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AMD \$46.00

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RYLAND GROUP INC  
7599 ANAGRAM DR  
EDEN PRAIRIE MN 55344

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**Office of the County Recorder  
Scott County, Minnesota  
James L. Hentges, County Recorder**

**AMENDED AND RESTATED  
DECLARATION  
OF  
EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DAKOTA CROSSING**

**This instrument drafted by:**  
Hellmuth & Johnson (NTP)  
8050 W. 78<sup>th</sup> St.  
Edina, MN 55439  
(952) 941-4005

**AMENDED AND RESTATED DECLARATION  
OF  
EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DAKOTA CROSSING**

**THIS AMENDED AND RESTATED DECLARATION** is made as of the 6 day of April, 20 15, by THE RYLAND GROUP, INC., a Maryland corporation (hereinafter referred to as “Declarant”).

**WHEREAS**, there are filed of record in the office of the Scott County Recorder a certain Declaration of Easements, Covenants, Conditions and Restrictions for Dakota Crossing recorded November 20, 2013, as Document No. A949543 (the “Original Declaration”); and

**WHEREAS**, the Original Declaration established a plan for the use, operation, maintenance and preservation of the real estate described in Exhibit A attached hereto (the “Property”); and

**WHEREAS**, pursuant to Article XVI, Section 3a, the Original Declaration may be amended by the Declarant, only, at its discretion, until Declarant is no longer the Owner of any Lot in the Property and a certificate of occupancy has been issued to the City with respect to every Lot therein”; and

**WHEREAS**, the Declarant still owns at least one Lot in the Property, and desires to amend and restate the Original Declaration in accordance herewith; and

**WHEREAS**, this Community is exempt from the provisions of the Minnesota Common Interest Community Act pursuant to Minnesota Statutes § 515B.1-102(e)(2).

**NOW THEREFORE**, Declarant hereby declares that the Property and any additions thereto shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, restrictions, easements, charges and liens set forth herein, 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 any right, title or interest in the said properties hereinafter described or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof; and that the Original Declaration shall be revoked and superseded in its entirety by this Declaration upon its recording.

**ARTICLE I**

**DEFINITIONS**

Section 1. **“Association”** shall mean Dakota Crossing Homeowners Association, a Minnesota nonprofit corporation.

Section 2. **“City”** shall mean the City of Shakopee, a Minnesota municipal corporation.

Section 3. **“Common Elements”** shall mean those portions of the Property, if any, other than the Lots. As of the date of the recording of this Declaration, there are no Common Elements.

Section 4. “Common Expenses” shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including, without limitation, allocations to reserves.

Section 5. “Declarant” shall mean and refer to THE RYLAND GROUP, INC., a Maryland corporation.

Section 6. “Governing Documents” shall mean this Declaration, the Bylaws and Articles of Incorporation of the Association, as each may be amended from time to time.

Section 7. “Living Unit” shall mean a single residential housing unit consisting of a group of rooms and hallways, which are designed or intended for use as living quarters for one family.

Section 8. “Lot” shall mean and refer to any tract or parcel of land shown upon any recorded plat or subdivision map of the Properties, whenever such plat or subdivision map, as amended, replatted or further subdivided, shall be made of record.

Section 9. “Member” shall mean any person or entity holding membership in the Association as provided in Article IV hereof.

Section 10. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot subject to the Declaration, but shall not mean or refer to the mortgagee of any such Lot unless and until such mortgagee has acquired title pursuant to foreclosure of said mortgage and the period within which the fee owner may redeem from such foreclosure has terminated. Where any such Lot is being sold by the fee owner to a contract vendee who is entitled to possession of the Lot, the contract vendee shall be considered the “Owner” of the Lot.

Section 11. “Property” or “Properties” shall mean and refer to that certain real property described in Article II of this Declaration, and such additions thereto as may hereafter be brought within the scope of this Declaration.

Section 12. “Rules and Regulations” shall any Rules and Regulations promulgated by the Association pursuant to Article XV, Section 1 hereof.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Properties. The real estate which is and shall be held, transferred, sold, conveyed, occupied and used subject to the Declaration is located in the City of Shakopee, County of Scott, and State of Minnesota and is more particularly described on Exhibit A attached hereto and incorporated herein by reference.

## ARTICLE III

### GENERAL RESTRICTIONS, OBLIGATIONS AND PROPERTY RIGHTS OF OWNERS

Section 1. Living Unit Restriction. No Living Unit shall be used for purposes other than single-family residence, nor shall any trade or business of any kind be carried on within a

Living Unit or upon a Lot, provided that none of the following activities shall be considered a violation of this covenant:

- a) An Owner may use a portion of such Owner's residence for home office purposes, provided that the Owner shall not employ or engage the services of more than one other person, not related to the Owner, to be performed in the residence for any trade of business purpose, nor shall there be excessive traffic into or out of the Owner's residence or Lot; nor shall any business signage be placed upon the Lot or any structures located on a Lot.
- b) An Owner may employ or engage the services of a person or persons to provide home maintenance, child care and/or other domestic services for the benefit of the Owner and other occupants of the residence located upon a Lot.
- c) An Owner may conduct a home-based day care business upon such Owner's Lot in compliance with all state and local statutes, laws, ordinances, rules and regulations, including Rules and Regulations that may be established by the Association.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Membership. Every Owner of a Lot subject to assessment, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be a member. An Owner of more than one Lot shall be entitled to one membership for each such Lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. No person or entity other than an Owner or Declarant may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to that Lot. An Owner may, however, assign voting rights to a mortgagee or contract purchaser.

Section 2. Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, and except upon the transfer of the record title of a Lot and then only to such transferee by assignment, intestate succession, testamentary disposition, foreclosure of mortgage of record, or other legal process. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a member, in its sole discretion. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the transferee of title of such Lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

Section 3. Voting. The Association shall have two (2) classes of voting membership:

*Class A:* Class A Members shall be all Members with the exception of Declarant. Subject to Section 3.2 of the Bylaws of the Association, and the provisions of this Section, Class A Members shall be entitled to one (1) vote for each Lot owned.

*Class B:* Class B Members shall be the Declarant, which shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be

converted to Class A membership upon the happening of the first to occur of the following events:

- (i) when the total votes of Members outstanding in the Class A Membership equal the total votes outstanding in favor of the Declarant in the Class B Membership;
- (ii) on December 31, 2023; or
- (iii) on voluntary conversion of the Class B Membership by the Declarant to Class A Membership.

As used herein, reference to the "period of Declarant control" shall mean, with respect to the Association, the period commencing on the date hereof through and including the date of termination of all Class B Membership interest in the Association.

