

## **DAKOTA COMMONS DEVELOPMENT WATERTOWN, SD**

### **SUMMARY OF THE PLANNED UNIT DEVELOPMENT OBJECTIVES**

Dakota Commons is a residential development located on the eastern side of Watertown, SD. The developer's vision for the land use within this development is primarily residential with single family homes in a cluster formation, where each lot has access to a shared open space with permanent parks, walking trails and other common amenities for the enjoyment of the neighborhood. The primary purpose of this design is to create more open space for recreation and social interaction within the neighborhood, reduce impervious surfaces which minimize pollutant runoff into the watershed, and encourage cost savings on infrastructure installation and long-term maintenance. To achieve this vision, Planned Unit Development (PUD) zoning district has been chosen for the area which will allow the developer to create certain setback and other supplemental provisions to the existing requirements set forth in the zoning regulations and engineering design standards for the city of Watertown, SD. Below is a summary of the proposed setbacks and roadway designs that were previously implemented in the first phases of the development, and are sought to be continued within the future phases of the remaining portion of the un-development agricultural land as it is annexed, zoned and improved.

- SETBACKS (see page 2 of the PUD Plans and Exhibits A and B for further details)
  - Single Family residential lots will be required to have a 25' front yard, 7' side yard, and a 15' rear yard setbacks. The rear yard setback is being reduced to 15' since each lot is directly adjacent to a large open space that is available for the use of each resident within the development.
  - Single Family Attached residential lots which are primarily for duplex construction, shall be required to have a 25' front yard, 7' side yard, and a 15' rear yard setbacks. The rear yard setback is being reduced to 15' since each lot is directly adjacent to a large open space that is available for the use of each resident within the development.
  - Multi-family and commercial lots shall be governed by the requirements set forth by the City of Watertown, SD for R3 and C2 zoning districts.
  
- SUPPLEMENTAL PROVISIONS TO THE ENGINEERING DESIGN STANDARDS. (see page 5 of the PUD Plans for further details)
  - Since the proposed land use is low-density with an average of 3.5 units per acre, the roadways within the development are proposed to be 35' wide from back of curb to back of curb and the Cul-de-sacs within the development are proposed to be 32' wide from back of curb to back of curb. The bulb portion of the Cul-de-sac shall conform to the requirements of the Engineering Design Standards for

the City of Watertown, SD to ensure adequate turning maneuverability for refuse collection, snow removal, and emergency vehicles.

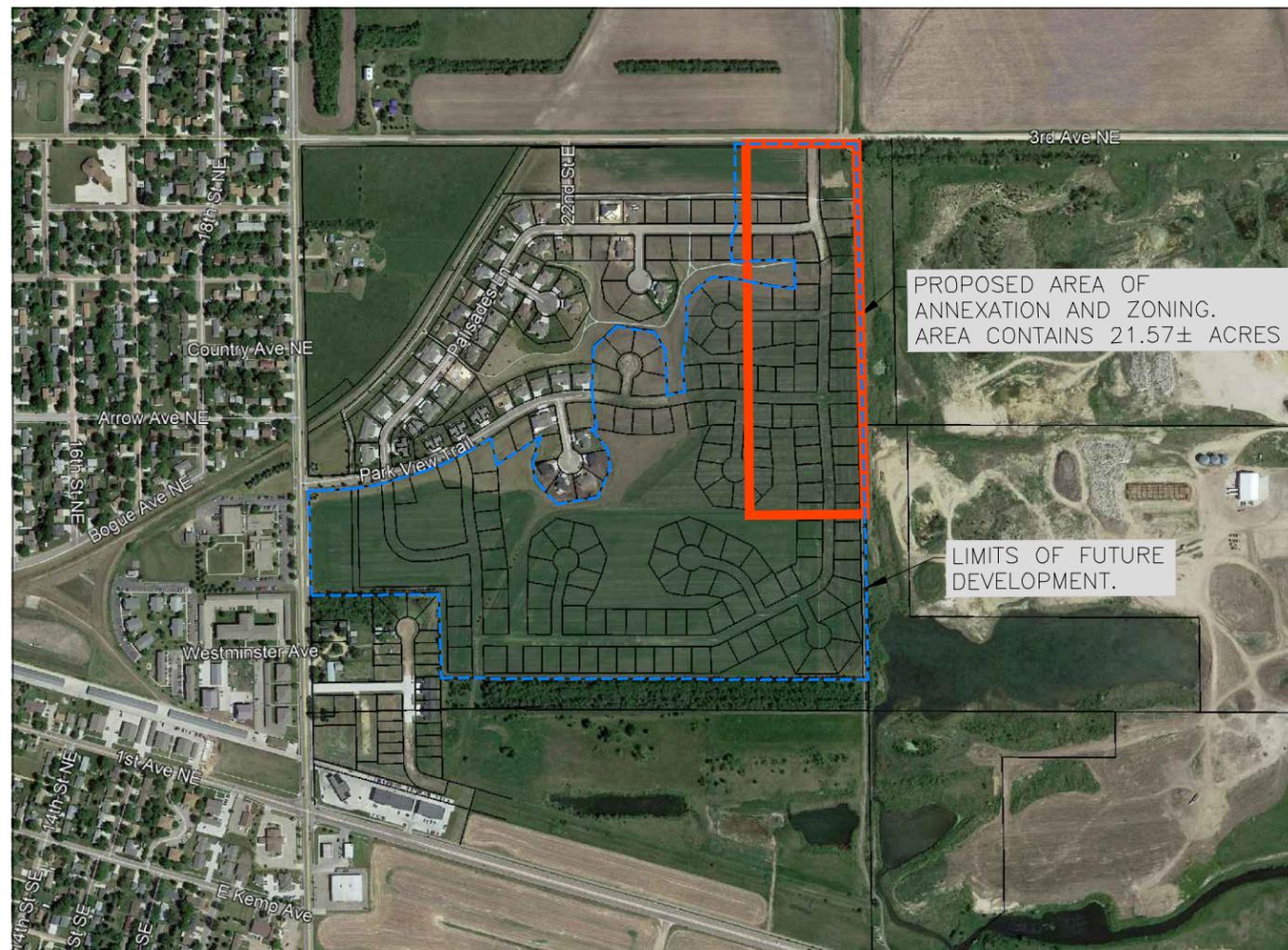
- In lieu of boulevard sidewalks, a walking trail has been, and will continue to be installed within the open spaces that abut each lot within the Dakota Commons Community which allow for pedestrian movement into, and throughout the development.
- TYPE AND CHARACTER OF BUILDINGS / LOTS (see Exhibit A)
  - As specified within the existing covenants and restrictions for the development, each residential structure must be approved by the Architectural Committee for the development to ensure compliance to the minimum size requirements set forth in Section 10 of Article VII. The architectural committee shall also review the plans for each structure to ensure harmony of the external design and landscaping to the surrounding properties to maintain the aesthetics of the neighborhood. See Article VII and VIII on Exhibit A for more information.

Comments in red show the changes that were approved at the August 17th, 2020 City Council Meeting.

>Trails will be required to be installed in lieu of the sidewalks being installed along each side of every street (Ch. 24.0510 1.) with the exception that sidewalks shall be installed in the boulevards along lots on the south and west sides of Lewis and Clark Trail.

>Current street width can be continued throughout development.

PUD PLANS FOR  
**DAKOTA COMMONS**  
 WATERTOWN, CODINGTON COUNTY, SOUTH DAKOTA



**SHEET INDEX**

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2	EXISTING CONDITIONS
3	PROPOSED LAND USE
4-8	STREET PLANS
9	DEVELOPMENT PHASING
10	NOTES AND DETAILS

**CONTACT INFORMATION:**

OWNER / DEVELOPER:  
 DAKOTA COMMONS, LLC  
 1323 MAIN AVE. S.  
 BROOKINGS, SD 57006  
 CONTACT: JACOB MILLS  
 PHONE: (605)697-3118  
 EMAIL: JACOB@MILLS-DEVELOPMENT.COM

ENGINEER:  
 AASON ENGINEERING COMPANY, INC.  
 1022 6TH ST SE  
 WATERTOWN, SD 57201  
 ROD DEJONG  
 PHONE: (605) 882-2371  
 EMAIL: RODEJONG@IW.NET

SURVEYOR:  
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 1022 6TH ST SE  
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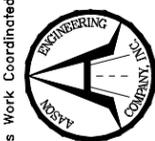
**LEGAL DESCRIPTIONS AND AREAS:**

ENTIRE DEVELOPMENT:  
 ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 117 NORTH, RANGE 52 WEST OF THE 5TH P.M., LYING SOUTH AND EAST OF THE ABANDONED RAILROAD RIGHT OF WAY, INCLUDING THAT PART OF THE RAILROAD RIGHT OF WAY LYING SOUTHERLY OF THE CENTER LINE OF SAID RIGHT OF WAY, EXCEPT THE SOUTH 144' THEREOF; AND EXCEPT EDTOM ADDITION TO THE CITY OF WATERTOWN, ALL IN CODINGTON COUNTY, SOUTH DAKOTA. PARCEL CONTAINS 124.87± ACRES.

2020 PETITIONED ANNEXATION AND PUD ZONING REQUEST:  
 THE NORTH 1714 FEET LESS THE WEST 2084 FEET OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 117 NORTH, RANGE 52 WEST OF THE 5TH P.M., CODINGTON COUNTY, SOUTH DAKOTA. PARCEL CONTAINS 21.57± ACRES.



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TITLE SHEET

PUD PLAN  
 DAKOTA COMMONS  
 WATERTOWN, SD

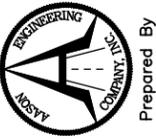
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 SCALE: 1" = 40'  
 DRAWN BY: CBD  
 JOB NO.: 2020-038  
 SHEET 1 OF 10



**EXISTING CONDITIONS**

1. THERE ARE NO SIGNIFICANT NATURAL FEATURES LOCATED WITHIN THE PROPOSED DEVELOPMENT AREA.
2. THERE ARE NO SIGNIFICANT BODIES OF WATER LOCATED WITHIN THE PROPOSED DEVELOPMENT AREA.
3. THE EXISTING SOILS CONSIST OF 12"-24" OF TOPSOIL OVER CLAY, SAND AND GRAVEL SUB-BASE. ACCORDING TO THE USDA SOIL SURVEY THE SITE IS FAVORABLE TO RESIDENTIAL CONSTRUCTION WITH BASEMENTS. (SEE EXHIBIT C)
4. THE EXISTING GROUND COVER CONSISTS OF WELL MAINTAINED GRASSES WITHIN THE EXISTING RESIDENTIAL DEVELOPMENT, AND ROW CROPS WITHIN THE UNDEVELOPED AREA.

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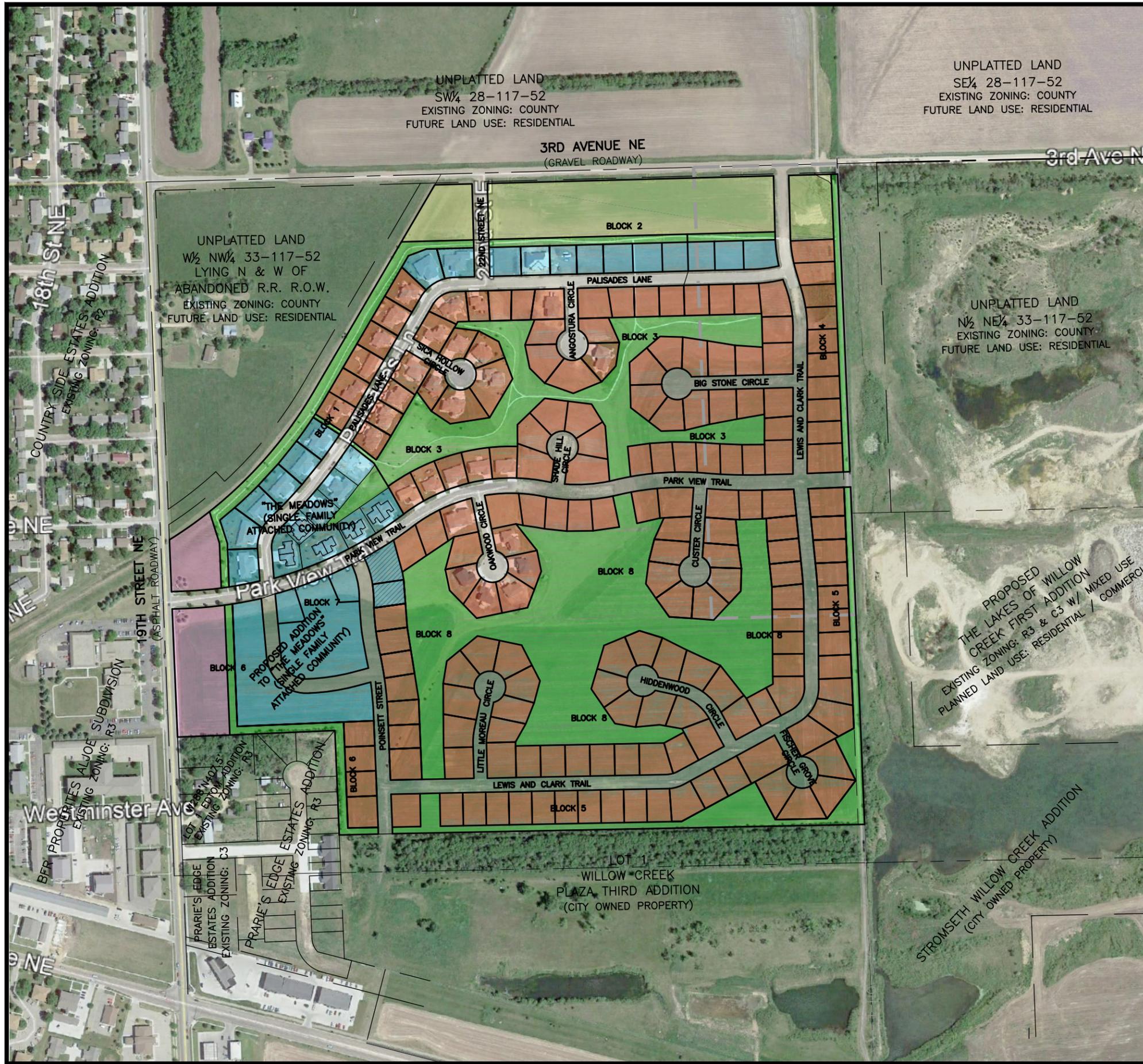


