1 shall apply to a first mortgage lender who has title to the Unit through foreclosure or deed in lieu of foreclosure.

(j) Any change to the exterior appearance of the structure or lot needs written approval by the Association.

3. 3. Pools. No swimming pool may be constructed, erected or installed by any Unit Owner. Jacuzzi's, hot tubs, spas or other similar apparatus may be permitted if in accordance with the Dakota Dunes Declarations.

4. 4. Patios and Decks. The erection, construction, installation or modification of any patio or deck adjacent to a Unit may be permitted if in accordance with the Architectural Standards of the Dakota Dunes Declaration and upon written approval by the Association. Each unit owner, at his sole expense, shall be responsible for keeping the deck adjacent to his or her unit, in good, clean, sanitary and attractive condition. No objects or structures, other than movable furniture or decorative pieces, shall be placed upon the decks without the prior written consent of the Association. Every unit owner shall have the right to decorate the deck adjacent to their Unit in a nonstructural manner provided the decorations which are visible to other units or the public shall have the prior written approval of the Association.

5. 5. Landscaping & Exterior Decoration. The erection, construction, installation or modification of the landscaping to a Unit may be permitted if in accordance with the Architectural Standards of the Dakota Dunes Declaration and

upon written approval by the Association. No building, fence, wall, other structure, exterior decoration, or lawn art may be commenced, erected, or maintained upon the Unit, nor shall any exterior addition to or change or alteration be made to the Unit unless in accordance with the Architectural Standards of the Dakota Dunes Declaration and until the Association approves in writing the plans and specifications.

6. Noxious Activity. No noxious or offensive activity shall be carried on in any units, nor shall anything be done therein which may be or become an annoyance or nuisance to others, or increase the rate of insurance to the Association or result in the cancellation of such insurance, or which would be in violation of any law.

7. Declarant's Use. The Declarant's use of the Units or property owned by it shall not be restricted by these restrictions.

8. Enforcement. The Association, acting through its Board of Directors, shall have the authority to enforce the use restrictions contained herein and the use restrictions contained in the Dakota Dunes Declarations. Further, the Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote. Imposition of sanctions shall be as provided in Article III, Section 23 of the By-Laws of the Association. The Board shall, in addition, have the power to seek relief in any Court for violations or to abate nuisances. Any such monetary damages, including the Association's reasonable attorney fees, shall be charged and assessed against the Unit and may be enforced and collected as an assessment for common expense, including the foreclosure of a lien.

ARTICLE X  
Amendment

1. By the Declarant. So long as Declarant owns Properties subject to this Declaration, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is:

- (a) Necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, judicial determination, or standards of Dakota Dunes;
- (b) Necessary to enable any reputable title insurance company to issue title insurance coverage on the Units;

(c) Required by any institutional or governmental lender or purchaser of mortgage loans including, but not limited to, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation to enable such lender or purchaser to make or purchase mortgage loans on the Unit;

(d) Necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing; or

(e) the Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material, adverse effect upon any right of any Owner.

2. By the Association. Thereafter, this Declaration may be amended only by the affirmative vote or written consent or any combination thereof of Members representing seventy-five percent (75%) of the total Class "A" votes in the Association and the consent of the Class "B" members so long as such membership exists. In addition, the approval requirements of any First Mortgagee shall be met if applicable. Any amendment to be effective must be recorded in the public records of Union County, South Dakota.

#### ARTICLE XI Term

The covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing signed by the majority of the then Owners has been recorded within the year preceding the beginning of each successive period of ten years agreeing to change said covenants and restrictions in whole or in part or to terminate the same in which case this Declaration shall be modified or terminated as specified therein.

#### ARTICLE XII Easements

1. Easements of Encroachment. There shall be reciprocal, appurtenant easements of encroachment as between each Unit, or as between adjacent Units due to unintentional placement or settling or shifting of the improvements constructed,

reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet as measured from any point on the common boundary between each Unit or as between said adjacent units as the case may be, along a line perpendicular to such boundary at such point; provided, however, no easement for encroachment shall exist if the encroachment occurred due to a willful or knowing conduct.

2. Easements for Utilities, etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property subject to this Declaration, to the Association and to the Assignees of each, a non-exclusive easement upon, across, over and under all of the Units, for ingress, egress, installation, replacement, repair and maintenance of improvements, utilities and related services, including but not limited to, cable television systems, roads, walkways, bike paths, drainage systems, street lights, security systems, signage, water, sewer, meter boxes, telephones, gas and electricity.

3. Easement for Golf Balls. Under no circumstances will the Declarant or the Association be held liable for any damage or injury resulting from errant golf balls or the exercise of the Golf Ball Easement preserved in the Dakota Dunes Declaration.

#### ARTICLE XIII Other Provisions

The Association and/or the Declarant reserve unto themselves certain other rights and obligations to the extent not subordinated to the Dakota Dunes Community Association, Inc. The following paragraphs from the Declaration of Covenants, Conditions for Dakota Dunes, filed on May 23, 1990, and recorded in Book 29 of Miscellaneous, Page 149, Union County, as it may be amended from time to time, shall be incorporated herein by reference. All terms shall be interpreted as if applicable to the Properties and parties of this Declaration.

1. Article VI – No partition.
2. Article VII – Condemnation
3. Article IX – Rights and Obligations of the Association
4. Article XIII – General Provisions.  
  
Section 7 – severability.  
Section 8 – right of entry.  
Section 9 – perpetuities.

Section 10 – litigation.  
Section 11 – cumulative effect; conflict.  
Section 13 – compliance  
Section 15 – security  
Section 16 – notice of sale or transfer of title.

