

Prepared By:  
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**DECLARATION OF RESERVATIONS AND RESTRICTIVE  
COVENANTS AND CONDITIONS**

THIS DECLARATION OF RESERVATIONS AND RESTRICTIVE COVENANTS AND CONDITIONS (this "Declaration") is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by 85<sup>th</sup> Street Partners, L.L.C., a South Dakota limited liability company, with its principal office located at 3408 S. Sycamore Avenue, Sioux Falls, South Dakota (hereinafter referred to as "Developer").

1. Developer is the fee owner of certain undeveloped real property which is legally described as follows:

[ Legal Description To Be Inserted Upon Platting Of Property ]

all in The Grand Prairie Estates Addition to the City of Sioux Falls, Lincoln County, South Dakota according to the recorded plat thereof (the "Property").

2. Developer intends to develop and improve the Property and to offer individual residential lots for sale to the general public.

3. Developer desires to subject all of said lots to certain covenants, agreements, easements, restrictions, conditions and charges, and to reserve for itself, its successors and assigns, easements for public utilities, drainageways and storm sewers, all in order to insure the harmonious and systematic development of the Property.

NOW, THEREFORE, Developer hereby declares that the Property shall be held, transferred, sold, conveyed and occupied subject to those covenants, conditions, restrictions, easements, charges and liens which are hereinafter set forth, which such covenants, conditions, restrictions and easements shall run with the Property and shall be binding upon all parties having any right, title or interest in the Property or any part thereof, together with their heirs, legal representatives, successors and assigns, and shall inure to the benefit of each such party.

## ARTICLE I

### DEFINITIONS

**1.1 Definitions.** The following words, when used in this Declaration, shall have the following meanings:

- (a) **“Developer”** shall mean and refer to 85<sup>th</sup> Street Partners, L.L.C., a South Dakota limited liability company, its successors and assigns.
- (b) **“Lot”** shall mean and shall refer to any tract, parcel or plot of land designated as a lot shown upon any recorded plat or subdivision map of the Property, whether recorded or not and whether finally approved or not.
- (c) **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot (excluding, however, contract sellers and including in their place their contract purchasers, and further excluding any person having such interest merely as security for the performance of an obligation).
- (d) **“The Grand Prairie Estates”** shall mean and refer to the Property and to all future parcels, if any, which will be a part of The Grand Prairie Estates Addition to the City of Sioux Falls, Lincoln County, South Dakota.
- (e) **“Common Areas”** shall mean and refer to those areas of The Grand Prairie Estates which are set aside for and dedicated to the common use and enjoyment of all Owners, subject to such terms and conditions as may be established, modified or amended in the sole discretion of Developer.

## ARTICLE II

### PLATTING OF ADDITIONAL PROPERTIES

**2.1** Developer shall have the right, without obtaining the consent of the Owners, to bring within the scheme of The Grand Prairie Estates and this Declaration additional real property, and to render such additional real property subject to this Declaration, by executing and

recording a Supplement to this Declaration (the "Supplemental Declaration") containing the following:

- (a) A description of the additional land to be made subject to this Declaration;
- (b) A statement that the Developer is a fee simple Owner of the additional land or a statement that all persons joining in the Supplement to this Declaration constitute the entire fee simple ownership of the additional land;
- (c) A statement of any additional Restrictions to which the additional land shall be subjected, if any, and a statement of any Restrictions of this Declaration which shall not be applicable to the Additional Land or which will be applicable in modified form, if any.

2.2 Following the execution and recording of the Supplemental Declaration, the additional land and the owners of the additional land shall in all respects be fully subject to the covenants and restrictions set forth in this Declaration, except as otherwise provided in the Supplemental Declaration.