GRAPHIC SCALE IN FEET

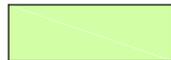
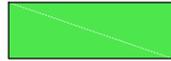
**EXISTING CONDITIONS**

PUD PLAN  
 DAKOTA COMMONS  
 WATERTOWN, SD

DATE: JUNE 16, 2020
SCALE: 1" = 40'
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SHEET 2 OF 10



**DAKOTA COMMONS PUD LAND USE:**

-  R1 – SINGLE FAMILY RESIDENTIAL
-  R2 – SINGLE FAMILY ATTACHED RESIDENTIAL
-  R3 – MULTI-FAMILY RESIDENTIAL
-  C2 – COMMUNITY COMMERCIAL
-  GREEN SPACE

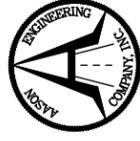
**PROPOSED DENSITY**

1. R1 SINGLE FAMILY RESIDENTIAL DWELLINGS
  - A. MIN. MAIN LEVEL SIZE: 1500 SQ. FT.
  - B. TOTAL NO. OF R1 LOTS: 181
  - C. TOTAL R1 USE AREA: 51.27 ACRES
  - D. AVERAGE R1 LOT SIZE: 12,229 SQ.FT.
  - E. R1 NET DENSITY: 3.5 UNITS PER ACRE
 (NOTE: SEE SECTION 10 ON PAGE 10 OF THE DECLARATION OF COVENANTS RECORDED IN BOOK 4P OF MISC. PAGE 990.) (SEE EXHIBIT A)
2. R2 SINGLE FAMILY ATTACHED RESIDENTIAL DWELLINGS
  - A. MIN. MAIN LEVEL SIZE: 1500 SQ. FT. (PER UNIT)
  - B. TOTAL R2 LOTS PROPOSED: 45 (APPROX.)
  - C. TOTAL R2 USE AREA: 14.11 ACRES
  - D. AVERAGE R2 LOT SIZE: 13,658 SQ.FT.
  - E. PROPOSED R2 NET DENSITY: 6.4 UNITS PER ACRE
 (NOTE: SEE EXHIBIT B FOR THE EXISTING DECLARATION OF COVENANTS FOR THE MEADOWS)
3. R3 MULTI-FAMILY RESIDENTIAL DWELLINGS
  - A. TOTAL R3 USE AREA: 7.27 ACRES
 \*MULTI-FAMILY DWELLINGS SHALL BE GOVERNED BY THE REQUIREMENTS SET FORTH IN THE CITY OF WATERTOWN, SD ORDINANCES FOR R3 ZONED LOTS.
4. C2 COMMUNITY COMMERCIAL LAND USE
  - A. TOTAL C2 USE AREA: 3.30
 \*COMMERCIAL LAND USES SHALL BE GOVERNED BY THE REQUIREMENTS SET FORTH IN THE CITY OF WATERTOWN, SD ORDINANCES FOR C2 ZONED LOTS.
5. TOTAL OPEN SPACE / RECREATION AREA: 14.31± ACRES
6. TOTAL DEDICATED RIGHT OF WAY AREA: 34.61± ACRES

**PROPOSED SETBACKS**

- SETBACKS FOR R1 & R2 LAND USE DESIGNATION:
- |             |         |
|-------------|---------|
| FRONT YARD: | 25 FEET |
| SIDE YARD:  | 07 FEET |
| REAR YARD:  | 15 FEET |
- NOTE: SEE SECTION 10 ON PAGE 10 OF THE DECLARATION OF COVENANTS RECORDED IN BOOK 4P OF MISC. PAGE 990. (SEE EXHIBIT A)
- SETBACKS FOR R3 LAND USE DESIGNATION:
- |             |          |
|-------------|----------|
| FRONT YARD: | 30 FEET  |
| SIDE YARD:  | *10 FEET |
| REAR YARD:  | 25 FEET  |
- ZONING AUTHORITY: CITY OF WATERTOWN, SD  
 PHONE NUMBER: (605) 882-6202 EXT. 3528 CONTACT PERSON: BRANDI HANTEN  
 \*INCREASES TO 15' AT 9 UNITS AND ABOVE.
- SETBACKS FOR C2 LAND USE DESIGNATION:
- |             |         |
|-------------|---------|
| FRONT YARD: | 40 FEET |
| SIDE YARD:  | 30 FEET |
| REAR YARD:  | 30 FEET |
- ZONING AUTHORITY: CITY OF WATERTOWN, SD  
 PHONE NUMBER: (605) 882-6202 EXT. 3528 CONTACT PERSON: BRANDI HANTEN

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**PROPOSED LAND USE PLAN**

PUD PLAN  
 DAKOTA COMMONS  
 WATERTOWN, SD

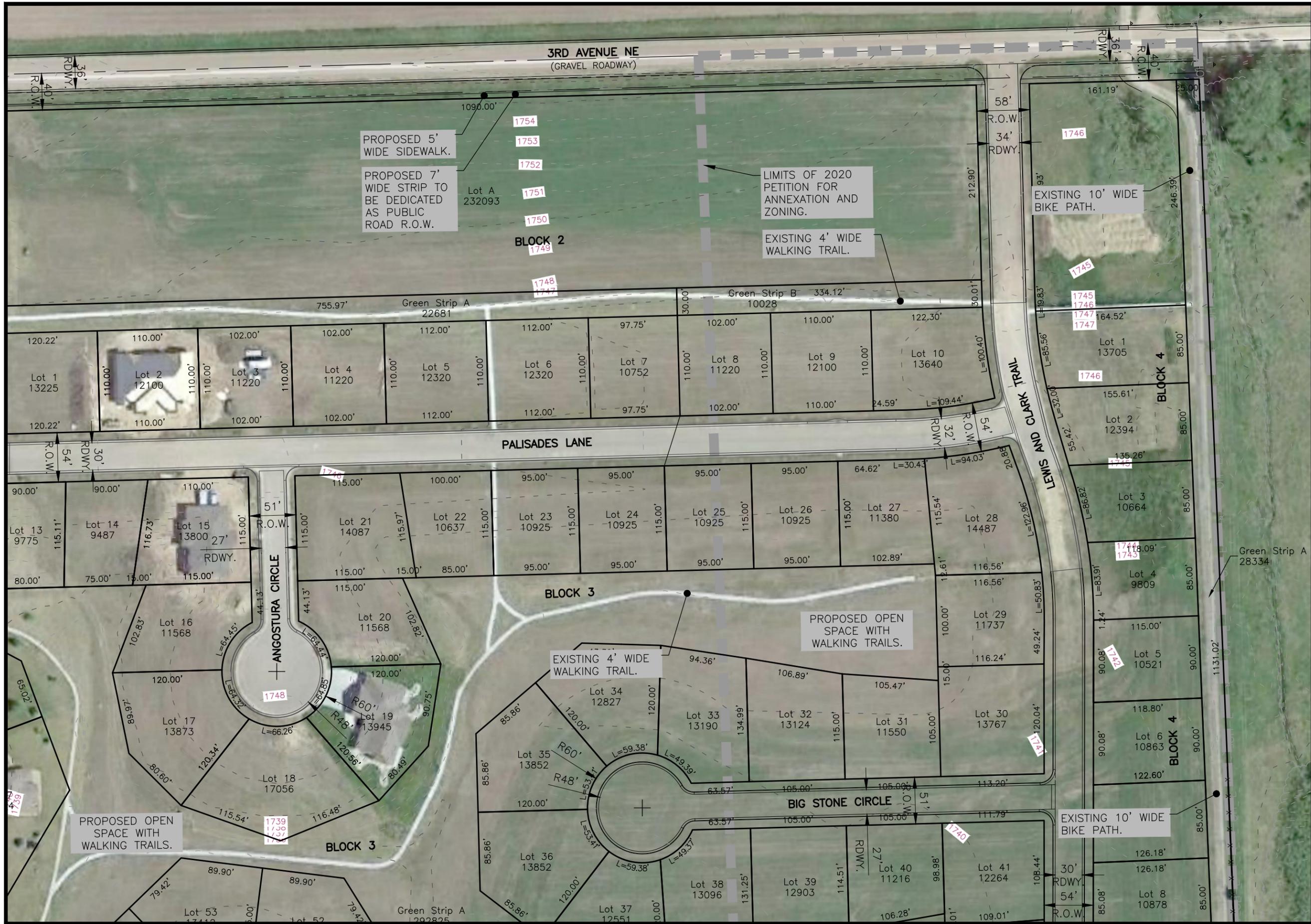
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JOB NO.: 2020-038

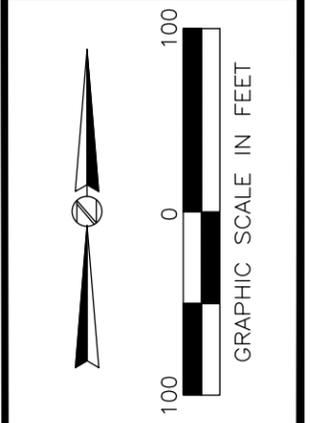
SHEET 3 OF 10



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**PROPOSED STREET PLAN**

PUD PLAN  
 DAKOTA COMMONS  
 WATERTOWN, SD

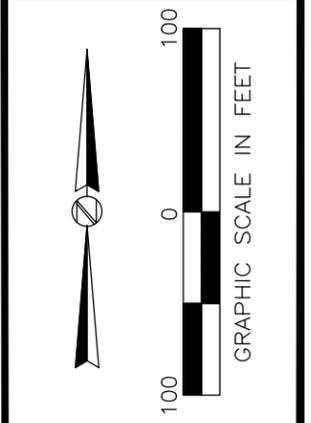
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PUD PLAN  
 DAKOTA COMMONS  
 WATERTOWN, SD

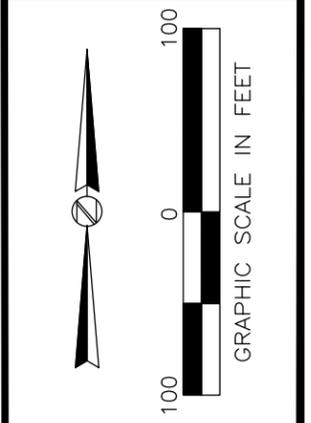
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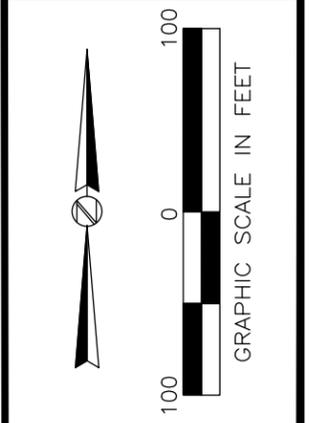
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**PROPOSED STREET PLAN**