5. Article XIV – Mortgagee Provisions.

6. Article XV – Declarant's Rights.

ARTICLE XIV  
Property Taxes

1. By the Owner. The Owner shall pay all property taxes and special assessments on the Unit as defined herein. In the event the Owner fails or refuses to pay, then the Association may, but is not obligated to, pay the tax or assessment. If the Association chooses to make such payment, the cost shall be added to and become a part of the assessment to which the Owner is subject and shall become a lien against the Unit in the manner set forth in Article VII.

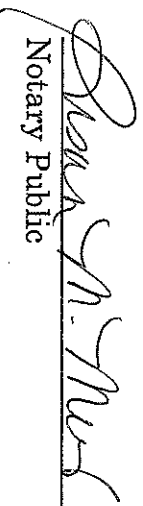
IN WITNESS WHEREOF the undersigned Declarant has executed this Declaration the date and year first above written.

BROOKLINE DEVELOPMENT, L.L.C.  
A South Dakota Limited Liability Company

BY:   
\_\_\_\_\_  
Kyle J. Kelly, Manager

State of Iowa, Woodbury County, ss:

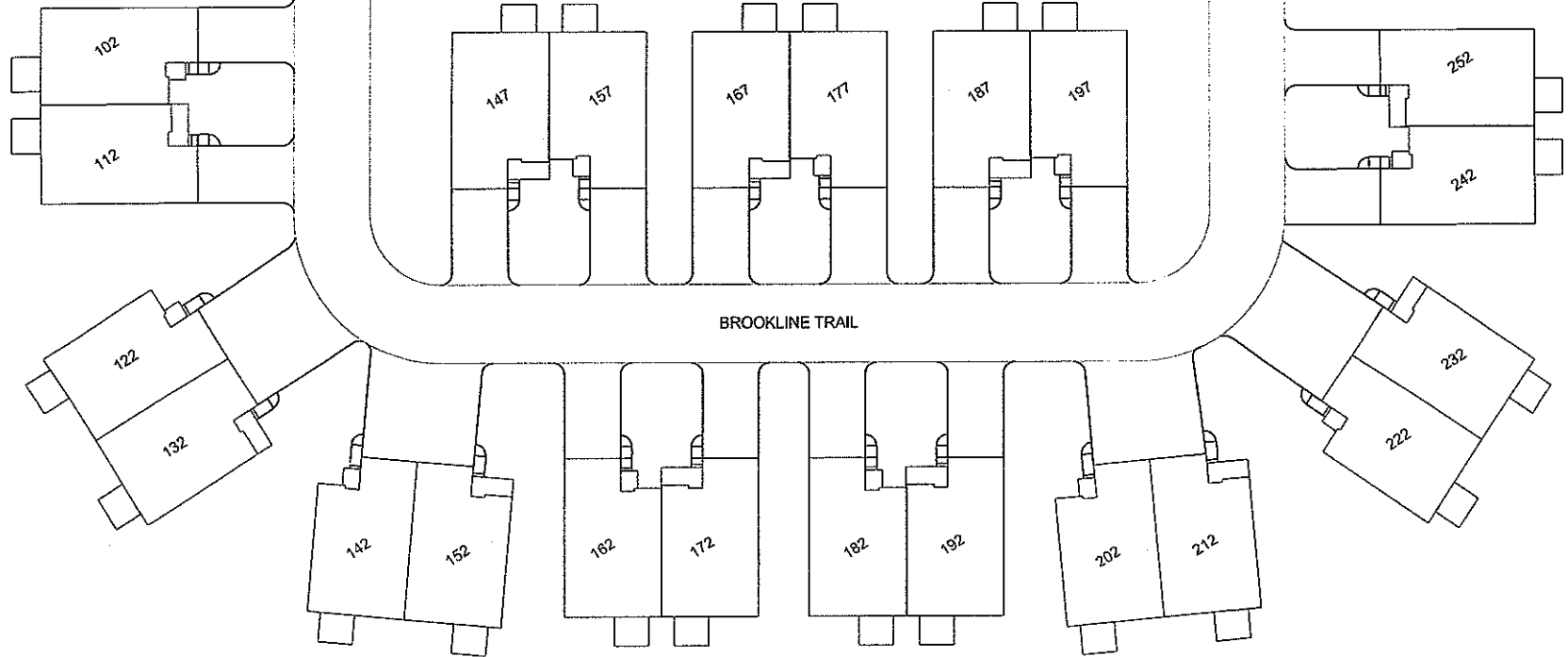
On this 15 day of October, 2008, before me the undersigned officer, personally appeared Kyle J. Kelly, who acknowledged himself to be the Manager of Brookline Development, L.L.C., a South Dakota Limited Liability Company, and that he, as such manager, being authorized to do so, executed the foregoing instrument for the purposes contained, by signing the name of the Company by himself as Manager.

  
\_\_\_\_\_  
Notary Public

4270-1 D

PRAIRIE BLVD.

BROOKLINE TRAIL



|             |               |      |               |
|-------------|---------------|------|---------------|
| DESIGN BY   | ERH           | DATE | JUNE 23, 2008 |
| APPROVED BY | JMK           | DATE | 06/23/08      |
| DATE        | JUNE 23, 2008 |      |               |
| SCALE       | AS SHOWN      |      |               |

| NO. | DATE | BY | REVISION DESCRIPTION |
|-----|------|----|----------------------|
| 1   |      |    |                      |



BROOKLINE TRAIL UTILITY AND PAVING PROJECT  
 KELLY PROPERTY ADVISORS  
 DAKOTA DUNES, SOUTH DAKOTA

SITE PLAN

1

4100 N. 14th St. Rapid City, SD 57701  
 605.342.1234  
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