### **ARTICLE III**

#### **EASEMENT/WETLANDS**

3.1 Easements are hereby reserved by Developer for water, sewer, electricity, gas, telephone, storm sewers, drainage, television, streetlights and signage, all as more particularly shown on the plat or plats of The Grand Prairie Estates. Said reserved easement areas may be utilized for the purposes of ingress, egress, and for the installation, replacing, repairing and maintaining of utilities placed within the easement areas. The easement areas reserved by Developer, as shown on the plat of The Grand Prairie Estates, are hereby dedicated to those utilities and entities that provide the various services referred to herein. The Owner of a Lot shall maintain the easement area located upon such Owner's Lot, except for those improvements for which a public utility or public authority is responsible. No structure or building shall be placed or permitted to remain on or to interfere with the dedicated easement areas. In the event an Owner plants trees or greenery on such dedicated easement areas, such trees or greenery may be disturbed or removed consistent with the use of the easement, with no liability accruing to any person or entity due to such disturbances or removal. Owners of Lots containing designated wetlands shall comply in all respects with all covenants, agreements and undertakings made by Developer in favor of the United States Army Corp of Engineers with respect thereto, and shall further comply in all respects with all covenants and restrictions set forth in the document of conveyance whereby Owner acquired legal title to such Lot, or as may be otherwise filed with the Lincoln County Register of Deeds, as the case may be. The Developer shall prepare and record a wetland protection document entitled Acknowledgement And Agreement that shall be recorded against the affected Lots within The Grand Prairie Estates.

## ARTICLE IV

### ARCHITECTURAL REVIEW PROCESS

4.1 In order to maintain the criteria for standards, to prevent the impairment of the attractiveness of the individual Lots, to maintain the desired tone of The Grand Prairie Estates, and to thereby secure to each Owner the full benefit and enjoyment of such Owner's Lot with no greater restriction on the free and undisturbed use of a Lot than is necessary to ensure the same advantages for the other Owners, an Architectural Review Committee (the "Committee") is hereby established. The Committee shall consist of up to three (3) individuals (unrelated to Developer) who shall be appointed in the sole discretion of the Developer and who shall serve at the pleasure of the Developer. At such time as all Lots have been sold, the Developer shall relinquish control of the Committee and the Committee shall thereafter consist of three (3) individuals as elected by the Owners under rules and guidelines established by a majority vote of the Owners.

4.2 Before commencing any permanent improvement on any Lot, including landscaping, the construction or external alteration of any building, enclosure, fence or any other structure, the Owner shall first submit a site plan and construction plans and specifications for the written approval of the Committee, together with a nonrefundable application fee in the amount of \$150.00. In the event the Committee fails to approve or disapprove of plans and specifications submitted to it or to request additional information reasonably required within thirty (30) days after the receipt of such plans and specifications, the plans and specifications as submitted shall be deemed approved.

4.3 Any member of the Committee shall have the right, during reasonable hours and after reasonable notice, to inspect any Lot for the purpose of ascertaining whether or not the covenants contained in this Declaration have been or are being complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry.

4.4 The approval of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent. Further, such approval shall not be deemed as a waiver of strict compliance with the terms and conditions of this Declaration, and any ambiguity, inconsistency or conflict arising in connection with an approval shall be resolved solely by reference to this Declaration.

4.5 The review and approval of any application submitted pursuant to this Article IV shall be made on the basis of aesthetic considerations only, and the Committee shall not bear any responsibility of insuring the structural integrity or soundness of approved construction or modifications, nor for insuring compliance with building codes, land use regulations, or any other government regulations or requirements. Neither Developer nor the Committee, nor any

principal or member thereof, shall be held liable for any injury, damage or loss arising out of the manner or quality of approved construction on, or modifications to, any improvement or structure, and Owners hereby release and agree to indemnify the foregoing, their respective heirs, legal representatives, successors, and assigns, and to hold them harmless with respect thereto.