PUD PLAN  
 DAKOTA COMMONS  
 WATERTOWN, SD

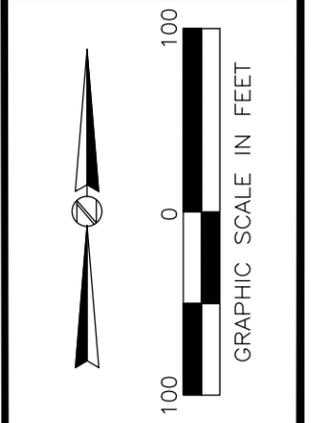
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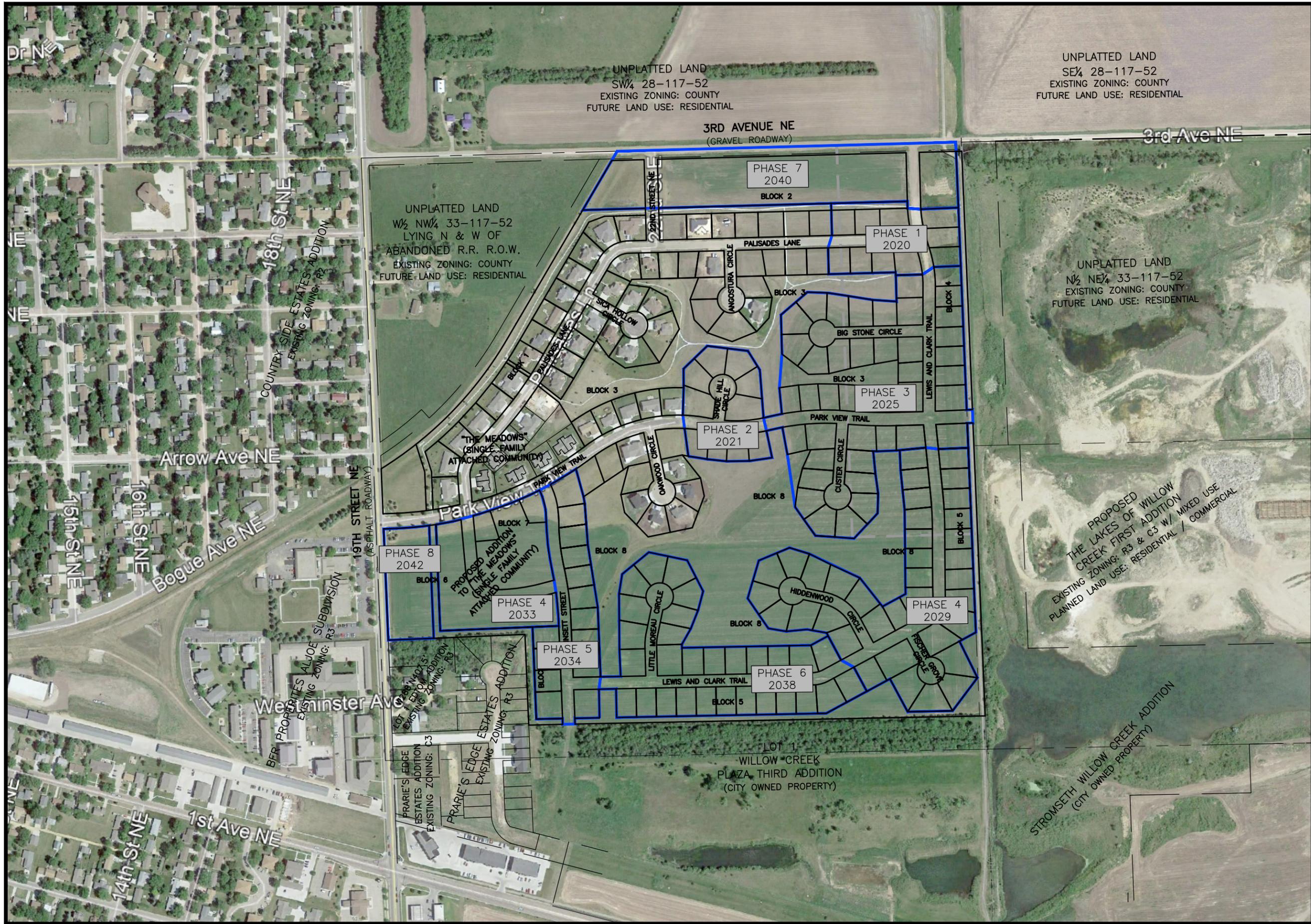
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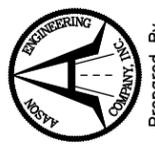
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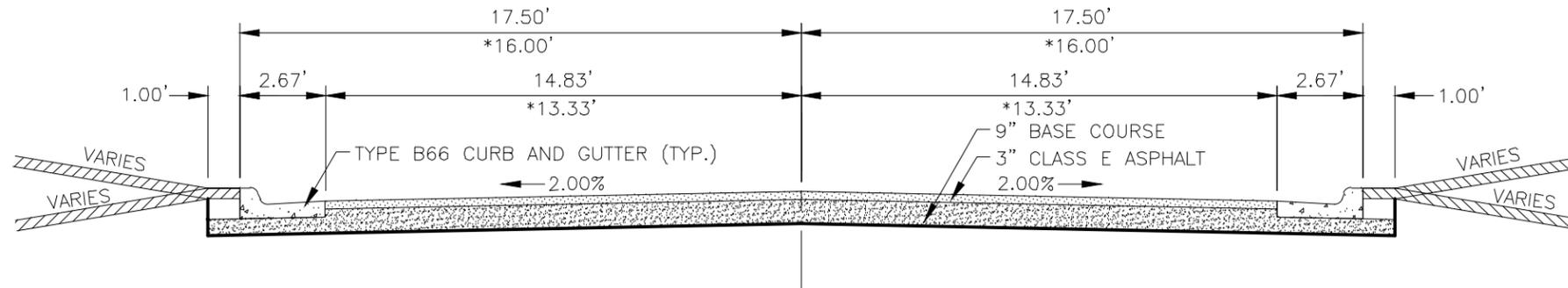
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**PHASING PLAN**

PUD PLAN  
 DAKOTA COMMONS  
 WATERTOWN, SD

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SHEET	9 OF 10



TYPICAL SECTION  
\*CUL-DE-SAC DIMENSIONS

PROPOSED LAND USE AND LAND USE OBJECTIVES:

THE PROPOSED LAND USE AND LAND USE OBJECTIVES SHALL BE AS DESCRIBED UNDER ARTICLE VII OF THE DECLARATION OF COVENANTS AND RESTRICTIONS FOR DAKOTA COMMONS. SEE EXHIBIT A.

TYPE AND CHARACTER OF BUILDINGS:

ALL STRUCTURES SHALL MEET THE MINIMUM STANDARDS SET FORTH IN ARTICLE VII SECTION 10 AND REVIEWED BY THE ARCHITECTURAL COMMITTEE AS DESCRIBED IN ARTICLE VIII BOTH OF WITHIN THE DECLARATION OF COVENANTS AND RESTRICTIONS FOR DAKOTA COMMONS. SEE EXHIBIT A.

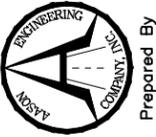
PROPOSED UTILITY NOTES:

SANITARY SEWER MAINS SHALL BE INSTALLED IN ACCORDANCE TO THE SPECIFICATIONS OF THE CITY OF WATERTOWN, SD. EACH LOT WITHIN THE R1 USE SHALL BE PROVIDED A SERVICE LINE TO THE MAIN. EACH RESIDENTIAL UNIT WITHIN THE R2 USE SHALL BE PROVIDED A SERVICE. R3 AND C2 USES SHALL BE PROVIDED A MIN. SERVICE DIAMETER OF 6".

WATER MAINS SHALL BE INSTALLED IN ACCORDANCE TO THE SPECIFICATIONS OF THE WATERTOWN MUNICIPAL UTILITIES. EACH LOT WITHIN THE R1 USE SHALL BE PROVIDED A SERVICE LINE TO THE MAIN. EACH RESIDENTIAL UNIT WITHIN THE R2 USE SHALL BE PROVIDED A SERVICE. R3 AND C2 USES SHALL BE PROVIDED A MIN. SERVICE DIAMETER OF 6".

EASEMENTS SHALL BE PROVIDED ALONG PROPERTY LINES AS NEEDED FOR THE INSTALLATION OF STORM SEWER, GAS, POWER AND COMMUNICATION LINES.

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NOTES AND DETAILS

PUD PLAN  
DAKOTA COMMONS  
WATERTOWN, SD

DATE: JUNE 16, 2020

SCALE: NA

DRAWN BY: CBD

JOB NO.: 2020-038

SHEET 10 OF 10

Prepared by:  
Eric N. Rasmussen  
Glover, Helsper & Rasmussen, P.C.  
100 22<sup>nd</sup> Avenue, Suite #200  
Brookings, SD 57006  
(605) 692-7775

BOOK 4P PAGE 990

State of South Dakota } ss.  
County of Codington }

OFFICE OF REGISTER OF DEEDS  
Filed this 18<sup>th</sup> day of March  
2003 at 2:20 o'clock P m  
Book 4P Page 990  
*Ruth Pope*  
REGISTER OF DEEDS/DEPUTY

DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
DAKOTA COMMONS ADDITION

THIS DECLARATION, made on the date hereinafter set forth by DAKOTA COMMONS, L.L.C., a South Dakota Limited Liability Company, PATRICIA NEUENDORF, of Watertown, South Dakota, HARVEY MILLS, of Brookings, South Dakota and JOHN MILLS, of Brookings, South Dakota (hereinafter collectively referred to as "Declarants"). Individually, the individuals shall be hereinafter referred to by their surname and DAKOTA COMMONS shall be referred to as "Developer".

WHEREAS, Declarants are the owners of certain real property in the City of Watertown, Codington County, South Dakota, which is described below, and have agreements among themselves for the ultimate purchase of the property by Developer; and

WHEREAS, Developer desires to create on said real property a residential community with permanent parks, open spaces and other common facilities for the benefit of said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities of said community and to this end desires to subject the real property described below, together with such additions as may hereafter be made, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

NOW, THEREFORE, the Declarants hereby declare that all of the property herein described 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 and be binding on all parties having the right, title or interest in the described properties or in part thereof, their heirs, successors and assigns and which rights shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

- a. "Association" shall mean and refer to the Dakota Commons Association which is anticipated to be a South Dakota nonprofit corporation of the same name to be organized and exist under the laws of the State of South Dakota for the purpose as set forth in the corporation documents with all the rights, duties and obligations set forth herein, or to its successors and assigns.
- b. "Common Area" shall mean all property within Dakota Commons owned by the developer or the Association as the

case may be for the common use and enjoyment of the owners, which has not been exempted from these Covenants and Restrictions and which has been developed and landscaped for and devoted to the common use of the owners by the Developer. Developer shall be allowed to designate additional common areas from time to time as development of Dakota Commons progresses.

- c. "Common Expenses" shall mean any and all expenses related to the care and keep of the common area, and the limited use common area, except such expenses as may hereafter be assigned to the Owners.
- d. "Dakota Commons" shall mean the development of residential lots and common area in Watertown, Codington County, South Dakota, within the real property described below, all of which residential dwelling units and common area shall be subject to the rules, regulations, covenants and restrictions set forth herein. Dakota Commons shall not include that portion of the property described as "The Meadows", a development of townhouses which development is subject to a separate Declaration of Covenants and Restrictions.
- e. "Developer" shall mean and refer to DAKOTA COMMONS, L.L.C., a South Dakota Limited Liability Company, its successors and assigns, if such successors or assigns should acquire the balance of undeveloped lots from the developer for the purpose of development.
- f. "Lot" shall mean that portion of the real property described below which has been deeded to the owners separately as shown on any recorded subdivision map of the property described below. For purposes of these covenants, "Lot" shall not include common area whether deeded or not.
- g. "Member" shall mean and refer to all owners who are members of the Association as provided below.
- h. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot or living unit as part of Dakota Commons, but not refer to the mortgagee unless and until the mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION:

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Watertown, Codington County, South Dakota more particularly described as follows:

All that part of the Northwest Quarter (NW¼) of Section Thirty-three (33), Township One Hundred Seventeen (117) North, Range Fifty-two (52) West of the 5<sup>th</sup> P.M., lying south and east of the abandoned railroad right-of-way, including that part of the railroad right-of-way lying southeasterly of the center line of said right-of-way, except

the South One Hundred Forty-four Feet (S 144') thereof; and except Edtom Addition to the City of Watertown, all in Codington County, South Dakota.

The above property shall be referred to as "the premises". These covenants and restrictions shall not apply to that portion of the above described property which are burdened and subject to the covenants and restrictions of "The Meadows". Also excluded from these covenants and restrictions shall be those portions of the premises shown on Exhibit 1 zoned as commercial or R-3.

Section 2. Alterations of the Premises.

- a. General Plan of Development. Attached hereto as Exhibit 1 is a general plan of development for Dakota Commons. The developer is not limited by such general plan as to the exact number or configuration of the residential lots or common areas. The developer may exempt any lots or subdivisions of the premises from the effects, burdens and benefits of this Declaration, and all the Covenants and Restrictions contained herein.