When more than one person holds title to 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 one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other person has filed a general voting authority with the Secretary applicable to all votes until rescinded.

Section 4. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Declaration for a period of thirty (30) days, such Owner's right to vote as a member of the Association may be suspended by the Board and shall remain suspended until all payments are brought current and all defaults remedied.

## ARTICLE V

### COMMON EXPENSES

Section 1. General. Subject to the provisions of Section 6.4 of the Bylaws, the Association shall have the authority to contract for and expend money for the purposes of enforcing the covenants and restrictions contained in this Declaration, and for incidental purposes relating to its operation as described in the Declaration and the Association's Bylaws. Such expenditures will be deemed Common Expenses.

Section 2. Capital Contribution. At the time of the initial sale of any Lot from Declarant to any Owner, such Owner shall pay to Declarant for the use by the Association a sum equal to one sixth (1/6) of the annual assessment in effect as of the date of closing of such sale. If no annual assessment has been levied at the time of closing, then the capital contribution shall be \$ \_\_\_\_\_. Such sum shall be delivered by Declarant to the Association for use as described in this Declaration. The Capital Contribution for any Lot shall be levied only upon the sale by Declarant to an Owner and shall not be levied on any subsequent sales of the Lot.

## ARTICLE VI

### ASSESSMENTS

Section 1. Personal Obligation; Lien. Declarant, for each Lot owned by it within the Property, hereby covenants, and each Owner of a Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed therein, shall be and is deemed to covenant and hereby agrees to pay to the Association; (a) annual assessments or charges, which shall be payable in regular installments and shall include, but not be limited to, Common Expenses, and (b) special assessments, such assessments to be established and collected as hereinafter provided. Any assessments authorized herein, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for special assessments) against the Lot assessed. Such annual assessments shall be due and payable in annual, semi-annual, quarterly or monthly installments, at the discretion of the Board. Each assessment, together with interest, costs and reasonable attorneys' fees, also shall be the personal obligation of the person who was the Owner of such Lot on the date said assessment became due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a statement of lien for such assessments shall have been filed in writing with the County Registrar of Titles/Recorder (as appropriate) for Scott County, Minnesota. No Owner shall escape liability for the assessments which fell due while he was the owner by reason of non-use, transfer or abandonment of his Lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the common expenses described in this Declaration.

Section 3. Special Assessments. In addition to the annual assessments authorized above, the Board 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 cost of any unforeseen or unbudgeted common expense, including without limitation the unexpected construction, reconstruction, repair or replacement of a capital improvement and including fixtures and personal property related thereto.

Section 4. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except that the Declarant, or any Lot owned by it, shall not be liable, or subject to a lien for, any assessment until the Dwelling within the Lot is completed and certified by the City ready for occupancy as a residence.

Section 5. Surcharges. The Association, in accordance with reasonable and uniform standards, may add to the assessments for a particular Lot or Lots a surcharge for maintenance expenses directly caused by the negligent or willful act of the Owner, resident or invitee of such Lot.

Section 6. Commencement of Initial Annual Assessments. Subject to the provisions of Section 4, above, with regard to Declarant's liability for assessments, the obligation of any Owner to pay assessments shall commence at the *later* of (i) the time at which the Owner acquires title to the Lot, or (ii) the due date of the first assessment levied by the Board, which levy shall be made at the discretion of the Board. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

Section 7. Commencement of Annual Assessments. By November 30<sup>th</sup> of each year, the Board shall fix the amount of annual assessments against each Lot for the following fiscal year and shall send written notice thereof to each Owner. The due date for payment of annual

assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments, it shall adopt a budget for the following fiscal year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

Section 8. Proof of Payment. Upon written demand of an Owner or first mortgagee, at any time and for a reasonable charge, the Association shall furnish a written certificate signed by an officer or agent of the Association setting forth whether there are any then-unpaid annual or special assessments levied against such Owner's or first mortgagee's Lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid, and of any maintenance assessments and surcharges stated therein as paid.

Section 9. Nonpayment of Assessments. Any assessments which are not paid when due shall be deemed delinquent. In the event of a default of more than thirty (30) days in payment of any assessment or installment thereof, the Board may accelerate the remaining installments of the assessment due in the current assessment year upon ten (10) days' written notice thereof to the Owner, and thereupon the entire unpaid balance of the assessment with all accrued interest and penalties shall become due and payable upon the date stated in the notice. If an annual, semi-annual, quarterly or monthly assessment is not paid by the tenth (10<sup>th</sup>) day of the month when it is due, the Board may assess a service charge in an amount determined by the Board, and such shall become a continuing lien in favor of the Association on the Lot against which assessed and the improvements thereon, and the Association (or any Owner acting in the name and for the benefit of the Association) may bring an action at law or in equity against the person personally obligated to pay the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit. There shall be no right of set-off against the Association based upon a failure to provide services or for money owed by the Association to the Owner.

Section 10. Recording and Enforcement of Liens. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, the name of the person personally obligated to pay the same, and a description of the Lot. Such a notice shall be signed by an officer of the Association, and it or a notice of lien or adverse claim thereof may be recorded in the office of the County Registrar of Titles/Recorder (as appropriate) for Scott County, Minnesota. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days. Upon such a delinquency for thirty (30) days, the Association shall proceed promptly to enforce the lien or, in its discretion, to sue the person personally liable to pay the lien for the delinquency. Such lien shall be enforced by action or by power of sale, which is hereby deemed granted by each Owner, at the option of foreclosing party, in the same manner in which mortgages on real property containing a power of sale may be foreclosed in Minnesota, provided, however, that the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees authorized by the declaration or bylaws, notwithstanding the provisions of Minn. Stat. Section 582.01, subdivisions 1 and 1a. In any such foreclosure, the person personally obligated to pay the lien shall be required to pay all costs of foreclosure including interest, costs, and all reasonable attorneys' fees, notwithstanding the provisions of Minn. Stat. §582.01, Subd. 1 and 1a. All such interest, costs, and expenses shall be secured by the lien being foreclosed. The person personally obligated to pay the lien also shall be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the foreclosed interest in the Lot as the Owner thereof.

The Association shall, upon written request, report to any encumbrancer of a Lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due, provided, however, that such encumbrancer first shall have furnished to the Association written notice of such encumbrance.