**4.6** The Committee shall strive to work with developers and their architects to develop themes within their projects that will add this character and quality to the Property. As such, it is strongly recommended that Owners strive to create built environments that are unique or special. Moreover to create variety and diversity, the Committee shall impress upon Owners and contractors that it is desirable to vary the masses within each building of the Property so that uniformity of line and mass is avoided. In addition, building projections should provide interest and variety through the use of windows, doors, eaves and parapets. Building components should have good proportions and interesting relationships to help avoid monotonous, uninteresting building evaluations.

## **ARTICLE V**

### **RESTRICTIONS**

**5.1** No deadline shall exist within which an owner shall commence construction on a lot.

**5.2** The minimum yard and set-back requirements, the maximum height restrictions, and the permitted uses of the Property shall all be governed by applicable ordinances and regulations promulgated by the City or any other applicable governing body.

**5.3** No Lot shall be used for any purpose except for a permitted use under applicable this Declaration, zoning laws, rules and regulations and the Planned Development Regulations for The Grand Prairie Estates. No Lot may be subdivided, reduced in size or replatted to any tract or parcel smaller than the whole of the Lot as presently platted, except by Developer; provided, however, that an Owner may acquire an adjacent Lot or Lots for the purpose of increasing the size of such Owner's original Lot, but any Lot so increased in size may never contain more than one detached single family residential dwelling; provided further, however, that any combination of Lots, whether by replatting or otherwise, shall not effect the rights, duties and obligations set forth herein, as concerns the voting rights and financial obligations of the Lots as presently platted (e.g., if two Lots are replatted into one Lot, the Owner retains the rights, duties and obligations associated with two Lots, not one Lot). Lots combined via replatting may be replatted to their original state.

**5.4** No building, other than a single-family residential dwelling and permissible outbuildings, shall be constructed, altered or permitted to remain on any Lot. All building construction must comply with the restrictions and requirements of these covenants, as well as any applicable ordinances, building code requirements, zoning regulations and Planned Development Regulations pertaining to the Property. All external furnaces, air conditioners, heat pumps and other items or devices of like or similar nature shall be concealed from the public

view by foliage or appropriate screening devices as approved by the Committee. Construction, once commenced on any Lot, must be diligently and steadily pursued and shall be completed as soon as continuous construction progress allows. In the event construction is not completed within such time frame, Developer shall have the right, exercisable in its sole discretion, to levy a penalty in an amount not to exceed Five Thousand Dollars (\$5,000.00) per month, which shall become a lien or charge against the Lot and which may be foreclosed upon by an action brought in the name of Developer. All residential dwelling structures shall conform with the following standards:

- (a) Single-story and split-level structures shall be constructed with a fully-enclosed finished square footage above grade of at least 2000 square feet; and
- (b) One and one-half story or two-story structures shall be constructed with a fully-enclosed finished square footage above grade of at least 2,500 square feet;

For purposes of these restrictions, "square footage above grade" is any portion of the structure which is entirely upon the surface of the earth. Any floor level that is in whole or in part below the surface of and/or surrounded by earth shall not be considered as being upon the surface of the earth. Garages and open porches are excluded in calculating the above areas.

#### 5.5 Prohibited Activities:

(a) The following activities and structures are hereby prohibited on the Property or on any Lot:

(1) Modular homes, mobile homes, tents, shacks, barns, temporary buildings, manufactured houses, tree houses, or any structure of a temporary character; provided, however, that a temporary sales office may be maintained by Developer;

(2) Satellite dishes, except those less than three (3) feet in diameter, which shall be located on roofs or in the rear yard not any closer than twenty (20) feet from the rear and side yard lot lines (except for Lots adjacent to the Course, wherein the distance shall be thirty-five (35) feet);

(3) Recreational vehicles, unless garaged (except those recreational vehicles that are owned by guests of an Owner and located on a Lot for no more than two (2) weeks in any six (6) month period);

(4) Animals, livestock or poultry of any kind raised, bred or kept on any Lot, except that dogs or cats may be kept provided that they are kept, bred or maintained for no reason other than as household pets;