Any exemption authorized under this subsection shall be accomplished by the filing for record of a Supplemental Declaration of Covenants and Restrictions with respect to such exempted lands. Such Supplemental Declaration shall contain any and all complimentary additions and modifications to the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character of the premises as modified and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplemental Declaration revoke, modify or add to the Covenants established by this Declaration with respect to "the premises" not exempted as allowed by this subsection.

- b. Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its By-Laws, the owner of any property who desires to add it to the scheme of this Declaration and subject it to the jurisdiction of the Association may file of record a Supplemental Declaration of Covenants and Restrictions as in subsection (a) hereof. Furthermore, at any time while this Declaration remains in affect, if the Developers should develop additional lands adjacent to the area described in Article II, Section 1, such additional lands may be annexed to the property without the assent of the members.

- c. Mergers. Upon merger or consolidation of the Association with another association as provided in its By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively the properties, rights and obligations of another association may by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the premises together with the covenants and restrictions established on any other properties as one scheme. No such merger or consolidation however, shall effect any revocation,

change or additions to the covenants established by this Declaration within the premises as they then exist, except as hereinafter provided.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. The membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A shall be all those Owners as defined in Section 1 with the exception of the developer. Class A members shall be entitled to one vote for each lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The developer shall be the sole Class B member. The Class B member shall be entitled to 200 votes in the Association. The Class B membership shall cease and terminate upon the happening of any of the following events whichever first occurs:

- a. When the last living unit lot within Dakota Commons is sold or,
- b. When the developer formally announces no further living unit lots will be developed as part of Dakota Commons or,
- c. Twenty (20) years from the date of this Declaration.

From and after the happening of any of the above described events, which ever first occurs, the Class B member shall be deemed to be a Class A member, entitled to one (1) vote for each lot in which it holds the interest required for membership under Section 1.

### ARTICLE IV

#### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members Easement of Enjoyment. Subject to the provisions of Section 3, every member shall have a right and easement of enjoyment in and to the common properties when deeded to the Association, and such easement shall be appurtenant to and shall pass with the title to every lot. The common area is not for

the use of the general public, but is for the common use of the members and their guests.

Section 2. Title to Common Area. The developer may retain legal title to all or any portion of the common area until such time as it has completed improvements thereon or until such time as in the opinion of the developer, the Association is able to maintain the same, or when the developer formally announces that no further development of Dakota Commons shall occur. It is anticipated throughout the development of Dakota Commons that the developer may deed portions of common area lots as individually platted lots, to the Association. Upon the completion of the development or upon formal announcement of no further development, the developer shall transfer ownership by good and sufficient warranty deed, of any undeeded common area as they then exist, to the Association. Notwithstanding developer's ownership of the common area, the Association shall provide for the maintenance of the developed common area.

Section 3. Extent of Members Easements. The rights and easements of enjoyment created hereby and the title of the Association to the common properties shall be subject to the following:

- a. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the common properties, and in aid thereof to mortgage said properties, and the rights of such mortgagee in such property shall be subordinate to the rights of the members hereunder; and
- b. The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure;
- c. The right of the Association to enact Rules and Regulations governing the use and enjoyment of the common area; and
- d. The right of the Association as provided in its Articles and By-Laws to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid; and to suspend the said enjoyment rights for any period not to exceed thirty (30) days for any infraction and to assess a fine not to exceed \$50.00 for each infraction of its published rules and regulations; provided however, that nothing contained in this subparagraph shall be deemed to deny an owner access to and from his lot or living unit located in Dakota Commons; and
- e. The rights of the Association to charge reasonable admission and other fees for use of the common properties; and
- f. The right of the Association to dedicate or transfer all or any part of the common properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, and no determination as to the purposes or as to the conditions hereof, shall be effective unless an instrument signed by members entitled to cast three-fourths of the vote of each class of membership has been

recorded agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every member at least thirty (30) days in advance of any action taken.

#### ARTICLE V

##### COVENANTS FOR ASSESSMENTS AND MAINTENANCE

Section 1. Creation of assessments. The developer for each lot owned by him within Dakota Commons hereby covenants and each Owner of any lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be and hereby is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; (b) special assessments for capital improvements; and (c) special assessments for repairs and maintenance, all such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and the costs of collection thereof, shall be the personal obligation of the person who was the owner of each lot at the time when the assessment fell due and shall be a lien against each lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in Dakota Commons. In the event the Developer decides to erect a community building as part of the development, which decision is solely at the discretion of the Developer, assessments may be used to lease and pay for the ongoing operating costs of such community building, including the costs of maintenance, taxes, insurance, repair and operation thereof.

Section 3. Initial Annual Assessment. Until modified as provided below, the annual assessment shall be \$120.00 per lot payable as hereinafter provided. From and after the year beginning January 1, 2004, the annual assessment may be increased by a vote of the members as provided in Section 5 below. However, in September of each year, for the succeeding year, the Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for the following year in a lesser amount. The assessment for each platted lot owned by the developer, abutting common space owned by the Association, shall be one-half of the annual assessment.

Section 4. Special Assessments. In addition to the annual assessments authorized by Section 3 above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying in whole or in part the costs of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of the membership who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of such meeting shall be sent by first class mail to all the members at least thirty (30) days in advance, and shall set forth the purpose of the meeting.

Furthermore, the Association shall be entitled to assess any owner for the cost of any repairs authorized in Section 12 below.

Section 5. Increase in Annual Assessments. Subject to the limitations of Section 3 hereof, the Association may increase the assessments fixed by Section 3 hereof prospectively, provided that any such change shall have the assent of two-thirds (2/3) of the vote of the members who are voting in person or by proxy at a meeting called for such purpose, written notice of which shall be sent by first class mail at least thirty (30) days in advance.

Section 6. Quorum for any action authorized under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called for such purpose, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Sections 4 and 5 and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than forty-five (45) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments. The annual assessment provided for herein shall commence on and be prorated to the date of closing of the sale of a lot to an owner.

The due date of any special assessments allowed within this Article shall be fixed in the resolution authorizing such assessments.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment at least thirty (30) days in advance of such date and shall maintain a roster of the properties and assessments applicable thereto which shall be kept by the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall be sent by first class mail to every Owner subject thereto. The Association shall upon demand furnish to any Owner liable for assessment, a certificate in writing signed by an officer of the Association setting forth whether the assessment has been paid. Such certificate shall be conclusive evidence of the payment of assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment. If the assessments are not paid on the date when due as specified herein, then such assessment shall become delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, become a continuing lien on the property which shall bind such properties in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and

the Association may bring an action at law against the owner personally obligated to pay the same, or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event judgment is obtained, such judgment shall include interest, costs, reasonable attorney's fees as allowed by law, and any other expenses allowed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the common properties or abandonment of his lot.

Section 10. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money mortgage placed upon a lot subject to assessments; provided however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of a lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure; such sale or transfer shall not release a lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein;

- a. All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- b. All properties exempted from taxation by the laws of the State of South Dakota.
- c. All common properties as defined herein.

Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from assessments, charges or liens.

## ARTICLE VI

### INSURANCE

Section 1. Association Responsibility to Insure. Insurance policies upon the property covering the items described in Section 2 of this Article shall be purchased by the Association as trustee for the benefit of the Association and the Owners and their mortgagees as their interest may appear. Provisions shall be made for the issuance of certificates of mortgage endorsements to any mortgagees.

Section 2. Insurance Coverage. Insurance shall cover the following:

- a. All common properties and betterments, including improvements owned or operated and maintained for the benefit of the Association, and all personal fixtures and property included in the common properties in an amount equal to the insurable replacement value, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against "all risks" of direct physical loss or damage;

- b. Public liability of at least \$1,000,000 for each occurrence, and bodily injury and property damage liability and with such additional coverage as shall be required by the Board of Directors of the Association;
- c. Workmen's compensation as required by law; and
- d. Such other insurance, including a Fidelity Bond on the Association's agent handling its monies, as the Board of Directors of the Association shall determine from time to time is desirable.

Section 3. Premium Payment and Assessment. Premiums on insurance policies purchased by the Association shall be paid by the Association as a common expense of the Association. The premiums paid by the Association shall be included in the assessment for each owner.

## ARTICLE VII

### PROTECTIVE COVENANTS

Section 1. Residential Use. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than a single family living unit, except that on any portion of Dakota Commons that is zoned R-2, a twin home or duplex may be constructed. The Developer and/or the Association may elect to construct a community building or maintenance buildings as are necessary for the benefit of the members.

Section 2. Prohibited Activities. No noxious or offensive activities shall be carried on upon any lot nor shall anything be done thereon which shall become an annoyance or nuisance. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, an owner may keep no more than three household pets. An owner may construct a kennel or dog run provided the same contains no more than 80 square feet, is attached to the owner's residence, and screened from view of adjacent lots. Under no circumstances may any animal be maintained for any commercial purpose. No automotive repair may be conducted on any lot except within a garage, however, no commercial automotive repair shall be conducted under any circumstances.

Section 3. Prohibited Residences. No trailer, basement, tent, shack, garage, barn, outbuilding or structure of a temporary character shall be used on any lot at any time as a residence either temporarily or permanently.

Section 4. Automobile and recreational vehicle storage. No vehicle, recreational vehicle, boat, snowmobile, trailer, or unlicensed motor vehicle may be kept on any street, lot or common area for a period of time in excess of five (5) days except within a garage.

Section 5. Trash Containers. No trash or debris shall be left on or in any lot except in approved containers. No trash receptacles or garbage cans shall be located outside of a building unless placed on a temporary basis only, awaiting pickup.

Section 6. Outbuilding and Fences. No fence, building, outbuilding, shed, kennel or other pet enclosure of any kind may be constructed, erected or moved onto any lot or plot without first submitting a written proposal containing the specifications of any

such structure to the architectural control committee. Under no circumstances shall any such structure be erected on the common area. Furthermore, no perimeter fence shall be allowed under any circumstances.

Section 7. Removal of Soil. No soil may be removed from any lot or plot without the prior approval of the Developer, and there shall be no change in the grade levels as they exist at the perimeter of the lot. This provision shall not apply to the Developer during any period of original construction on a lot or plot. Furthermore, the Developer may direct fill dirt within the development; any excess fill dirt shall be hauled and deposited within the development at the expense of the owner. Finally, owner agrees to abide by all drainage control requirements imposed by the State of South Dakota and/or the City of Watertown.

Section 8. Residency Restrictions. The number of residents in any living unit shall be limited to a family or household which shall mean one or more persons related by blood, marriage, adoption or formal guardianship as an individual housekeeping entity, such may include no more than two (2) other persons not related by blood, marriage, adoption or guardianship. Notwithstanding any other provision, the maximum number of persons residing in a residence shall not exceed two (2) per bedroom.

Section 9. Vacant Lots. Owners of vacant lots must keep them neat and clean in appearance and mowed as needed. If after ten (10) days notice an Owner shall fail to comply with this requirement, the Developer or the Association may perform the necessary service and bill the Owner the cost thereof and shall have a lien on the property for such service. Every owner shall commence construction of a living unit on a lot within two years of the date of purchase and thereafter diligently continue construction until completion. Failure to commence construction within said two year period shall entitle the Developer to repurchase the lot for the original purchase price.

Section 10. Size of Dwellings. All dwellings built within Dakota Commons shall be in conformance with the following table of minimum size standards:

MINIMUM FLOOR AREA ON MAIN LEVEL

<u>House Type</u>	<u>Area</u>
Single Level	1,500
Split Foyer	1,300
Two-Story	1,200
Split Level	1,500 (main level and upper level)

Each dwelling unit shall have a minimum front yard set back of twenty-five feet (25') and a minimum side yard set back of seven feet (7'), and a minimum rear yard set back of fifteen feet (15'). No underground, basement, or outbuilding space shall be included in order to meet such minimum requirements. Furthermore, each dwelling shall at a minimum include an attached two stall garage.

The Architectural Control Committee, in its sole discretion, may excuse compliance with such architectural requirements as are not necessary or appropriate to specific situations and may permit

compliance with different or alternative requirements. Any questions arising as to conformance to minimum space standards, or any variances thereof, shall be decided by the Architectural Control Committee.

Neither the Association nor the Developer shall be responsible in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects or work done in accordance with such plans and specifications approved by the Architectural Control Committee.

Section 11. No Box Elder, Chinese Elm, American Elm, Cottonwood, or other such noxious trees shall be planted on any part of this subdivision.

Section 12. No portion of the premises other than an entire lot, together with the improvements thereon, may be rented or leased and then only to a single family.

Section 13. Erosion Control. At all times during initial construction and thereafter, Owners, their contractors, landscapers and all others shall adhere to the requirements of the general permit for storm water discharges associated with construction activities imposed by the South Dakota Department of Environment and Natural Resources and/or the City of Watertown including, without limitation, using proper control measures to avoid erosion.

It shall be the responsibility of the Owner, their contractor or landscaper to be acquainted with the appropriate rules and regulations imposed by the Department of Environment and Natural Resources to prevent storm water discharges associated with construction activities.