Section 11. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of the first mortgage or remedies provided in the mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which accrued prior to acquisition of title pursuant to such sale or transfer. Notwithstanding the foregoing, if (i) a first mortgage on a Lot is foreclosed, and (ii) no Owner redeems during the Owner's period of redemption provided by Minnesota Statutes Chapters 580, 581 or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Lot subject to unpaid assessments for Common Expenses levied pursuant to this Declaration which became due, without acceleration, during the six (6) months immediately preceding the first day following the end of the Owner's period of redemption. No such sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming due or from the lien thereof or shall relieve the person personally obligated to pay the lien of personal liability for assessments due prior to such sale or transfer or acquisition of premises. Any delinquent assessments, the lien for which is extinguished by reason of this provision, may be reallocated and assessed to all Lots as a Common Expense.

## ARTICLE VII

### OTHER RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Services. The Association may obtain and pay for the services of any persons or entities, to manage the affairs of the Association, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper discharge of its duties, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with its work or the enforcement of this Declaration.

Section 2. Maintenance Obligations of the Association. The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance," unless specifically stated otherwise) of the Common Elements, if any. The Association shall be responsible for repair and replacement of any entrance monument identifying the Dakota Crossing community located on the Property (exclusive of surrounding plantings, if any, and equipment, if any, used in the irrigation or lighting of the monument and surrounding area, including all plumbing, wiring and underground utilities).

Section 3. Maintenance of Entrance Monument. The Owner of the Lot upon which any entrance monument identifying the Dakota Crossing community is located shall be responsible for the maintenance of grass and plantings, if any, surrounding the entrance monument and any equipment, if any, used in irrigation and lighting of the monument and surrounding areas, including all plumbing, wiring and underground utilities.

Section 4. Maintenance Obligations of Owners. The Owner of a Lot shall be solely responsible for all maintenance, repair and replacement (collectively referred to as "maintenance") of all portions of his or her Lot and Living Unit, including, but not limited to (i) maintenance of landscaping and lawn, including all boulevard trees; (ii) maintenance of roof and all exterior building surfaces; (iii) maintenance of all interior portions of the Living Unit; (iv) maintenance of



walkways located within a Lot, from Living Unit to sidewalk, including removal of snow therefrom; (v) maintenance of driveways, including snow removal; (vi) snow removal from any portion of any sidewalk (public or private) abutting the Owner's Lot; and (vii) maintenance, repair and replacement of mailboxes, in accordance with standard established by the United States Postal Service. Notwithstanding anything to the contrary contained elsewhere herein, the Association may require that any mailbox installed on the Property comply with specific uniform criteria established by the Association, provided such criteria shall, *at a minimum*, comply with the standards of the United States Postal Service. If any Owner fails or refuses to maintain such Owner's Lot and improvements thereto, the Association may, but is not obligated to, perform the necessary maintenance and assess the costs thereof to the affected Lot and its Owner.

Section 5. Optional Maintenance by Association. In addition to the maintenance described in Section 2 of this Article VII, the Association may, with the approval of a majority of Owners who have authority to cast in excess of fifty percent (50%) of the total votes in the Association in person or by proxy at a meeting called for such purposes, undertake to provide ground services (landscaping, snow removal) to the Lots.

Section 6. Damage Caused by Owner. Notwithstanding any provision to the contrary in this Section, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of any Owner or Occupant, or their guests, or by a condition in a Lot or Living Unit which the Owner or Occupant has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter upon any Lot to do so), and the cost thereof may be assessed against the Lot of the Owner responsible for the damage.

Section 7. Maintenance Responsibilities Defined by Board of Directors. Notwithstanding any provisions to the contrary, the Board of Directors shall have the sole and exclusive authority to define the scope of maintenance and repair to be provided by the Association. The Board of Directors is hereby vested with the authority to interpret the Governing Documents and rule on any ambiguities contained therein. The Owners shall be legally bound by any decisions of the Board of Directors pertaining to the determination of the Association's maintenance obligations and the scope and extent thereof.

## ARTICLE VIII

### INSURANCE

Section 1. Maintenance of Insurance. Commencing not later than the time of the first conveyance of a Lot to an Owner other than Declarant, the Association shall maintain

- (a) Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of property owned by the Association, whether real or personal. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available.
- (b) Comprehensive public liability insurance covering the use, operation and maintenance of property owned by the Association, whether real or personal, with minimum limits of \$1,000,000 per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement which shall preclude the

insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants.

- (c) Fidelity bond, crime or insurance coverage against dishonest acts on the part of directors, officers, manager, trustees, employees or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board. The fidelity bond or insurance shall name the Association as the named insured and shall be written in an amount equal to the greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond in force, or (ii) a sum equal to three months aggregate assessments on all Lots plus reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers, or a waiver of defense based upon the exclusion of persons serving without compensation shall be added.
- (d) Workers' Compensation insurance as required by law.
- (e) Directors and officers' liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.
- (f) Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

***The Association shall not be required to insure any Lot or Living Unit.***

Section 2. Premiums; Improvements; Deductibles. All insurance premiums shall be assessed and paid as a Common Expense. The Association may, in the case of a claim for damage resulting from the acts or omissions of a Lot Owner or Occupant or their guest, licensee or invitee, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Lots of such Owner in any reasonable manner, or (iii) require the Owner of the Lot causing the damage affected to pay the deductible amount directly. The Association's decision as to who shall be charged with paying the deductible amount may, but need not, be based upon fault.

Section 3. Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it). The Association, or any insurance trustee selected by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy maintained by the Association.

Section 4. Waivers of Subrogation. All policies of insurance shall contain waivers of subrogation by the insurer against the Association, or an Owner, members of the Owner's household, officers or directors, as applicable, and, if available, waivers of any defense based on co-insurance or of invalidity from any acts of the insured. Nothing in this section shall prohibit any Owner from subrogating his or her individual insurance coverage (as differentiated from the insurance obtained and maintained by the Association) against the individual insurance coverage of another Owner.

Section 5. Cancellation; Notice of Loss. All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be canceled or substantially modified, for any reason, without at least 30 days prior written notice to the Association.

Section 6. Restoration in Lieu of Cash Settlement. All policies of property insurance maintained by the Association shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable (i) without the prior written approval of the Association (or any Insurance Trustee) or (ii) when in conflict with provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law.

Section 7. No Contribution. All policies of insurance maintained by the Association shall be the primary insurance where there is other insurance in the name of the Owner covering the same property, and may not be brought into contribution with any insurance purchased by Owners. Nothing in this section shall prohibit an Owner's individual insurance coverage (as differentiated from the insurance obtained and maintained by the Association) from providing "gap coverage" for any deductible under the Association's policy assessed to an Owner pursuant to Section 3 hereof.

