

**DECLARATION OF COVENANTS
AND RESTRICTIONS FOR
BRANDON BLUFFS**

Brandon Bluffs, LLC, (the “Developer”) hereby this ____ day of October, 2003 declares and establishes upon the real property legally described as follows (the “Development”):

Lots 1 through 17 in Block 1, Lots 1 through 29 in Block 2, and Lot 1 in Block 3, all in the Brandon Bluffs, an addition to Brandon, Minnehaha County, South Dakota, according to the recorded plats thereof

The following covenants, restriction, easements, reservations and requirements (together the “Covenants”) upon the use and development of Lots within the Development to supplement all prior covenants and restrictions:

1. Purposes

Developer intends by these Covenants to encourage and assure:

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

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

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

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

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

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

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

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

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

2. Definitions

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

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

2.02 *Common Property* shall mean any real or tangible personal property described in any plat of any portion of the Development, in any development plan filed with the City of Brandon or identified in any Notice from the Developer to the owners as intended for the common good and benefit of all Owners or for the benefit of the Development generally.

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

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

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

3. Platting and Easements

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

(a) to plat and replat the Development into Lots, roadways, easements and Common Properties and to replat or subdivide Lots;

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

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

(d) to replat or join in the replat of any Lot or portion of the Development.

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

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

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

4. Residential Covenants

4.01 *Land Use and Building Type.* No lot shall be used except for residential purposes exclusively. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single family dwelling, which dwelling shall not exceed two stories in height from the street level.

4.02 *Zoning Ordinances and Setbacks.* No building, accessory building or other structure shall be erected, placed or altered on any lot nearer to the street than the minimum building setback as provided below.

(a) General Requirements:

	<u>Street Set Back</u>	<u>Required Side Yard</u>	<u>Required Rear Yard</u>	<u>Maximum Height</u>
Single Frontage Lots	25’	7’	25’	35’
Corner * Lots	25’	7’	15’	35’

* One required front yard may not be reduced to twenty feet.

(b) There shall be a required front yard on each street side of a double frontage lot. There shall be a required front yard on each street side of a corner lot.

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

1,450 square feet of living space on any one story dwelling;

1,300 square feet of living space on the main floor of any split level dwelling;

1,150 square feet of living space on the main floor of any one and one-half story dwelling;

1,000 square feet of living space on the main floor of any two story dwelling.

4.04 *Garages and Driveways.* All garages shall provide sufficient space for two automobiles, with a minimum of 500 square feet, and the driveway approaches thereto shall be of concrete or its equivalent. No concrete drives in the setback area will be allowed.

4.05 *Outbuildings.* Suitable or necessary outbuildings to serve the principal structure may be permanently constructed, but must conform in exterior appearance and design to the principal structure on the lot. All dwellings or structures shall be placed on a solid permanent foundation, shall not exceed 145 square feet and be of one story only. No metal structure shall be permitted.

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

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

4.08 *Fences or Hedges.* No fence or hedge shall be erected, placed or altered on any lot nearer to any street than the minimum building street setback line as provided by these covenants. Wood, 100% vinyl, or vinyl dipped chain link will be permitted, provided the superior side is facing the outside of the lot. Galvanized chain link fencing will not be allowed.

4.09 *Livestock and Poultry.* No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor shall garbage or large commercial trucks be permanently parked or housed in the Development.

4.10 *Nuisances.* No noxious or offensive trade or activity, as defined by law, shall be carried on upon any lot in said subdivision, nor shall anything be done which may be or become an annoyance or nuisance, as defined by law, to the neighborhood or individuals residing or owning property therein. Self-employed business where the public is invited shall not be permitted.

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

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

4.13 *Trees and Landscaping.* No box elder, cottonwood, or elm shall be planted on any lot in the addition. Each Lot must have an established lawn within twelve months of substantial completion of the Home on such Lot.

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

4.15 *Brick.* Each Home shall contain at least 100 square feet of brick or other comparable material approved by the Developer.

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

4.17 *Shingles.* Each home shall have laminated shingles or other comparable material approved by the developer.

4.18 *Roof Pitch.* Each home shall have a 5/12 pitched roof or greater.

4.19 *Vinyl Siding.* Vinyl siding will not be allowed.

5. Approval of Plans

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

5.02 *Criteria.* Approval or disapproval shall be based, among other things, upon: the adequacy of Home site dimensions and setbacks; the conformity and harmony of exterior design

5.03 with neighboring or expected Homes; balance, proportion and material transitions; exterior materials colors; use, location, height, elevations and alignments in relation to topography, neighboring Lots, neighboring structures and nearby streets; and compliance with these Covenants.

5.04 *Procedure.*

(a) In the event the Developer fails to approve or disapprove the Plans in writing within 30 days after the same have been submitted to the Developer, then such Plans shall be deemed to have been approved.

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

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

5.05 *Effect of Approval.*

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

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

6. Maintenance

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

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

6.03 *Undeveloped Lots.* Weeds and undergrowth on all unimproved Lots must be kept mowed to a height of not more than 6 inches.

6.04 *Trash, Etc.* No trash, debris, litter or other objectionable materials shall be permitted on any Lot, except as stored for removal and conformity with these Covenants. No open burning shall be permitted. Use of any incinerator must have the prior express written consent of the Developer. Lot owner is responsible for keeping adjacent properties free of material and debris. Any cost of cleanup is owner's sole responsibility.