Section 14. Miscellaneous Restrictions. Notwithstanding any omission in this Article, the use of any property included in this Declaration shall be restricted by any other limits expressed elsewhere in this Declaration, and by any applicable rule, regulation, ordinance or statute.

#### ARTICLE VIII

##### ARCHITECTURAL COMMITTEE

Section 1. There shall be created an Architectural Committee which shall be responsible for reviewing the plans of all proposed residences as part of the original construction, as well as repairs, additions, modifications or landscaping thereafter. The primary purpose of the Committee is to review and approve or deny written plans and drawings submitted by an owner. Such Committee shall review building and modification plans to ensure compliance with minimum building requirements. Notwithstanding the above, at all times the Owner shall remain 100% responsible for compliance with any building requirements. Notwithstanding anything contained in this Article to the contrary, the Committee may not approve plans which do not meet the applicable building codes.

Section 2. The Architectural Committee shall consist of not less than three (3) nor more than seven (7) members to be selected annually by the Board of Directors of the Association, with the members to be chosen for varying terms so as to achieve staggered terms and continuity of membership of such Committee. For so long as the Developer remains a Class B member, Developer shall appoint one member to the Architectural control Committee. However, the developer shall have the power to veto any action taken by the

Committee until the termination of the Class B membership as specified in Article III, Section 2.

Section 3. No construction, change, modification or alteration for which plans are to be submitted to the Committee shall commence until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall be submitted to and approved in writing by the Architectural Committee as to the harmony of external design and location in relation to the surrounding structures and other such factors as the Architectural Committee considers necessary and relevant to maintain the aesthetics of the neighborhood. The Architectural Control Committee shall review and either approve or disapprove such design plan within thirty (30) days after the plans and specifications have been submitted to it. Failure of the Architectural Control Committee to act within said period shall entitle the Owner to go directly to the Board of Directors for approval of the submitted plans.

Section 4. Maintenance by Owner. Nothing in this Article shall preclude or relieve an Owner from maintaining a residence. Any repairs, improvements, and/or maintenance performed by an Owner must be accomplished in a workmanlike manner to the satisfaction of the Association. No repairs, improvements or maintenance may alter the aesthetics of the property, unless approved in advance as provided for in this Article. In the event of the failure of an Owner to maintain their property, after ten (10) days notice, the Association may, but shall not be obligated to, perform repairs and maintenance on the exterior of a residence. The cost of any maintenance performed by the Association shall be assessed to each lot Owner and added to the annual assessment for such lot.

#### ARTICLE IX

##### GENERAL PROVISIONS

Section 1. Duration. The covenants, restrictions and easements of Declaration shall run with the land and bind and inure to the benefit of and be enforceable by the Association or the Owner of any lot, their respective legal representatives, heirs, successors and assigns, for a period of twenty (20) years from the date this Declaration is recorded, after which time said covenants, restrictions and easements shall be automatically extended for a period of ten years, with successive ten (10) years extensions thereafter. Amendments to this Declaration may be affected by a two-thirds (2/3) vote of the members of the Association. Any amendments to this Declaration must be recorded.

Section 2. Severability. Invalidation of any one of these covenants and restrictions by judgment or Court order shall in no way affect the remaining provisions.

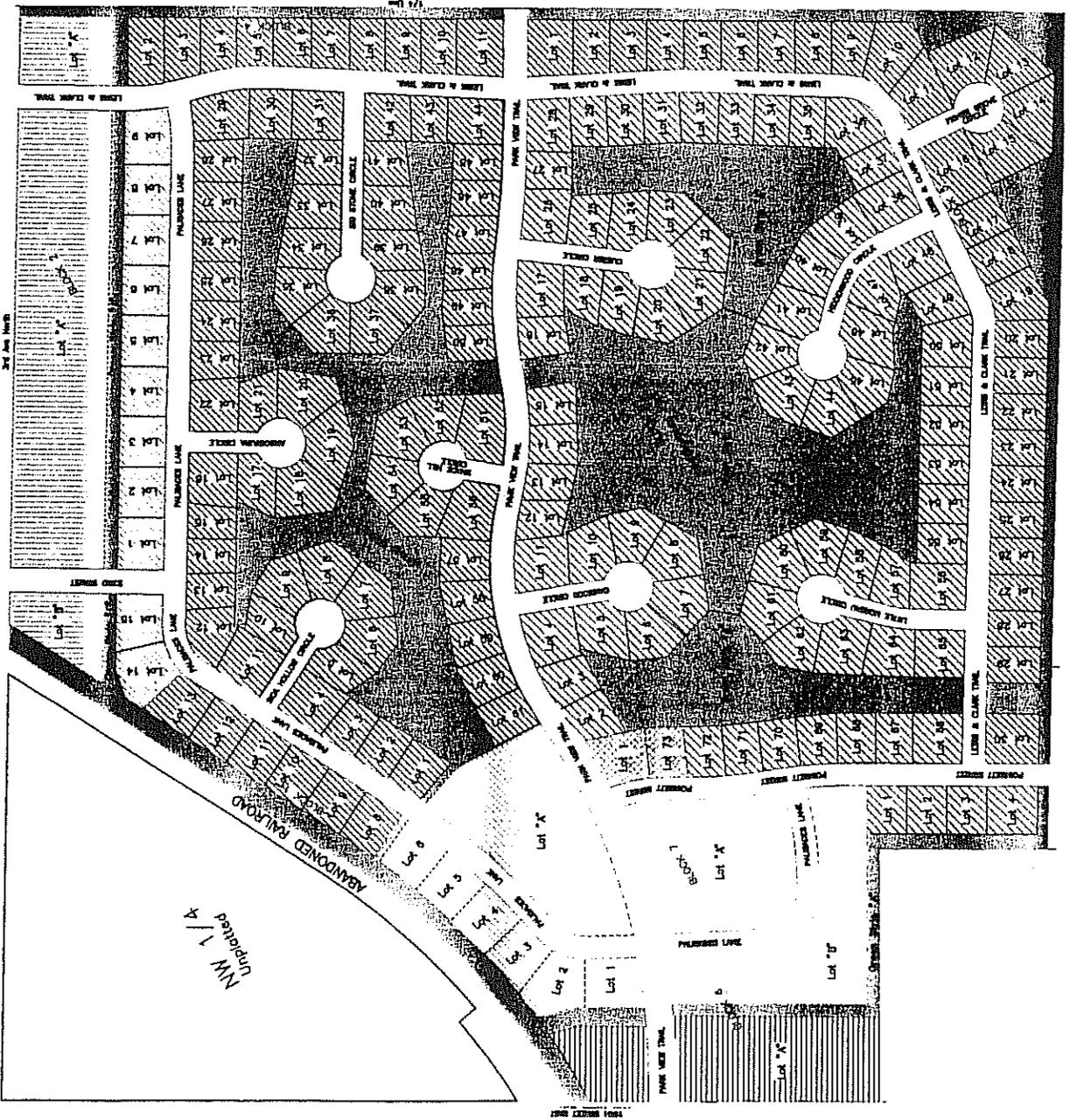
Section 3. Notice. Any notice to be given pursuant to this Declaration shall be given to the Owner of any lot at the legal address in writing by certified or first class mail. Notice to the Association shall be by certified mail to the registered agent of the Association as set forth in the Articles of Incorporation for the Association or as later amended.

Section 4. Waiver. Failure of the Association or any Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

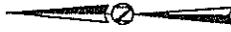




# DAKOTA COMMONS GENERAL PLAN OF DEVELOPMENT



Lines show conceptional locations of future Streets and Lots and may be subject to change



Scale: 1"=400'

**PROPOSED TYPE OF USES**

- R-1 - Single Family Residential
- R-2 - Single Family Duplex
- R-2 - Planned Area for "The Meadows" & Possible Twin Homes
- R-3 - Multi Family Residential
- C-2 - Local Commercial District
- Site of Possible Community Building & Parking

Association which is anticipated to be a South Dakota nonprofit corporation of the same name to be organized and exist under the laws of the State of South Dakota for the purpose as set forth in the corporation documents with all the rights, duties and obligations set forth herein, or to its successors and assigns.

b. "Common Area" shall mean all property within Dakota Commons owned by the developer or the Association as the

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17 pp

Prepared by:  
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BOOK 4P PAGE 991

State of South Dakota } ss.  
County of Codington }

OFFICE OF REGISTER OF DEEDS  
Filed this 18<sup>th</sup> day of March  
2003 at 2:25 o'clock P m  
Book 4P Page 991  
*Keith Pope*  
REGISTER OF DEEDS/DEPUTY

**DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
THE MEADOWS**

THIS DECLARATION, made on the date hereinafter set forth by DAKOTA COMMONS, L.L.C., a South Dakota Limited Liability Company, PATRICIA NEUENDORF, of Watertown, South Dakota, HARVEY MILLS, of Brookings, South Dakota and JOHN MILLS, of Brookings, South Dakota (hereinafter collectively referred to as "Declarants"). Individually, the individuals shall be hereinafter referred to by their surname and DAKOTA COMMONS shall be referred to as "Developer".

WHEREAS, Declarants are the owners of certain real property and have the option to purchase additional real property in the City of Watertown, Codington County, South Dakota, which is described below; and

WHEREAS, Developer seeks to develop the property described below as a planned unit development of townhouses as hereinafter defined;

NOW, THEREFORE, the Declarants hereby declare that all of the property herein described 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 and be binding on all parties having the right, title or interest in the described properties or in part thereof, their heirs, successors and assigns and which rights shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DEFINITIONS**

- a. "Bedroom" shall mean a room within a living unit in the original construction designed to be furnished with a bed and intended to be primarily used for sleeping; under no circumstances shall the rooms customarily referred to as kitchen and living room be construed as a bedroom.
- b. "Common Area" shall mean all property within The Meadows owned by the developer or the Association as the case may be for the common use and enjoyment of the owners, which has not been exempted from these Covenants and Restrictions and which has been developed and landscaped for and devoted to the common use of the owners by the Developer.
- c. "Common Expenses" shall mean any and all expenses related to the care and keep of the common area, and the limited use common area, except such expenses as may hereafter be assigned to the Owners.

- d. "Developer" shall mean and refer to DAKOTA COMMONS, L.L.C., a South Dakota Limited Liability Company, its successors and assigns, if such successors or assigns should acquire the balance of undeveloped lots from the developer for the purpose of development.
- e. "Family and Household" shall mean one or more persons related by blood, marriage or adoption occupying a living unit as an individual housekeeping entity; and such may include no more than two other persons not related by blood, marriage or adoption; notwithstanding any other provision herein, the maximum number of persons residing in a living unit shall not exceed two (2) per bedroom.
- f. "Formal Notice of No Further Development" shall occur when the developer shall record a Supplemental Declaration of Covenants and Restrictions which includes a provision indicating that developer shall develop no more townhouses as part of The Meadows development.
- g. "Limited Use Common Area" shall mean certain property within The Meadows owned separately by an owner as further described below in Article IV, Section 4. In addition, the Limited Use Common Area shall include driveways and sidewalks from a driveway to a door of a living unit. Limited Use Common Area shall not include any area occupied by a Living Unit or Townhouse. An owner shall be granted limited control of Limited Use Common Area subject, however, at all times to ultimate control by the Association.
- h. "Living Unit" shall mean that portion of The Meadows designated and intended for use and occupancy as a residence by a family or household.
- i. "Lot" or "Living Unit Lot" shall mean that portion of the real property described below which has been deeded to the owners separately, which real property encompasses the land immediately beneath the living unit plus such other land owned by the owner and shown on any recorded subdivision map of the property described below. It is anticipated Living Unit lots will be designated by numbers and common area lots by letters.
- j. "The Meadows" shall mean the development of townhouses in Watertown, Codington County, South Dakota within the real property described below, all of which residential dwelling units shall be subject to the rules, regulations, covenants and restrictions set forth herein.
- k. "The Meadows Association" (hereinafter "Association") shall mean and refer to the South Dakota nonprofit corporation of the same name to be organized and exist under the laws of the State of South Dakota for the purposes set forth in the corporation documents with all the rights, duties and obligations as set forth herein.
- l. "Member" shall mean and refer to all owners who are members of the Association as provided below.
- m. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot or living unit as part of The Meadows, but not

refer to the mortgagee unless and until the mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

- n. "Townhouse" shall mean a single family dwelling unit, the ownership of which shall include the real property directly beneath the unit and such other real property as shall be deeded with the living unit and which shall be attached by a common wall to at least one other living unit.

## ARTICLE II

### **PROPERTY SUBJECT TO THIS DECLARATION**

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Watertown, Codington County, South Dakota more particularly described as follows:

Lots One (1) through Six (6) inclusive of Block One (1) and Lot A of Block Three (3) in Dakota Commons Addition to the Municipality of Watertown, Codington County, South Dakota, as shown on the recorded plat thereof on file in the office of the Register of Deeds in and for Codington County, South Dakota.