Section 8. Effect of Acts Not Within Association's Control. All policies of insurance maintained by the Association shall provide that the coverage shall not be voided by or conditioned upon (i) any act or omission of an Owner, unless acting within the scope of authority on behalf of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

## ARTICLE IX

### RIGHTS FOR THE PROTECTION OF FIRST MORTGAGEES

Section 1. Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 2. Liability for Unpaid Assessments. Any first mortgagee who obtains title to or comes into possession of a Lot pursuant to the remedies provided in the mortgage or by foreclosure of the mortgage or by deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale shall not be liable for the unpaid assessments of the Lot which accrue prior to the acquisition of title or possession to such Lot by the mortgagee, except (i) as provided in Article VI, or (ii) any unpaid assessments or charges with respect to the Lot may be reallocated equally among all Lots.

Section 3. Examination of Books and Records. First mortgagees, including holders, insurers and guarantors of first mortgages shall have the right to examine the books and records of the Association, as set forth more fully in the Bylaws.

## ARTICLE X

### ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment of Architectural Control Committee. There is hereby created an Architectural Control Committee (ACC) to regulate and enforce the terms, conditions, covenants and restrictions of this Declaration as more fully provided herein.

Section 2. Committee Membership. Unless otherwise provided by the Board, the Architectural Control Committee shall consist of the members of the Board. During the period of Declarant Control provided in Article IV Section 3 hereof, Declarant shall have the authority and power to appoint successors and/or replacements by duly recorded instrument until (i) Declarant has

conveyed fee title to all Lots within the Property, *and* (ii) a Living Unit has been constructed and a certificate of occupancy has been issued on each and every Lot.

Section 3. Review by Committee. For so long as the Board shall exist, no building, structure, fence, swimming pool, tennis court, or other structure shall be commenced, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration therein (generally referred to herein as "Alterations") be made until the plans and specifications showing the nature, kind, shape, height, materials, color, surrounding landscaping, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by a majority of the Board. For all proposed construction or improvements of a permanent nature proposed to be placed upon any Lot, the following procedures shall govern requests for Alterations under this Article:

- (a) Complete detailed plans, specifications and related information regarding any proposed Alteration, in form and content acceptable to the Board, shall be submitted to the Board at least ninety (90) days prior to the projected commencement of construction. Lot Owner shall, at a minimum, comply with the restrictions set forth in Article XI hereof. No Alterations shall be commenced prior to approval.
- (b) The Board shall give the Owner written notice of approval or disapproval. If the Board fails to approve or disapprove within ninety (90) days after receipt of said plans and specifications and all other information requested by the Board, then approval shall be deemed denied.
- (c) If no request for approval is submitted, approval is denied.
- (d) All fees and costs incurred by the Association in conjunction with any such request for approval, including attorneys' fees and costs or fees and costs of other professionals, shall be borne by the requesting party. Any such fee or cost which the requesting party fails to pay shall be assessed to the subject Lot and Owner of such Lot, and shall be a lien against such Lot and the personal obligation of such Lot Owner in the same manner and with the same priority and effect as assessments under Article VI hereof.
- (e) The Declarant is exempt from the provisions of this Article.

Section 4. Remedies for Violations. The Association may undertake any measures, legal or administrative, to enforce compliance with this Article and shall be entitled to recover from the Owner causing or permitting the violation all attorneys' fees and costs of enforcement, whether or not legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Lot and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Lot and to restore any part of the Living Unit or Lot to its prior condition if any Alterations were made in violation of this Article, and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Lot.

Section 5. Modification to Allow Access to the Disabled. Subject to the provisions of applicable law, an Owner, at Owner's expense, may make improvements or Alterations to a Lot as necessary for the full enjoyment of the Lot by any person residing in the Lot who has a handicap or disability, as provided in the Fair Housing Amendments Act, United States Code, Title 42, Section 3601, *et seq.*, and the Minnesota Human Rights Act, Chapter 363, and any amendments to those acts. The Association may not prohibit such improvements or Alterations referred to in this Section 5, but may reasonably regulate the type, style and quality of the improvements or Alterations as they relate to health, safety and architectural standards.

Section 6. Hold Harmless. The Owner who causes an Alteration to be made, regardless of whether the Alteration is approved by the Board, shall be solely responsible for the construction standards and specifications relating to the Alteration, and the construction work. The Owner, and not the Association, is responsible for determining whether any Alteration is in violation of any restrictions imposed by any governmental authority having jurisdiction over the Property. In no event shall the Association's review or approval of plans, specifications or related information be deemed to constitute an opinion or statement by the Association as to the adequacy or structural soundness of the Alterations or their compliance with governmental laws, codes, ordinances or regulations. The Owner shall hold the Association harmless and indemnify the Association, and its officers and directors, from and against any expenses, claims, damages, losses or other liabilities, including, without limitation, attorneys' fees and costs of litigation, arising out of (i) any Alteration which violates any governmental laws, codes, ordinances or regulations; (ii) the adequacy of the specifications for construction of the Alterations; and (iii) the construction of the Alterations.

Section 7. Waiver of Liability. The Board shall be concerned about aesthetic characteristics only and does not assert architectural expertise. In the course of its duties, the Board may request certain design modifications in the interest of producing overall Lot improvements more complimentary to or compatible with the Dakota Crossing community. It is the sole duty and responsibility of the applicant to employ an architect or other person to design the requested modifications in a safe and architecturally sound manner. Each Owner of any interest in the Property, his heirs, successors and assigns, as a condition of his ownership, waives any right to damages which result from architectural design requested by the Board and/or ACC. The Board/ACC shall exercise its best judgment as to aesthetic characteristics of architectural design and its judgment shall be final. To the fullest extent permitted by applicable law, no member of the Board/ACC shall be personally liable to the Owners, or any of them, and all Owners hereby waive and forever discharge the members from time to time of the Board/ACC, for breach of any fiduciary duty of such Owners.

## ARTICLE XI

### LAND USE REQUIREMENTS AND RESTRICTIONS

Section 1. Residential Structures. All Lots within the Property shall be used only for single-family residential purposes. No building or structure shall be erected, altered, placed or permitted to remain on any Lot except a single-family residence structure and accessory structures, related thereto, together with an attached garage. No sheds, yard barns or other detached storage buildings shall be allowed on any Lot.

Section 2. Drainage and Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat unless vacated by action of the municipal authority. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

Section 3. Easement for Public Utilities. The Property shall be subject to non-exclusive, appurtenant easements for all utilities, water and sewer, septic, metering and control devices, cable television and other electronic communications, and similar services, which exist from time to time, as constructed or referred to in the Plat, or as otherwise described in this Declaration or any other duly recorded instrument, including, but not limited to, an easement benefiting the City and running under, over and through the Property for maintenance, repair and replacement of public utilities such as water, sewer and sanitary and storm sewer services. Each

Lot, and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the other Lots for all such services, including without limitation any sewer or water lines servicing other Lots. Each Lot shall also be subject to an exclusive easement in favor of the Association, the City and all utilities companies providing service to the Lots for the installation and maintenance of utilities metering devices.