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

6.06 *Construction.* All materials and equipment used or incorporated into construction on any Lot shall be stored on the Lot only for such periods as are reasonably necessary during diligent progress of construction, shall be adequately protected, shall be arranged in an orderly fashion, shall be kept off streets, common properties and other Lots, shall not block any access and shall not be permitted to be carried by the elements or human activity to any other portion of the Development. Any damage to, defacing or destruction of roadways, curbs, gutters, properties and adjoining Lots and Home and Improvements thereon, including landscaping, caused by such construction activity shall be promptly repaired at the sole expense of the constructing Lot Owner.

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

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

7. Common Properties

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

7.02 *Description.* Common Properties may include streets, walkways, detention ponds and other drainage structures, medians, landscaping, signs, gates, boulevards, parks, common meeting facilities, benches, trash receptacles, lighting, maintenance equipment and storage facilities, or other real or personal property like or unlike any of the foregoing intended by the Developer for the common good and benefit of all Lots or the Development generally.

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

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

8. Assessments

8.01 *Imposition.* Each Owner and each Lot shall be subject to monetary assessments in proportion to Lot size for all taxes, maintenance and expenses applicable to the Common Properties and for the expenses of enforcing these Covenants.

8.02 *Procedures.* Notice of the levy of all assessments shall be given to each Owner no more frequently than monthly or may be given by posting a brief written notice of the assessment in some visible place on the Lot. Each assessment shall become due and payable upon the date set forth in the notice which shall not be less than 30 days after the date of such notice. From and after the payment due date, the assessment shall bear interest at the highest legal rate.

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

9. Right of Repurchase

9.01 *Construction Delay.* If, after the expiration of 18 months from the date of the original fee simple conveyance by the Developer of any Lot within the Development, any Owner (or anyone claiming under such Owner) shall not have commenced diligently and in good faith to construct an acceptable Home and Improvements upon such Lot, in conformity with these Covenants, the Developer may, within a 2-year period thereafter, at its option, require the Owner to reconvey the

Lot to the Developer, free and clear of all liens, charges, encumbrances, tenancies and other title exceptions. Any party claiming an interest in such Lot, including any mortgagee or other encumbrancer, shall take subject to the provisions of this paragraph, and any interest in the Lot claimed by such parties, shall be fully subordinate to the rights of the Developer hereunder. At any time, however, the Developer may extend, in writing, the time in which such Home and Improvement will be commenced.

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

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

10. Authority and Remedies

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

- (a) to exercise authority explicitly granted to the Developer elsewhere in these Covenants;
- (b) to enforce these Covenants by resort to legal and equitable remedies described elsewhere in these Covenants, the expenses and costs of which shall be paid or reimbursed by assessments;
- (c) to assign and delegate its rights, responsibilities and authority hereunder to any third party, and in particular to an owner's association created under by-laws, rules and regulations determined by the Developer;
- (d) to interpret these Covenants, to establish rules and regulations of further specificity for implementation and enforcement of these Covenants; and to grant variances, waivers or approvals in instances determined by the Developer in its reasonable discretion to be consistent with, or not violative of, the spirit an intent of these Covenants;
- (e) to establish rules and regulations for use of Common Property and standards for maintenance of Common Property; to levy assessments against the Lots for purposes permitted by these Covenants; to maintain bank accounts and make deposits and debits to such accounts for the same purposes as assessments are permitted hereby;
- (f) to exercise all powers, rights and remedies now or hereafter granted to a developer by city ordinance with respect to planned development districts generally or to any such district comprising or including the Development;

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

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

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

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

(a) Cure any such default, make any such payment or perform any such obligation or covenant and recover as damages all costs, fees and expenses, including attorney's fees, relating to the same;

(b) Obtain any court order or judgment to enjoin or restrain the same, before or after its occurrence, it being expressly agreed and understood that every act, omission to act, or condition which violates or likely will violate these Covenants shall constitute a nuisance;

(c) Exercise any other right or remedy available at law or in equity;

(d) Recover all attorney's fees and expenses in the enforcement of the foregoing.

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

11. Duration, Scope and Binding Effect

11.01 *Duration.* These Covenants shall run with the land for a period of 25 years from the date of recordation with the Minnehaha County Register of Deeds and thereafter shall be of no further effect unless the Owners of not less than $\frac{3}{4}$ of the Lots in the Development by recorded declaration or agreement alter, amend or extend any one or more of these Covenants; provided, however, that so long as the Developer shall own any Lot or portion thereof, the consent of the

Developer shall also be required. The mere lapse of time shall not affect or alter the application of this section.

11.02 *Superiority.* These Covenants shall be deemed prior and superior (except as described in paragraph 8.03) to all mortgages, contracts for deed, options, leases and other instruments hereafter executed with respect to any land subject to these Covenants and shall survive any foreclosure, transfer, trust, devise or intestate succession, and shall be fully binding upon all successors, assigns and transferees to the same extent as any original Owner.

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

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

11.05 *Additional Land.* The Developer may from time to time subject other contiguous lands to these Covenants by the execution and recordation of an instrument so indicating, which also describes land to be added and a statement of the covenants to which such land is subjected together with any other additional restrictions.

12. Notices

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

12.02 *Addresses.* Notices to the Developer shall be delivered to the address described below. Notices to any owner shall be sent or delivered to the address specified in the deed from the Developer to the Owner or at such other address as is furnished to the Developer in a Notice complying with the requirements of this section or to the street address of the Lot. Any party may change the address to which Notices are to be sent or delivered by giving Notice in a manner complying with this section. The Developer shall not be bound by any change in record ownership of any Lot until it has been given Notice of such change.

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