In addition to the platted property described above, this Declaration shall attach to the property shown on the preliminary plat described as Lot "B" of Block Six (6) and Block Seven (7) of Dakota Commons Addition, all of which property shall be referred to as "the premises".

### Section 2. Alterations of the Premises.

- a. General Plan of Development. Attached hereto as Exhibit 1 is a general plan of development for The Meadows; it is anticipated by the developer that there will be ultimately up to 60 living units with attached garages as part of the development. However, developer is not limited by such general plan as to the exact number or configuration of the living units, nor is developer required to develop all of the property as part of The Meadows. The developer may exempt any lots or subdivisions of the premises from the effects, burdens and benefits of this Declaration, and all the Covenants and Restrictions contained herein.

Any exemption authorized under this subsection shall be accomplished by the filing for record of a Supplemental Declaration of Covenants and Restrictions with respect to such exempted lands. Such Supplemental Declaration shall contain any and all complimentary additions and modifications to the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character of the premises as modified and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplemental Declaration revoke, modify or add to the Covenants established by this Declaration with respect to "the premises" not exempted as allowed by this subsection.

- b. Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its By-Laws, the owner of any property who desires to add it to the scheme of this Declaration and subject it to the jurisdiction of the Association may file of record a Supplemental Declaration of Covenants and Restrictions as in subsection (a) hereof. Furthermore, at any time while this Declaration remains in affect, if the Developers should develop additional lands adjacent to the area described in Article II, Section 1, such additional lands may be annexed to the property without the assent of the members. It is anticipated developers will develop Lot A in Block Seven (7) and Lot B in Block Six (6) as shown on the Master Plan of Dakota Commons as additions to the premises.
- c. Mergers. Upon merger or consolidation of the Association with another association as provided in its By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively the properties, rights and obligations of another association may by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the premises together with the covenants and restrictions established on any other properties as one scheme. No such merger or consolidation however, shall effect any revocation, change or additions to the covenants established by this Declaration within the premises as they then exist, except as hereinafter provided.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. The membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A shall be all those Owners as defined in Section 1 with the exception of the developer. Class A members shall be entitled to one vote for each lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The developer shall be the sole Class B member. The Class B member shall be entitled to 100 votes in the Association. The Class B membership shall cease and terminate upon the happening of any of the following events whichever first occurs:

- a. When the last living unit lot within The Meadows is sold or,
- b. When the developer formally announces no further living unit lots will be developed as part of The Meadows or,
- c. Twenty (20) years from the date of this Declaration.

From and after the happening of any of the above described events, which ever first occurs, the Class B member shall be deemed to be a Class A member, entitled to one (1) vote for each lot in which it holds the interest required for membership under Section 1.

#### **ARTICLE IV**

##### **PROPERTY RIGHTS IN THE COMMON PROPERTIES**

Section 1. Members Easement of Enjoyment. Subject to the provisions of Section 3, every member shall have a right and easement of enjoyment in and to the common properties when deeded to the Association, and such easement shall be appurtenant to and shall pass with the title to every lot. The common area is not for the use of the general public, but is for the common use of the members and their guests. Nothing contained herein shall reduce or eliminate the responsibility of each lot owner to keep the common area adjacent to his living unit free from any obstructions for the benefit of the postal service and other services.

Section 2. Title to Common Area. The developer may retain legal title to all or any portion of the common area until such time as it has completed improvements thereon or until such time as in the opinion of the developer, the Association is able to maintain the same, or when the developer formally announces that no further development of The Meadows shall occur. It is anticipated during the development of The Meadows that the developer may deed portions of common area lots as individually platted lots, to the Association. Upon the completion of the development or upon formal announcement of no further development, the developer shall transfer ownership by good and sufficient warranty deed, of any undeeded common area as they then exist, to the Association. Notwithstanding developer's ownership of the common area, the Association shall provide for the maintenance of the developed common area.

Section 3. Extent of Members Easements. The rights and easements of enjoyment created hereby and the title of the Association to the common properties shall be subject to the following:

- a. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the common properties, and in aid thereof to mortgage said properties, and the rights of such mortgagee in such property shall be subordinate to the rights of the members hereunder; and

- b. The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure;
- c. The right of the Association to enact Rules and Regulations governing the use and enjoyment of the common area; and
- d. The right of the Association as provided in its Articles and By-Laws to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid; and to suspend the said enjoyment rights for any period not to exceed thirty (30) days for any infraction and to assess a fine not to exceed \$50.00 for each infraction of its published rules and regulations; provided however, that nothing contained in this subparagraph shall be deemed to deny an owner access to and from his lot or living unit located in The Meadows; and
- e. The rights of the Association to charge reasonable admission and other fees for use of the common properties; and
- f. The right of an Owner of each lot to exercise control over Limited Use Common Area; and
- g. The right of the Association to dedicate or transfer all or any part of the common properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, and no determination as to the purposes or as to the conditions hereof, shall be effective unless an instrument signed by members entitled to cast three-fourths of the vote of each class of membership has been recorded agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every member at least thirty (30) days in advance of any action taken.

Section 4. Limited Use Common Property and Special Conditions Relating to Lots 1 through 6, Block 1. The developer and/or Association shall retain an easement on, over and under the limited use common area deeded to the owners of Lots One (1) through Six (6) in Block One (1) for the continued maintenance of the lawns, driveways and sidewalks including, without limitation, mowing and snow removal. Upon reasonable notice to and consent of the Association, the owners of townhomes within Lots One (1) through Six (6) of Block One (1) shall be entitled to landscape and maintain all or a portion of the rear yard of their lot to include the cultivation of flower and vegetable gardens, placement of bird feeders and similar lawn ornaments. This provision shall not authorize any owner to erect a fence or a detached garage on the lot. The annual assessment for any owner shall not be reduced as a result of their decision to assume the maintenance over any portion of the rear yard of their lot. The Developer may add these special conditions to Lot B of Block 6 and other perimeter properties that may be added to The Meadows.

## ARTICLE V

### **PARKING RIGHTS**

Notwithstanding any other provision contained herein, nothing in this Declaration shall entitle an owner or guest to park in the driveway of another owner.

## ARTICLE VI

### **COVENANTS FOR ASSESSMENTS AND MAINTENANCE**

Section 1. Creation of Assessments. The developer for each platted living unit lot owned by him within The Meadows hereby covenants and each Owner of any lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be and hereby is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; (b) special assessments for capital improvements; and (c) special assessments for repairs and maintenance, all such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and the costs of collection thereof, shall be the personal obligation of the person who was the owner of each lot at the time when the assessment fell due and shall be a lien against each lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The Meadows. In the event the Developer decides to erect a community building as part of the development, which decision is solely at the discretion of the Developer, assessments may be used to lease and pay for the ongoing operating costs of such community building, including the costs of maintenance, taxes, insurance, repair and operation thereof.

Section 3. Initial Annual Assessment. Until modified as provided below, the annual assessment shall be \$900.00 per lot payable monthly as hereinafter provided. From and after the year beginning January 1, 2004, the annual assessment may be increased by a vote of the members as provided in Section 5 below. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, change the annual assessment to a lesser amount. The assessment for each platted living unit lot owned by the developer containing a completed unoccupied living unit shall be one-third of the annual assessment.

Section 4. Special Assessments. In addition to the annual assessments authorized by Section 3 above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying in whole or in part the costs of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of the membership who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of such meeting shall be sent by first class mail to all the members at least thirty (30) days in advance, and shall set forth the purpose of the meeting. The due date of any special assessments shall be fixed in the resolution authorizing such assessments.

Furthermore, the Association shall be entitled to assess any owner for the cost of any repairs authorized in Section 12 below.

Section 5. Change in Annual Assessments. During September of each year, there shall be a membership meeting of the Association to discuss the annual assessment and any other business of the Association. The Association may increase the assessments fixed by Section 3 hereof prospectively, provided that such increase shall have the assent of two-thirds (2/3) of the vote of the members who are voting in person or by proxy at a meeting called for such purpose, written notice of which shall be sent by first class mail at least thirty (30) days in advance.

Section 6. Quorum. Quorum for any action authorized under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called for such purpose, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Sections 4 and 5 and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than forty-five (45) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments. The annual assessment provided for herein shall commence on and be prorated to the date of closing of the sale of a living unit to an owner. The annual assessment for each lot owned by the developer upon which there is no completed living unit, shall commence on the first day of the calendar month subsequent to the date such lot contains a substantially completed living unit.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment at least thirty (30) days in advance of such date and shall maintain a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall be sent by first class mail to every Owner subject thereto. The Association shall upon demand furnish to any Owner liable for assessment, a certificate in writing signed by an officer of the Association setting forth whether the assessment has been paid. Such certificate shall be conclusive evidence of the payment of assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment. If the assessments are not paid on the date when due as specified herein, then such assessment shall become delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, become a continuing lien on the property which shall bind such properties in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory

period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and the Association may bring an action at law against the owner personally obligated to pay the same, or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event judgment is obtained, such judgment shall include interest, costs, reasonable attorney's fees as allowed by law, and any other expenses allowed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the common properties or abandonment of his lot.

Section 10. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money mortgage placed upon a lot subject to assessments; provided however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of a lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure; such sale or transfer shall not release a lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein;

- a. All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- b. All properties exempted from taxation by the laws of the State of South Dakota.
- c. All common properties as defined herein.

Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from assessments, charges or liens.

Section 12. Exterior and Interior Maintenance. In addition to maintaining the common area, the Association may, but shall not be obligated to, perform repairs and maintenance, and engage any subcontractors or contractors necessary to perform such maintenance on any or all of the buildings, including living units, in The Meadows including, without limitation, all exterior maintenance, such as repair and replacement of roofs, siding, masonry, gutters, downspouts, painting and staining, and other periodic maintenance to be performed on the buildings. Furthermore, the Association may assume the responsibility for certain interior repairs and maintenance, to the sewers, plumbing, heating, air conditioning and electrical systems to any and all buildings constructed as a part of The Meadows.

Section 13. Cost of Exterior and Interior Maintenance. The cost of any maintenance performed by the Association as allowed for and/or required by Section 12 above, shall be assessed to each lot owner and added to the annual assessment assessed to such lot. Where any such maintenance expense extends to more than one (1)

lot, the cost of such shall be rateably apportioned among the lots benefiting from such repair or improvements.

Section 14. Maintenance by Owners. Nothing in Section 12 or 13 above shall preclude or relieve an Owner from maintaining a living unit. Any repairs, improvements, and/or maintenance performed by an Owner must be accomplished in a workmanlike manner to the satisfaction of the Association and conform to the party wall agreement set forth herein. No repairs, improvements or maintenance may alter the aesthetics of the property, unless approved in advance as provided for in Article XI below. In the case of any dispute between an Owner and the Association concerning any such maintenance or repairs, the opinion of the Association shall prevail.

## **ARTICLE VII**

### **INSURANCE**

Section 1. Association Responsibility to Insure. Insurance policies upon the property covering the items described in Section 2 of this Article shall be purchased by the Association as trustee for the benefit of the Association and the Owners and their mortgagees as their interest may appear. Provisions shall be made for the issuance of certificates of mortgage endorsements to any mortgagees.

Section 2. Insurance Coverage. Insurance shall cover the following:

- a. All living units and buildings, all common properties and betterments, including improvements owned or operated and maintained for the benefit of the Association, and all personal fixtures and property included in the common properties in an amount equal to the insurable replacement value, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against "all risks" of direct physical loss or damage;
- b. Public liability of at least \$1,000,000 for each occurrence, and bodily injury and property damage liability and with such additional coverage as shall be required by the Board of Directors of the Association, including but not limited to hired automobile and non-owned automobile coverages, and with cross liability endorsement to cover liabilities of the Owners as a group to a townhouse Owner individually;
- c. Workmen's compensation as required by law; and
- d. Such other insurance, including a Fidelity Bond on the Association's agent handling its monies, as the Board of Directors of the Association shall determine from time to time is desirable.

Section 3. Premium Payment and Assessment. Premiums on insurance policies purchased by the Association shall be paid by the Association as a common expense of the Association with the exception of the "special form" insurance for direct physical loss or damage coverage on individual living units which shall be purchased by the Association, but shall be assessed and billed to each owner on a proportionate value basis, based upon the value each townhouse bears to all townhouses in the Meadows. The value

basis shall be equivalent to the original selling price of the living unit without any modification for one year after purchase, after which time the value basis shall be determined in a manner selected by the Board of Directors of the Association.

Section 4. Association Appointed Agent. The Association is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association, and to execute and deliver releases upon payment of claims.

Section 5. Owner Responsibility to Insure. The insurance of personal liability, personal property and improvements and betterments of individual living units, including any interest of an Owner in any improvements, modifications or changes in the limited use common area, shall be the individual responsibility and cost of the Owner. Nothing in this section shall require an Owner to provide insurance to any of the common properties.