Section 4. Entrance Monument Easement. The Property shall be subject to non-exclusive appurtenant easements for entrance monuments purposes as follows:

- (a) *Location of Easement.* The entrance monument easement shall be over the southeastern corner of Lot 19, Block 4, Dakota Crossing (10 ft x 10 ft square).

Lot 19, Block 4, Dakota Crossing, shall also be subject to an ingress and egress easement for reasonable access to perform the duties required hereunder.

- (b) *Purpose of Easement.* The easement granted under this Section shall be for the installation and replacement of an entrance monument.
- (c) *Maintenance and Replacement of Easement.* The Association shall be responsible for replacement of the entrance monument, as described in Article VII, Section 2 of the Declaration. The Owner of the Lot over which the entrance monument easement has been established hereunder shall be responsible for the maintenance and repair of the entrance monument and surroundings, as described in Article VII, Section 3 of this Declaration.

Section 5. Setback. Every building, structure, or other improvement, other than fences, swimming pools, terraces and steps shall be set back in accordance with the setback ordinances, rules and regulations of the City, including those established and approved by the City which are specific to the Dakota Crossing community, and the ordinances, rules and regulations of any other governmental body which may have or acquire jurisdiction over the Property. The placement of all structures and improvements is subject to the approval of the Board/ACC as set out in Article X herein.

Section 6. Alterations. No exterior alteration on any original residential Living Unit or other structure, and no additional structures, shall be made or installed unless and until the Board/ACC approves in writing the nature, kind, shape, materials and locations of the alteration or addition, as more fully described in Article X hereof.

Section 7. Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or Occupant be denied reasonable access to his or her Lot or the right to utility services thereto. The easements set forth in this Section shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Property for purposes of maintenance, repair, replacement and reconstruction. All easement rights shall include a right of reasonable access to maintain, repair and replace the utility lines and related equipment.

## ARTICLE XII

### PROHIBITED ACTIVITIES AND USES

Section 1. Nuisances. No noxious or offensive activities shall be carried upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 2. Livestock and Poultry; Domesticated Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property except that dogs, cats or other household domesticated pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. All household domesticated pets, most often dogs and cats, shall be restricted from entering onto any Lot other than the Lot of its owner, and the owner of any such household domesticated pet shall be responsible for the immediate cleanup and disposal of pet droppings. Notwithstanding the foregoing, the Association specifically reserves the right to promulgate rules and regulations regarding pets on the Property, including, but not limited to, the size of pets permitted and/or the prohibition of pets on the Property.

Section 3. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste or household refuse shall be kept in sanitary containers. All containers or other equipment for the storage or disposal of such materials shall be kept within the garage forming a part of a Living Unit.

Section 4. Temporary Structures. No structure of a temporary character, trailer, tent, shack, barn or other out-building shall be used on any Lot at any times as a residence, either temporarily or permanently. One construction trailer may be maintained on a Lot from the time construction of the Living Unit has commenced until a Certificate of Occupancy has been issued, provided that all necessary approvals of the City have been obtained.

Section 5. Signs. No signs of any kind that are not in compliance with applicable city ordinance shall be displayed to the public view on any Lot except as follows:

- (a) Signs designating the location of easements; or
- (b) Signs not more than five square feet advertising the Lot for sale or rent by the then Owner; or
- (c) Any sign or signs used by the Declarant or its designee to advertise the availability of Lots until such time as Declarant or its designee no longer owns or has an interest in any Lot within the Property.

Section 6. Vehicles. No buses, house trailers, unlicensed automobiles, aircrafts, tractors, trailers of any kind, commercial vehicles, motor homes, campers, all-terrain vehicles (ATVs), snowmobiles or watercraft shall be parked, kept or stored on the Property except on a temporary basis unless parked, kept or stored within a closed garage. For the purposes of this Section, "temporary" is defined as no more than fourteen (14) days per year.

Section 7. Tower Structures. No poles, posts, towers, or antenna may be installed that exceed seven (7) feet in height from grade. Satellite dishes having a diameter not greater than one meter may be attached to the Living Unit.

## ARTICLE XIII

### DECLARANT RIGHTS

Section 1. Declarant Rights. The Declarant expressly reserves the exclusive and unconditional authority to exercise the following declarant rights, for as long as it owns or retains an interest in a Lot, or for such shorter period as may be specifically indicated:

- (a) To elect, or cause persons designated by it to elect, the officers and members of the Board in accordance with Article IV, Section 3 hereof and Section 6.1 of the Bylaws.
- (b) To complete improvements indicated on the plat of the Property, if any, or otherwise included in Declarant's development plans or allowed by this Declaration, and to make alterations in the Lots to accommodate its sales facilities.
- (c) To construct, operate and maintain sales offices, management offices, signs advertising the Property, and models (which models may be any Lot which Declarant may from time to time own or in which Declarant may hold an interest).
- (d) To use easements through and over the Property for the purpose of making improvements within the Property and for the purpose of exercising its special declarant rights.
- (e) To create Lots or Common Elements within the Property.
- (f) To subdivide Lots or convert Lots into Common Elements.
- (g) To relocate boundaries between Lots and to otherwise alter Lots owned by Declarant.
- (h) To merge or consolidate the Association with another association of the same form of ownership.
- (i) To require that as long as Declarant owns any unsold Lot for sale, Declarant's written consent shall be required for any amendments to the Governing Documents or Rules and Regulations which directly or indirectly affect or may affect Declarant's rights under the Governing Documents.

## ARTICLE XIV

### COMPLIANCE BY OWNER

Section 1. Right of Action in Owners and Association. Failure of any Owner to comply with the provisions of the Governing Documents, Rules and Regulations, decisions of the Association and such amendments thereto as may be made from time to time shall give rise to a cause of action in the Association and any aggrieved Owner for the recovery of damages, or for injunctive relief, or both.

Section 2. Entitlement to Relief. The Association may commence legal action to recover sums due, for damages, for injunctive relief or to foreclose a lien owned by it, or any



combination thereof, or an action for any other relief authorized by the Governing Documents or available at law or in equity. Legal relief may be sought by the Association against any Owner or by an Owner against the Association or another Owner to enforce compliance with the Governing Documents, Rules or decisions of the Association. However, no Owner may withhold assessments payable to the Association, or take (or omit) other action in violation of the Governing Documents or Rules as a measure to enforce such Owner's position, or for any other reason.