(5) No streamers, posters, banners, balloons, exterior illumination or other rallying devices will be allowed on any Lot in the promotion or sale of any Lot or residential structure unless approved in advance and in writing by Developer;

(6) No noxious or offensive trade or activity, as defined by law, shall be carried on upon a Lot, nor shall anything be done which may become an annoyance or nuisance, as defined by law;

(7) Window or wall heating units and window or wall air conditional units:

(8) Wind turbines or solar panels;

(9) Septic sewer systems;

(10) Spot lights, flood lights or other lighting that interferes with the enjoyment of other Lots;

(11) Above grade swimming pools;

(12) No structures (houses or garages) shall be moved onto a Lot; and

(13) All outbuildings need to be of the same or substantially similar to the color, quality of materials, and outward design of the Owner's home.

(b) In addition to the foregoing said prohibited activities, Owners shall do and perform the following:

(1) Each Owner of a vacant Lot must keep and maintain such Lot in a neat and clean condition. Each such Lot shall be regularly mowed to keep the length of grass and weeds growing thereon at six (6) inches or less (unless a more stringent requirement is mandated by any local governing authority), and weeds shall be sprayed or removed at least two (2) times annually. Upon failure to comply with this covenant, and after three days' written notice is given, Developer may perform (but shall not be required to perform) such maintenance as is necessary and bill the Owner for all expense incurred.

(2) No Lot shall be used or maintained as a dumping ground for rubbish or waste concrete, as a storage area for any trash, garbage or other waste or solely as a parking facility/locating while an Owner is building a structure on a nearby Lot. Each Owner of a Lot shall refrain from driving across adjacent or nearby lots without permission and shall not engage in any of the activities described in the immediately preceding sentence on Lots owned by others at the Property. Any such trash, garbage or other waste shall be kept within sanitary containers and shall be stored either underground or within garages, or within a

screened device for that purpose. No abandoned, junked or non-used vehicles or trailers shall be kept or stored on any Lot.

(3) No sign of any kind shall be displayed to the public view on any Lot, except one sign of not more than six (6) square feet advertising a residence for sale, or signs used by Developer or a construction contractor to advertise for sale during the construction period; provided, however, that permanent identification signs, markers or monuments may be constructed by Developer at the perimeter of the Property and signs of a temporary nature may be placed by Developer to advertise the Property, or any unsold Lot, for sale during the development of the Property; provided further, however, that during promotional events sponsored by the local Sioux Falls Home Builders Association or the Developer (such as, but not limited to the "Parade of Homes" or the "Street of Dreams" feature events) builders participating may for a period of forty-eight (48) hours prior to opening and forty-eight (48) hours following the closing of such event place or allow signage on a Lot identifying only the vendors and contractors involved in construction of a home entered in the promotional event. Notwithstanding the foregoing, the Developer retains the right to refuse or decline any kind of signage determined, in the Developer's opinion, to be offensive or negative in nature to the neighborhood. In its sole discretion, Developer may require that all signs on the Property be obtained from Developer, with Developer reserving the right to charge a reasonable fee for the use thereof.

(4) No soil shall be removed from the Property without first obtaining the written approval of Developer. Such soil shall be placed at a location designated by Developer. There shall be no material change in grade levels as they now exist without approval of the Committee. Runoff and erosion shall be controlled on site during construction with erosion control barriers. All disturbed ground areas of a construction site shall be sodded or seeded, and covered with plants or mulched with approved landscape materials.

(c) The Developer shall be entitled to use all legal means to include, but not necessarily limited to, court action, injunction and assessing reasonable monetary damages and assessments for the damage caused by the occurrence of any prohibited activity described hereinabove.

## ARTICLE VI

### LANDSCAPING

**6.1** With one (1) year after the completion of construction on a Lot, Owner shall plant a minimum of fifteen (15) trees (in addition to any trees located on such Lot at the time of such conveyance), six (6) of which may be coniferous.