Section 6. Lien for Premiums. The Association may, but shall not be required to, make payment of insurance premiums on behalf of any Owner who becomes delinquent in such payment. In the event the Association does make such payment, then such payment and the cost thereof shall be treated as if it was a part of the annual assessment described above and shall be a charge on the land and a continuing lien on the property for whose benefit such premium payment is made and also the personal obligation of the Owner of such property at the time when such premium payment is made.

Section 7. Proceeds Payable to Association. All insurance policies purchased by the Association shall provide that proceeds covering property losses shall be paid to the Association for the purposes herein provided. The Association shall receive such proceeds as are paid and hold them in trust for the benefit of the Owners and their mortgagees. Such proceeds on account of damage to common properties shall be paid to the Association for the common properties repair. Proceeds on account of townhouses shall be held for the Owners of damaged townhouses in proportion to the costs of repairing the damage suffered by each townhouse owner, which cost shall be determined by the Association. In the event a mortgagee endorsement has been issued to a townhouse, the share of the townhouse Owner shall be held in trust for the mortgagee and the townhouse owner as their interest may appear.

Section 8. Disbursements of Proceeds. Proceeds of insurance policies received by the Association shall be distributed as follows:

- a. All expenses of the Association incurred in connection with the insurance shall be first paid;
- b. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be expended for such repair or reconstruction. Any proceeds remaining after such repair shall be distributed to the Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a townhouse and may be enforced by such mortgagee;
- c. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the Owners and their mortgagees being payable jointly to them; this covenant is for the benefit of any mortgagee and may be enforced by such mortgagee.

## **ARTICLE VIII**

### **WHEN DAMAGED PROPERTY IS TO BE RECONSTRUCTED OR REPAIRED**

Section 1. Property Owned by the Association. If common properties or townhouses owned or operated and maintained for the benefit of the Association are damaged, they shall be reconstructed or repaired. The ASSOCIATION shall obtain reliable and detailed estimates of the cost to rebuild or repair so as to place the damaged property in condition as good as that before the casualty.

Section 2. Property Owned by an Owner. If damage occurs to a townhouse for which the responsibility of maintenance and repair is that of the Owner, then the Owner shall be responsible for all reconstruction and repair after casualty, being entitled to the insurance proceeds held by the Association as trustee. In the event casualty or damage occurs to more than one townhouse, the Association shall have the right, but no obligation, to hire such contractor or contractors as the Association deems necessary to complete the repairs, paying for such repairs out of the insurance proceeds.

Section 3. Approval. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original buildings or according to the plans and specifications approved by the Board of Directors of the Association or the architectural committee as provided in Article XI.

## **ARTICLE IX**

### **PROTECTIVE COVENANTS**

Section 1. Residential Use. No living unit shall be used except for residential purposes for a single family. The Developer and/or the Association may elect to construct a community building or maintenance buildings as are necessary for the benefit of the members.

Section 2. Prohibited Activities. No noxious or offensive activities shall be carried on upon any lot nor shall anything be done thereon which shall become an annoyance or nuisance. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot except that one dog or one cat or other small household pet may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. No automotive repair may be conducted on any lot except within a garage, however, no commercial automotive repair shall be conducted under any circumstances.

Section 3. Prohibited Residences. No trailer, basement, tent, shack, garage, barn, outbuilding or structure of a temporary character shall be used on any lot at any time as a residence either temporarily or permanently.

Section 4. Automobile and Recreational Vehicle Storage. No vehicle, recreational vehicle, boat, snowmobile, trailer, or unlicensed motor vehicle may be kept on any street, lot or limited use common area for a period of time in excess of five (5) days except within a garage.

Section 5. Trash Containers. No trash or debris shall be left on or in any lot except in approved containers. No trash receptacles or garbage cans shall be located outside of a building unless placed on a temporary basis only, awaiting pickup.

Section 6. Residency Restrictions. The number of residents in any living unit shall be limited to a family or household as defined in Article I of this Declaration, and by any rule, regulation, ordinance or statute.

Section 7. Miscellaneous Restrictions. Notwithstanding any omission in this Article IX, the use of any property included in this Declaration shall be restricted by any other limits expressed elsewhere in this Declaration, and by any rule, regulation, ordinance or statute.

## **ARTICLE X**

### **PARTY WALLS**

Section 1. General Rules to Apply. Each wall which is built as part of the original construction of the living units in The Meadows and placed on the dividing line between lots shall be a party wall, and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing necessary protection against such elements.

Section 5. Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owners' successors in title.

## **ARTICLE XI**

### **ARCHITECTURAL COMMITTEE**

Section 1. There shall be created an Architectural Committee which shall be responsible for reviewing the plans of all proposed repairs, additions, modifications or landscaping. The primary purpose of such Committee shall be to review and approve or deny written plans and drawings submitted by an Owner.

Section 2. The Architectural Committee shall consist of not less than three (3) nor more than seven (7) members to be selected annually by the Board of Directors of the Association, with the members to be chosen for varying terms so as to achieve staggered terms and continuity of membership of such Committee. As long as Developer shall own at least one lot or plot within The Meadows, Developer shall have the right to name one member to the

Architectural Control Committee. The Developer shall have the power to veto any action taken until the termination of the Class B membership as specified in Article III, Section 2. The Architectural Control Committee shall act on plans submitted to it within thirty (30) days. Failure of the Architectural Control Committee to act within said period shall entitle the owner to go directly to the Board of Directors to request approval of the submitted plans.

Section 3. No construction, change, modification or alteration for which plans are to be submitted to the Committee shall commence until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall be submitted to and approved in writing by the Architectural Committee as to the harmony of external design and location in relation to the surrounding structures and other such factors as the Architectural Committee considers necessary and relevant to maintain the aesthetics in The Meadows.

Section 4. Landscaping. Nothing contained in this Article shall entitle any Owner, individually, to landscape any of the common properties, with the exception of the area adjacent to patios and entry ways. All landscaping and maintenance of lawns and shrubs shall be the responsibility of the Association, with the exception of the exclusive easement areas described in Article XII, Section 1, and areas within the limited use common area approved for maintenance by owners as provided for in Article IV, Section 4.

## **ARTICLE XII**

### **EASEMENTS**

Section 1. Owners Easements. Owners shall have an easement and right of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot. However, the right of enjoyment and title of the Owner of each lot shall include the right of the Owner to an exclusive easement to areas occupied by roof overhangs, air conditioning compressors, decks, balconies, common utility installments and other appurtenances, which are part of the original construction of any living unit or which are added pursuant to the provisions of Article XI hereof.

Section 2. Extent of Association Easements. The rights and easements of enjoyment by the Owner of each lot and the title of such lot shall be subject to the rights of the Association to an easement on and over said lot for the purpose of installation and maintenance of necessary utilities, as well as landscaping described in Article XI, Section 4.

Section 3. Access and Utility Easements. There is hereby reserved and created a blanket easement upon, across, over, and under The Meadows for each townhouse thereon for ingress and egress to allow installation, replacement, repairing and maintaining all utilities. By virtue of this easement it shall be expressly permissible for any governmental body or public utility to install, erect, repair, replace and maintain any and all equipment necessary or appropriate for providing utility services within the development. In the event it should be necessary to enter an individual townhouse for these purposes, notice shall be given to the Owner thereof and, where possible, permission obtained if it cannot be accomplished without unreasonable delay. These easements shall in no way affect any other recorded easements on the premises

and shall be appurtenant to each lot and shall pass with title to each lot whether specifically recited on such deed or not.

**ARTICLE XIII**

**GENERAL PROVISIONS**

Section 1. Duration. The covenants, restrictions and easements of Declaration shall run with the land and bind and inure to the benefit of and be enforceable by the Association or the Owner of any lot, their respective legal representatives, heirs, successors and assigns, for a period of twenty (20) years from the date this Declaration is recorded, after which time said covenants, restrictions and easements shall be automatically extended for a period of ten years, with successive ten (10) years extensions thereafter. Amendments to this Declaration may be affected by a two-thirds (2/3) vote of the members of the Association. Any amendments to this Declaration must be recorded.

Section 2. Severability. Invalidation of any one of these covenants and restrictions by judgment or Court order shall in no way affect the remaining provisions.

Section 3. Notice. Any notice to be given pursuant to this Declaration shall be given to the Owner of any lot at the legal address in writing by certified or first class mail. Notice to the Association shall be by certified mail to the registered agent of the Association as set forth in the Articles of Incorporation for the Association or as later amended.

Section 4. Waiver. Failure of the Association or any Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

Section 5. Attorney's Fees. Any property owner violating any of the covenants and restrictions provided herein shall, in addition to any other damages, be liable and responsible for attorney's fees and costs that may result from the specific enforcement of these covenants.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants and Restrictions to be executed this 25<sup>th</sup> day of FEBRUARY, 2003.

DAKOTA COMMONS, L.L.C., a South  
Dakota Limited Liability Company

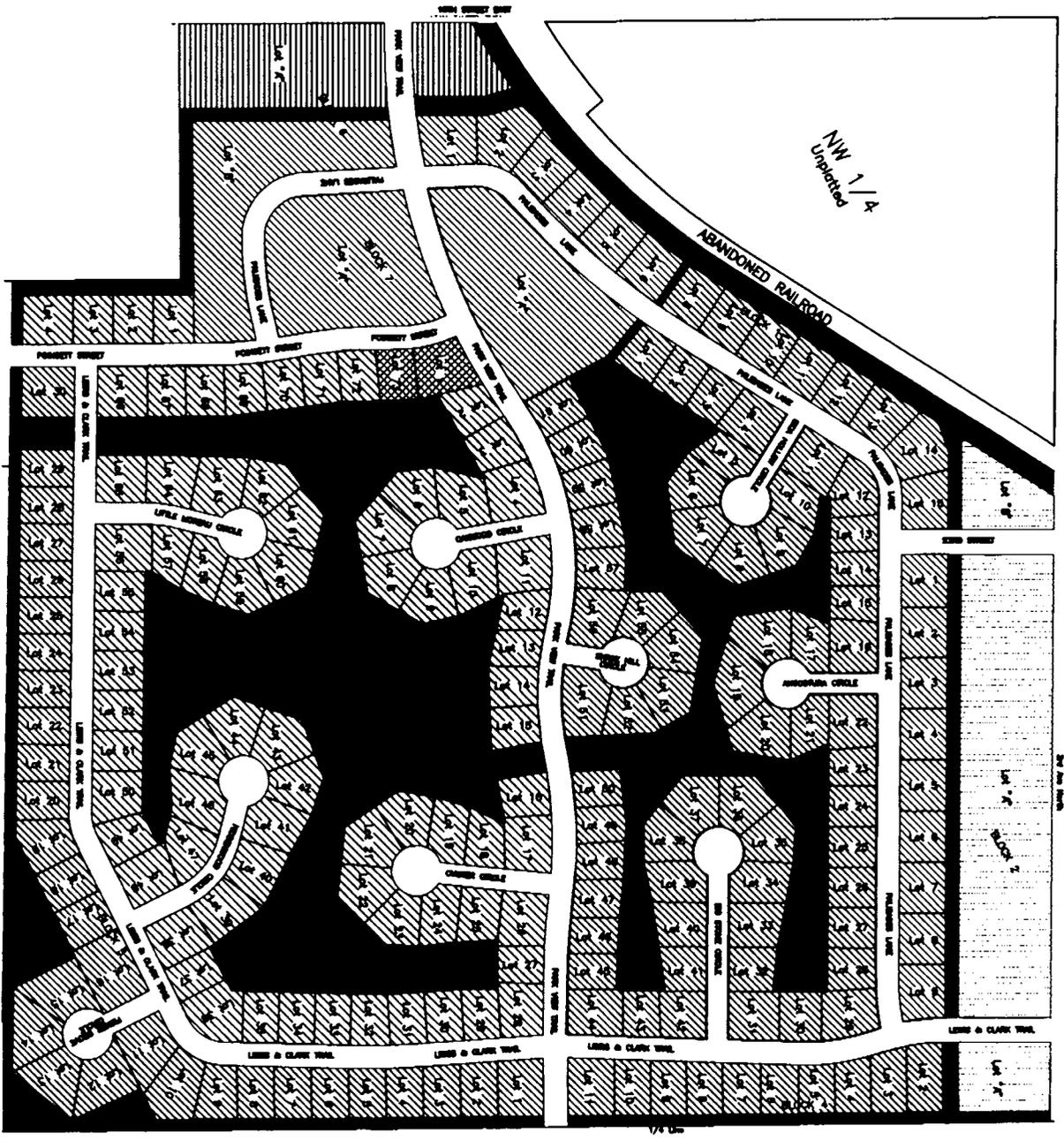
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BY: 

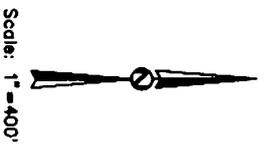
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# DAKOTA COMMONS GENERAL PLAN OF DEVELOPMENT