Section 3. Sanction and Remedies. In addition to any other remedies or sanctions, expressed or implied, administrative or legal, the Association shall have the right, but not the obligation, to implement anyone or more of the following actions against Owners and Occupants and/or their guests, who violate the provisions of the Governing Documents or Rules:

- (a) Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- (b) Impose late charges as determined by the Board for each past due assessment or installment thereof, and interest at up to the highest rate permitted by law.
- (c) In the event of default of more than thirty (30) days in the payment of any assessment or installment thereof, all remaining installments of assessments assessed against the Lot owned by the defaulting Owner may be accelerated and shall then be payable in full. If all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration, reasonable advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
- (d) Impose reasonable fines, penalties or charges for each violation of Governing Documents or Rules.
- (e) Suspend the rights of any Owner or Occupant and their guests to use any amenity; provided, however, that this limitation shall not apply to those portions of the Property providing utilities service and access to the Lot. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the Governing Documents or Rules, as the case may be, and for up to thirty (30) days thereafter, for each violation.
- (f) Restore any portions of the Property damaged or altered, or allowed to be damaged or altered, by an Owner or Occupant or their guests in violation of the Governing Documents or Rules, and to assess the cost of such restoration against the responsible Owners and their Lots.
- (g) Enter any Lot in which, or as to which, a violation or breach of the Governing Documents or Rules exists which materially affects, or is likely to materially affect in the near future, the health or safety of other Owners or Occupants, or their guests, or the safety or soundness of any Living Unit or other part of the Property or the property of the Owners or Occupants, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Lot which is causing the violation; provided, however, that any improvements which are a part of a Lot may be altered or demolished only pursuant to a court order or with the agreement of the Owner.
- (h) Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for the foreclosure of mortgages by action or under a power of sale in the state where the Property is located.

Section 4. Rights to Hearing. In the case of imposition of any of the remedies authorized by Section 3 (d), (e), (f) or (g) of this Article, the Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least ten (10) days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty (30) days of receipt of the hearing request by the Board, and with at least five (5) days' prior written notice to the offender. If the offending Owner fails to appear at the hearing, then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearing established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within a reasonable time following the hearing, if not delivered to the offender at the hearing.

Section 5. Lien for Charges, Penalties, Etc. Any assessments, fines, penalties, charges or interest imposed under this Article shall be a lien against the Lot of the Owner or Occupant against whom the same are imposed and the personal obligation of such Owner in the same manner and with the same priority and effect as assessments under Article VI. The lien shall attach as of the date of imposition of the remedy, but shall not be final as to violations for which a hearing is held until the Board gives written notice following the hearing. All remedies shall be cumulative, and the exercise of, or failure to exercise, any remedy shall not be deemed a waiver of any right to pursue any others.

Section 6. Costs of Proceeding and Attorneys' Fees. With respect to any collection measures, or any measure or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Governing Documents or Rules, whether or not finally determined by a court or arbitrator, the Association may assess the Owner involved and his or her Lot with any expenses incurred in connection with such enforcement, including, without limitation, fines or charges previously imposed by the Association, reasonable attorneys' fees, and interest (at the highest rate permitted by law) on the delinquent amounts owed to the Association.

Section 7. Liability for Owners' and Occupants' Acts. An Owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such Owner's acts or omissions, or by that of Occupants or guests in the Owner's Lot, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Occupant. However, any insurance deductible amount and/or increase in insurance rate resulting from the Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Lot.

Section 8. Enforcement by Owners. The provisions of this Article shall not limit or impair the independent rights of other Owners to enforce the provisions of the Governing Documents or Rules as provided therein.

## ARTICLE XV

### GENERAL PROVISIONS

Section 1. Rules and Regulations. The Board shall have authority to propose and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property; provided, however, that the Rules and Regulations shall not be inconsistent with the Governing Documents. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the

authority granted in this Article. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.

Section 2. Duration. The covenants, restrictions and easements of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Owner of any Lot subject to this Declaration, his or her respective legal representatives, heirs, successors and assigns, for a time of twenty (20) years from the date this Declaration is recorded; after which time said covenants, restrictions and easements shall be automatically renewed for successive ten (10) years.

Section 3. Amendments. The covenants and restrictions of this Declaration may be amended as follows:

- a) By the Declarant only, and at its discretion, until Declarant is no longer the Owner of any Lot in the Property and a certificate of occupancy has been issued by the City with respect to every Lot therein.
- b) Thereafter, by consent of not less than sixty-seven percent (67%) of the Owners of the Lots. Consent of Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. An Affidavit of the Secretary or President of the Association as to the outcome of the vote, or the execution of the foregoing consents, shall be adequate evidence thereof for all purposes including, without limitation, the recording of the amendment.

Any amendment of this Declaration must be in writing, which writing must be properly recorded or filed in the office of the Scott County Registrar of Titles/Recorder.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity by any Owner or Owners, or the Association, against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or recover damages and failure by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event of any litigation to enforce or interpret the terms hereof, the court shall have the authority to award costs and reasonable attorney's fees to the prevailing party.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 6. Conflict among Documents. In the event of any conflict among the provisions of this Declaration, the Bylaws or any Rules and Regulations approved by the Association, this Declaration shall control, and as between the Bylaws and the Rules and Regulations, the Bylaws shall control.

*[signature and acknowledgement on following page]*

IN WITNESS WHEREOF, the undersigned has caused this Amended and Restated Declaration of Easements, Covenants, Condition and Restrictions for Dakota Crossing to be executed as of the day and year first above written.

THE RYLAND GROUP, INC.,  
a Maryland corporation

By: [Signature]

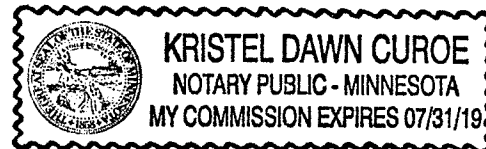
Its: Operational Vice President

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF HENNEPIN    )

This foregoing instrument was acknowledged before me this 6<sup>th</sup> day of April, 2015, by Michael W. DeVoe the Operational Vice President of The Ryland Group, Inc., a Maryland corporation, on behalf of the corporation.