The trunks of any deciduous trees planted pursuant to this Section 6.1 shall be at least two (2) inches in diameter at the time of planting. Coniferous trees planted pursuant to this Section 6.1 shall be at least five (5) feet in height at the time of planting.

**6.2** Within three (3) years after completion of the curb and gutter infrastructure at the Property, Owner shall plant five (5) deciduous trees, each being at least two (2) inches in diameter at the trunk at the time of planting, on the boulevard portion of such Lot, as approved by the Committee. Any trees planted pursuant to Section 6.2 shall count towards the requirements of Section 6.1 above.

**6.3** Within one (1) year after the date legal title to a Lot is conveyed by Developer to Owner, Owner shall plant and thereafter continually maintain on such Lot a bluegrass/rye mix of grass, to be kept free of weeds and mowed to a maximum six inches (6") height continuously until construction of a permanent residence shall commence on such Lot. Upon failure to comply with this covenant, and after three days' written notice is given, Developer may perform such maintenance as is necessary and bill the Owner for all costs and expenses incurred, which such amount shall be immediately due and payable.

**6.4** Within two (2) years after the completion of construction of a single-family dwelling on a Lot, the Owner of such Lot shall undertake additional landscaping by planting flower beds on such Lot to include not less than 640 square feet of ornamental shrubs or perennials. Plants in each bed must be spaced in such a way so that each bed shall be 90% covered over a three year period. At least 50% of the total planting bed area, or 320 square feet, whichever is greater, must be visible from a street on or adjacent to such Lot.

**6.5** Variances from the foregoing landscaping requirements may be requested, considered and decided upon by the Committee in its sole discretion on a case-by-case basis.

## **ARTICLE VII**

### **HOMEOWNER'S ASSOCIATION**

**7.1** Developer either has caused or will cause a nonprofit corporation be formed and organized under South Dakota law under the name "The Grand Prairie Estates Homeowners Association" (the "Association"). The Association shall have as its primary purpose the preservation of the values and amenities of The Grand Prairie Estates, the maintenance of the character and residential integrity of The Grand Prairie Estates, as established by the Developer from time to time, and the promotion of the health, safety, recreation, welfare, and enjoyment of the Owners.

**7.2** Each Owner shall be a Member of the Association and shall be entitled to and burdened by all of the rights, duties and obligations thereof, as set forth in the governing documents of the Association.

**7.3** The Association intends to acquire legal title to one or more Lots in order to construct or acquire improvements for the beneficial use and enjoyment of all Owners. The provisions of this Declaration shall be construed, interpreted and applied consistent therewith.

## **ARTICLE VIII**

### **POOLS/FENCES/ETC.**

**8.1** Inground swimming pools are permitted; provided, however, that plans and specifications for swimming pools must be submitted to the Committee for its prior review and written approval. Swimming pools shall not be constructed in the side yards of any Lot.

**8.2** The front yard of any Lot shall not be fenced. The rear yard of any Lot may be fenced, provided that any such fence must be either a wrought iron fence or a vinyl coated chain-like fence that is black or brown in color. Net-type fences or fences constructed of chains or ropes are not permitted. Opaque fencing for screening a patio or deck may be permitted in the sole discretion of the Committee. Fencing materials for swimming pools are subject to the prior written approval of the Committee. All fencing must comply in all respects with all applicable regulations, codes and ordinances.

**8.3** All driveways shall be asphalt, concrete or paver stones. Public sidewalks in the public right-of-way shall be concrete. All lots in the Development shall be subject to specific landscape design standards for sidewalk construction, landscaping, and berming according to construction plans for The Grand Prairie Estates. All sidewalks and exercise paths will be subject to construction guidelines and ordinances set forth by the City including, but not limited to, applicable building codes or ordinances regarding accessibility. All sidewalks on a Lot must be installed within one (1) year from the date of conveyance of legal title to such Lot from Developer to Owner. Developer reserves the right to apply the terms and conditions of this Section 8.3 to additional Lots in its sole discretion.