Lines show conceptual locations of future streets and lots and may be subject to change

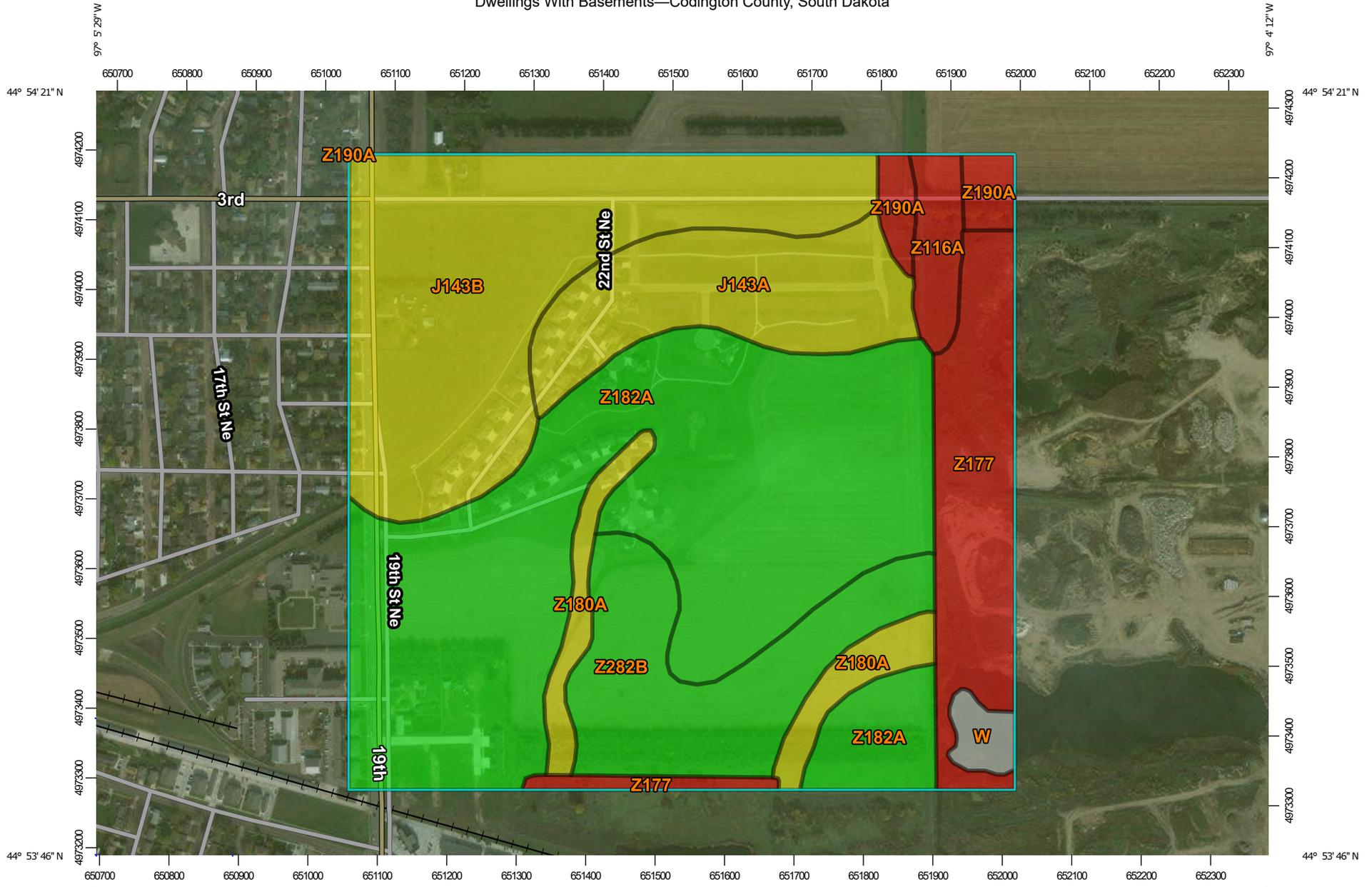


**PROPOSED TYPE OF USES**

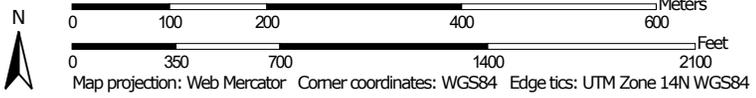
- R-1 - Single Family Residential
- Single Family Duplexes
- R-2 - Planned Area for "The Meadows" & Possible Twin Homes
- R-3 - Multi Family Residential
- C-2 - Local Commercial District
- Site of Possible Community Building & Parking

# EXHIBIT "C"

Dwellings With Basements—Codington County, South Dakota

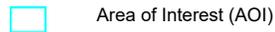


Map Scale: 1:7,720 if printed on A landscape (11" x 8.5") sheet.



## MAP LEGEND

### Area of Interest (AOI)



Area of Interest (AOI)

### Background



Aerial Photography

### Soils

#### Soil Rating Polygons



Very limited



Somewhat limited



Not limited



Not rated or not available

#### Soil Rating Lines



Very limited



Somewhat limited



Not limited



Not rated or not available

#### Soil Rating Points



Very limited



Somewhat limited



Not limited



Not rated or not available

### Water Features



Streams and Canals

### Transportation



Rails



Interstate Highways



US Routes



Major Roads



Local Roads

## MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:12,000.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service

Web Soil Survey URL:

Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Codington County, South Dakota

Survey Area Data: Version 23, Sep 16, 2019

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Feb 25, 2016—Oct 21, 2016

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

## Dwellings With Basements

Map unit symbol	Map unit name	Rating	Component name (percent)	Rating reasons (numeric values)	Acres in AOI	Percent of AOI
J143A	Kranzburg-Brookings silty clay loams, 0 to 2 percent slopes	Somewhat limited	Kranzburg (65%)	Depth to saturated zone (0.56)	21.0	9.7%
				Shrink-swell (0.08)		
J143B	Kranzburg-Brookings silty clay loams, 1 to 6 percent slopes	Somewhat limited	Kranzburg (70%)	Depth to saturated zone (0.56)	48.7	22.5%
				Shrink-swell (0.08)		
W	Water	Not rated	Water (100%)		2.2	1.0%
Z116A	McKranz-Hidewood, frequently flooded, silty clay loams, 0 to 2 percent slopes	Very limited	McKranz (65%)	Depth to saturated zone (1.00)	4.6	2.1%
				Shrink-swell (0.40)		
			Hidewood, frequently flooded (25%)	Flooding (1.00)		
				Depth to saturated zone (1.00)		
				Shrink-swell (0.50)		
			Brookings (5%)	Depth to saturated zone (1.00)		
				Shrink-swell (0.50)		
			Badger (3%)	Flooding (1.00)		
				Depth to saturated zone (1.00)		
				Shrink-swell (1.00)		
			Rauville, frequently flooded (2%)	Flooding (1.00)		
				Depth to saturated zone (1.00)		
Shrink-swell (0.09)						
Z177	Udorthents, coteau (gravel pits)	Very limited	Udorthents, gravelly (85%)	Slope (1.00)	21.0	9.7%
			Sioux (4%)	Slope (1.00)		

Map unit symbol	Map unit name	Rating	Component name (percent)	Rating reasons (numeric values)	Acres in AOI	Percent of AOI
Z180A	Goldsmith silty clay loam, coteau, 0 to 2 percent slopes	Somewhat limited	Goldsmith (80%)	Shrink-swell (0.01)	8.4	3.9%
			Brandt (10%)	Shrink-swell (0.08)		
Z182A	Estelline silt loam, coteau, 0 to 2 percent slopes	Not limited	Estelline (90%)		84.5	39.0%
			Renshaw (4%)			
Z190A	Brookings silty clay loam, 0 to 2 percent slopes	Very limited	Brookings (90%)	Depth to saturated zone (1.00)	3.9	1.8%
				Shrink-swell (0.01)		
			Badger (3%)	Flooding (1.00)		
				Depth to saturated zone (1.00)		
				Shrink-swell (1.00)		
			Mckranz (2%)	Depth to saturated zone (1.00)		
				Shrink-swell (0.40)		
			Tonka, undrained (1%)	Ponding (1.00)		
Depth to saturated zone (1.00)						
Shrink-swell (0.69)						
Z282B	Estelline-Kampeska silt loams, 2 to 6 percent slopes	Not limited	Estelline (50%)		22.5	10.4%
			Kampeska (35%)			
			Sioux (3%)			
<b>Totals for Area of Interest</b>					<b>216.9</b>	<b>100.0%</b>

Rating	Acres in AOI	Percent of AOI
Not limited	107.0	49.3%
Somewhat limited	78.1	36.0%
Very limited	29.5	13.6%
Null or Not Rated	2.2	1.0%
<b>Totals for Area of Interest</b>	<b>216.9</b>	<b>100.0%</b>

## Description

Dwellings are single-family houses of three stories or less. For dwellings with basements, the foundation is assumed to consist of spread footings of reinforced concrete built on undisturbed soil at a depth of about 7 feet.

The ratings for dwellings are based on the soil properties that affect the capacity of the soil to support a load without movement and on the properties that affect excavation and construction costs. The properties that affect the load-supporting capacity include depth to a water table, ponding, flooding, subsidence, linear extensibility (shrink-swell potential), and compressibility. Compressibility is inferred from the Unified classification of the soil. The properties that affect the ease and amount of excavation include depth to a water table, ponding, flooding, slope, depth to bedrock or a cemented pan, hardness of bedrock or a cemented pan, and the amount and size of rock fragments.

The ratings are both verbal and numerical. Rating class terms indicate the extent to which the soils are limited by all of the soil features that affect the specified use. "Not limited" indicates that the soil has features that are very favorable for the specified use. Good performance and very low maintenance can be expected. "Somewhat limited" indicates that the soil has features that are moderately favorable for the specified use. The limitations can be overcome or minimized by special planning, design, or installation. Fair performance and moderate maintenance can be expected. "Very limited" indicates that the soil has one or more features that are unfavorable for the specified use. The limitations generally cannot be overcome without major soil reclamation, special design, or expensive installation procedures. Poor performance and high maintenance can be expected.

Numerical ratings indicate the severity of individual limitations. The ratings are shown as decimal fractions ranging from 0.01 to 1.00. They indicate gradations between the point at which a soil feature has the greatest negative impact on the use (1.00) and the point at which the soil feature is not a limitation (0.00).

The map unit components listed for each map unit in the accompanying Summary by Map Unit table in Web Soil Survey or the Aggregation Report in Soil Data Viewer are determined by the aggregation method chosen. An aggregated rating class is shown for each map unit. The components listed for each map unit are only those that have the same rating class as listed for the map unit. The percent composition of each component in a particular map unit is presented to help the user better understand the percentage of each map unit that has the rating presented.

Other components with different ratings may be present in each map unit. The ratings for all components, regardless of the map unit aggregated rating, can be viewed by generating the equivalent report from the Soil Reports tab in Web Soil Survey or from the Soil Data Mart site. Onsite investigation may be needed to validate these interpretations and to confirm the identity of the soil on a given site.

## Rating Options

### *Aggregation Method: Dominant Condition*

Aggregation is the process by which a set of component attribute values is reduced to a single value that represents the map unit as a whole.

A map unit is typically composed of one or more "components". A component is either some type of soil or some nonsoil entity, e.g., rock outcrop. For the attribute being aggregated, the first step of the aggregation process is to derive one attribute value for each of a map unit's components. From this set of component attributes, the next step of the aggregation process derives a single value that represents the map unit as a whole. Once a single value for each map unit is derived, a thematic map for soil map units can be rendered. Aggregation must be done because, on any soil map, map units are delineated but components are not.

For each of a map unit's components, a corresponding percent composition is recorded. A percent composition of 60 indicates that the corresponding component typically makes up approximately 60% of the map unit. Percent composition is a critical factor in some, but not all, aggregation methods.

The aggregation method "Dominant Condition" first groups like attribute values for the components in a map unit. For each group, percent composition is set to the sum of the percent composition of all components participating in that group. These groups now represent "conditions" rather than components. The attribute value associated with the group with the highest cumulative percent composition is returned. If more than one group shares the highest cumulative percent composition, the corresponding "tie-break" rule determines which value should be returned. The "tie-break" rule indicates whether the lower or higher group value should be returned in the case of a percent composition tie. The result returned by this aggregation method represents the dominant condition throughout the map unit only when no tie has occurred.

### *Component Percent Cutoff: None Specified*

Components whose percent composition is below the cutoff value will not be considered. If no cutoff value is specified, all components in the database will be considered. The data for some contrasting soils of minor extent may not be in the database, and therefore are not considered.

### *Tie-break Rule: Higher*

The tie-break rule indicates which value should be selected from a set of multiple candidate values, or which value should be selected in the event of a percent composition tie.