[Signature]  
Notary Public

**This instrument drafted by:**  
Hellmuth & Johnson (NTP)  
8050 W. 78<sup>th</sup> St.  
Edina, MN 55439  
(952) 941-4005  
13387.0031-2148748\_1



Ryland Homes  
7599 Anahwan Dr  
Eden Prairie, MN 55344

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Lots 1 through 3, inclusive, Block 1;  
Lots 1 through 20, inclusive, Block 2;  
Lots 1 through 24, inclusive, Block 3;  
Lots 1 through 19, inclusive, Block 4

All in Dakota Crossing, Scott County, Minnesota

Doc. No. A 949543

OFFICE OF THE COUNTY RECORDER  
SCOTT COUNTY, MINNESOTA



Certified Filed and/or Recorded on

11-20-2013 at 01:00 Recpt: 446444

James L. Hentges, County Recorder 01

Fee: \$ 46.00

**DECLARATION  
OF  
EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DAKOTA CROSSING**

**This instrument drafted by:**  
Hellmuth & Johnson (NTP)  
8050 W. 78<sup>th</sup> St.  
Edina, MN 55439  
(952) 941-4005

X Fatco

**DECLARATION  
OF  
EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DAKOTA CROSSING**

**THIS DECLARATION** is made as of the 11 day of November, 2013, by THE RYLAND GROUP, INC., a Maryland corporation (hereinafter referred to as "Declarant").

**RECITALS**

**WHEREAS**, Declarant is the fee owner or contract purchaser of that certain real estate described in Exhibit A attached hereto and incorporated herein by reference ("Property"), and Declarant desires to create thereon a community of compatible and complementary single-family residential homes of consistently high architectural quality for the benefit of the residents of the community; and

**WHEREAS**, Declarant deems it desirable for the preservation of the natural beauty of the Property and for the assurance of consistent quality in architectural design to establish certain restrictions and covenants governing the development of the Property and to create a committee to which shall be delegated and assigned the powers of administering and enforcing certain of the following covenants and restrictions and exercising unfettered judgment as to what architectural designs are compatible and complementary to the Property;

**WHEREAS**, Dakota Crossing Homeowners Association, a Minnesota nonprofit corporation (hereinafter referred to as "Association"), has been formed for the purpose of effectuating policies and programs that will enhance the pleasure and value of the Property, maintain and administer certain easement areas, to preserve and enhance the Property, to administer and enforce the covenants and restrictions, and to collect and disburse the assessments and charges hereinafter created;

**WHEREAS**, this Community is exempt from the provisions of the Minnesota Common Interest Community Act pursuant to Minnesota Statutes § 515B.1-102(e)(2); and

**WHEREAS**, Declarant intends that certain of the following covenants and restrictions are to be administered and enforced by Declarant, the Association and the future owners of properties located in the Property.

**DECLARATION**

Declarant hereby declares that the Property as legally described on Exhibit A attached hereto and incorporated herein by reference shall be held, transferred, sold, conveyed, occupied and used 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 any right, title or interest in the said properties hereinafter described or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. “Additional Real Estate” shall mean that portion of the property legally described as set forth on Exhibit B attached hereto and incorporated by reference, which Declarant reserves the right to subject to the terms of this Declaration pursuant to the provisions of Article XV hereof.

Section 2. “Association” shall mean Dakota Crossing Homeowners Association, a Minnesota nonprofit corporation.

Section 3. “City” shall mean the City of Shakopee, a Minnesota municipal corporation.

Section 4. “Common Elements” shall mean those portions of the Property, if any, other than the Lots. As of the date of the recording of this Declaration, there are no Common Elements.

Section 5. “Common Expenses” shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including, without limitation, allocations to reserves.

Section 6. “Declarant” shall mean and refer to THE RYLAND GROUP, INC., a Maryland corporation.

Section 7. “Governing Documents” shall mean this Declaration, the Bylaws and Articles of Incorporation of the Association, as each may be amended from time to time.

Section 8. “Living Unit” shall mean a single residential housing unit consisting of a group of rooms and hallways, which are designed or intended for use as living quarters for one family.

Section 9. “Lot” shall mean and refer to any tract or parcel of land shown upon any recorded plat or subdivision map of the Properties, whenever such plat or subdivision map, as amended, replatted or further subdivided, shall be made of record.

Section 10. “Member” shall mean any person or entity holding membership in the Association as provided in Article IV hereof.

Section 11. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot subject to the Declaration, but shall not mean or refer to the mortgagee of any such Lot unless and until such mortgagee has acquired title pursuant to foreclosure of said mortgage and the period within which the fee owner may redeem from such foreclosure has terminated. Where any such Lot is being sold by the fee owner to a contract vendee who is entitled to possession of the Lot, the contract vendee shall be considered the “Owner” of the Lot.

Section 12. “Property” or “Properties” shall mean and refer to that certain real property described in Article II of this Declaration, and such additions thereto as may hereafter be brought within the scope of this Declaration.

Section 13. “Rules and Regulations” shall any Rules and Regulations promulgated by the Association pursuant to Article XVI, Section 1 hereof.



## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Properties. The real estate which is and shall be held, transferred, sold, conveyed, occupied and used subject to the Declaration is located in the City of Shakopee, County of Scott, and State of Minnesota and is more particularly described on Exhibit A attached hereto and incorporated herein by reference.

## ARTICLE III

### GENERAL RESTRICTIONS, OBLIGATIONS AND PROPERTY RIGHTS OF OWNERS

Section 1. Living Unit Restriction. No Living Unit shall be used for purposes other than single-family residence, nor shall any trade or business of any kind be carried on within a Living Unit or upon a Lot, provided that none of the following activities shall be considered a violation of this covenant:

- a) An Owner may use a portion of such Owner's residence for home office purposes, provided that the Owner shall not employ or engage the services of more than one other person, not related to the Owner, to be performed in the residence for any trade of business purpose, nor shall there be excessive traffic into or out of the Owner's residence or Lot; nor shall any business signage be placed upon the Lot or any structures located on a Lot.
- b) An Owner may employ or engage the services of a person or persons to provide home maintenance, child care and/or other domestic services for the benefit of the Owner and other occupants of the residence located upon a Lot.
- c) An Owner may conduct a home-based day care business upon such Owner's Lot in compliance with all state and local statutes, laws, ordinances, rules and regulations, including Rules and Regulations that may be established by the Association.

## ARTICLE IV

### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Membership. Every Owner of a Lot subject to assessment, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be a member. An Owner of more than one Lot shall be entitled to one membership for each such Lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. No person or entity other than an Owner or Declarant may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to that Lot. An Owner may, however, assign voting rights to a mortgagee or contract purchaser.

Section 2. Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, and except upon the transfer of the record title of a Lot and then only to such transferee by assignment, intestate succession, testamentary disposition, foreclosure of mortgage of record, or other legal process. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the

Association may continue to carry the name of the former Owner as a member, in its sole discretion. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the transferee of title of such Lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

Section 3. Voting. The Association shall have two (2) classes of voting membership:

*Class A:* Class A Members shall be all Members with the exception of Declarant. Subject to Section 3.2 of the Bylaws of the Association, and the provisions of this Section, Class A Members shall be entitled to one (1) vote for each Lot owned.