**8.4** All utilities shall be installed beneath the surface of the earth; provided, however, that wireless services and satellite TV applications may be excepted from this requirement in the sole discretion of the Developer and/or the Committee.

**8.5** The construction of any improvements on a Lot must be engineered in a manner insuring that there will be proper drainage which is not detrimental to adjoining Lots or properties. Elevations at all property lines shall not be altered from engineered construction plans or the Developer may, at any time during or after the process of construction of a residence on a Lot, request changes to grading of such Lot that is found to be a nuisance or in contravention of any engineering and/or construction plans to any adjacent Lot, street, easement, or Common Area. In the event the Owner of a Lot creating such a nuisance fails or refuses to commence the work required to remedy the nuisance within the timeframe requested by Developer, Developer may, in its sole discretion, enter the Lot and perform such reasonable work as to remedy the nuisance, and in such an event shall charge the Owner of the Lot for all fees and reasonable expense incurred in remedying such nuisance.

**8.6** Any Lot owned by Developer or a related party may be used for a model home or for a temporary structure during the development and sales period of The Grand Prairie Estates. Contractors may be allowed, in writing, by Developer discretion to use a Lot or temporary structure as a model home or sales office during the development and sales period of The Grand Prairie Estates. Developer may limit the use and distribution of any information or media considered inappropriate or competitive in nature to the Developer or The Grand Prairie Estates through operation of a model home or temporary sales office by a contractor in The Grand Prairie Estates. Such model homes or temporary sales offices may be subjected to operation during business hours and days deemed acceptable under reasonable standards in the industry.

**8.7** All mailboxes located on the Property must comply in all respects with design and construction criteria established by Developer and/or the Committees.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

**9.1** The covenants, conditions and restrictions set forth in this Declaration, are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of Lots has been recorded with the Lincoln County South Dakota Register of Deeds office agreeing to change this Declaration in whole or in part.

**9.2** The covenants, conditions, and restrictions set forth in this Declaration are for the mutual benefit of all Owners. Consequently, either Developer or any Owner may bring an action at law or in equity to enforce this Declaration, against any person or persons violating or attempting to violate any covenant, condition, or restriction hereof, whether to prohibit or compel an act or to recover money damages.

**9.3** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly given when mailed, postage prepaid, to the last known mailing address of the Owner.

**9.4** The invalidity in whole or in part of any covenant, restriction, section, subsection or any other provision of this Declaration shall not affect the validity of the remaining portions thereof.

IN WITNESS WHEREOF, we have hereunto executed this Declaration of Reservations and Restrictive Covenants and Conditions this \_\_\_\_\_ day of \_\_\_\_\_, 2008.



Prepared By:  
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Sioux Falls, SD 57108  
(605) 336-8234

**SUPPLEMENTAL  
DECLARATION OF RESERVATIONS AND RESTRICTIVE  
COVENANTS AND CONDITIONS**

THIS SUPPLEMENTAL DECLARATION OF RESERVATIONS AND RESTRICTIVE COVENANTS AND CONDITIONS (this "Supplemental Declaration") is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by GRAND PRAIRIE DEVELOPMENT, L.L.C., a South Dakota limited liability company, with its principal office located at 3408 S. Sycamore Avenue, Sioux Falls, South Dakota (hereinafter referred to as Developer).

1. Developer is the fee owner of certain undeveloped real property which is legally described as follows (the "Property"):

[ Legal Description To Be Inserted Upon Platting Of Property ]

all in The Grand Prairie Estates Addition to the City of Sioux Falls,  
Lincoln County, South Dakota, according to the recorded plat thereof.

2. Developer previously prepared a Declaration Of Reservations And Restrictive Covenants And Conditions (the "Original Declaration") with respect to the previously-platted lots referred to above.

3. The Original Declaration was filed for record with the Lincoln County Register of Deeds on October 19, 2005 at 9:42 a.m. on page 16 of Book 15 of Miscellaneous as Instrument No. 255178.