*Class B:* Class B Members shall be the Declarant, which shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the happening of the first to occur of the following events:

- (i) when the total votes of Members outstanding in the Class A Membership equal the total votes outstanding in favor of the Declarant in the Class B Membership;
- (ii) on December 31, 2023; or
- (iii) on voluntary conversion of the Class B Membership by the Declarant to Class A Membership.

As used herein, reference to the “period of Declarant control” shall mean, with respect to the Association, the period commencing on the date hereof through and including the date of termination of all Class B Membership interest in the Association.

When more than one person holds title to 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 one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other person has filed a general voting authority with the Secretary applicable to all votes until rescinded.

Section 4. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Declaration for a period of thirty (30) days, such Owner’s right to vote as a member of the Association may be suspended by the Board and shall remain suspended until all payments are brought current and all defaults remedied.

## ARTICLE V

### COMMON EXPENSES

Section 1. General. Subject to the provisions of Section 6.4 of the Bylaws, the Association shall have the authority to contract for and expend money for the purposes of enforcing the covenants and restrictions contained in this Declaration, and for incidental purposes relating to its operation as described in the Declaration and the Association's Bylaws. Such expenditures will be deemed Common Expenses.

Section 2. Capital Contribution. At the time of the initial sale of any Lot from Declarant to any Owner, such Owner shall pay to Declarant for the use by the Association a sum equal to one sixth (1/6) of the annual assessment in effect as of the date of closing of such sale. If no annual assessment has been levied at the time of closing, then the capital contribution shall be \$ \_\_\_\_\_. Such sum shall be delivered by Declarant to the Association for use as described in this Declaration. The Capital Contribution for any Lot shall be levied only upon the sale by Declarant to an Owner and shall not be levied on any subsequent sales of the Lot.

## ARTICLE VI

### ASSESSMENTS

Section 1. Personal Obligation; Lien. Declarant, for each Lot owned by it within the Property, hereby covenants, and each Owner of a Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed therein, shall be and is deemed to covenant and hereby agrees to pay to the Association; (a) annual assessments or charges, which shall be payable in regular installments and shall include, but not be limited to, Common Expenses, and (b) special assessments, such assessments to be established and collected as hereinafter provided. Any assessments authorized herein, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for special assessments) against the Lot assessed. Such annual assessments shall be due and payable in annual, semi-annual, quarterly or monthly installments, at the discretion of the Board. Each assessment, together with interest, costs and reasonable attorneys' fees, also shall be the personal obligation of the person who was the Owner of such Lot on the date said assessment became due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a statement of lien for such assessments shall have been filed in writing with the County Registrar of Titles/Recorder (as appropriate) for Scott County, Minnesota. No Owner shall escape liability for the assessments which fell due while he was the owner by reason of non-use, transfer or abandonment of his Lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the common expenses described in this Declaration.

Section 3. Special Assessments. In addition to the annual assessments authorized above, the Board 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 cost of any unforeseen or unbudgeted common expense, including without limitation the unexpected construction, reconstruction, repair or replacement of a capital improvement and including fixtures and personal property related thereto.

Section 4. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except that the Declarant, or any Lot owned by it, shall not be liable, or subject to a lien for, any assessment until the Dwelling within the Lot is completed and certified by the City ready for occupancy as a residence.

Section 5. Surcharges. The Association, in accordance with reasonable and uniform standards, may add to the assessments for a particular Lot or Lots a surcharge for maintenance expenses directly caused by the negligent or willful act of the Owner, resident or invitee of such Lot.

Section 6. Commencement of Initial Annual Assessments. Subject to the provisions of Section 4, above, with regard to Declarant's liability for assessments, the obligation of any Owner to pay assessments shall commence at the *later* of (i) the time at which the Owner acquires title to the Lot, or (ii) the due date of the first assessment levied by the Board, which levy shall be made at the discretion of the Board. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

Section 7. Commencement of Annual Assessments. By November 30<sup>th</sup> of each year, the Board shall fix the amount of annual assessments against each Lot for the following fiscal year and shall send written notice thereof to each Owner. The due date for payment of annual assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments, it shall adopt a budget for the following fiscal year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

Section 8. Proof of Payment. Upon written demand of an Owner or first mortgagee, at any time and for a reasonable charge, the Association shall furnish a written certificate signed by an officer or agent of the Association setting forth whether there are any then-unpaid annual or special assessments levied against such Owner's or first mortgagee's Lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid, and of any maintenance assessments and surcharges stated therein as paid.

Section 9. Nonpayment of Assessments. Any assessments which are not paid when due shall be deemed delinquent. In the event of a default of more than thirty (30) days in payment of any assessment or installment thereof, the Board may accelerate the remaining installments of the assessment due in the current assessment year upon ten (10) days' written notice thereof to the Owner, and thereupon the entire unpaid balance of the assessment with all accrued interest and penalties shall become due and payable upon the date stated in the notice. If an annual, semi-annual, quarterly or monthly assessment is not paid by the tenth (10<sup>th</sup>) day of the month when it is due, the Board may assess a service charge in an amount determined by the Board, and such shall become a continuing lien in favor of the Association on the Lot against which assessed and the improvements thereon, and the Association (or any Owner acting in the name and for the benefit of the Association) may bring an action at law or in equity against the person personally obligated to pay the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit. There shall be no right of set-off against the Association based upon a failure to provide services or for money owed by the Association to the Owner.

Section 10. Recording and Enforcement of Liens. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, the name of the person personally obligated to pay the same, and a description of the Lot. Such a notice shall be signed by an officer of the Association, and it or a notice of lien or adverse claim thereof may be recorded in the office of the County Registrar of Titles/Recorder (as appropriate) for Scott

County, Minnesota. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days. Upon such a delinquency for thirty (30) days, the Association shall proceed promptly to enforce the lien or, in its discretion, to sue the person personally liable to pay the lien for the delinquency. Such lien shall be enforced by action or by power of sale, which is hereby deemed granted by each Owner, at the option of foreclosing party, in the same manner in which mortgages on real property containing a power of sale may be foreclosed in Minnesota, provided, however, that the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees authorized by the declaration or bylaws, notwithstanding the provisions of Minn. Stat. Section 582.01, subdivisions 1 and 1a. In any such foreclosure, the person personally obligated to pay the lien shall be required to pay all costs of foreclosure including interest, costs, and all reasonable attorneys' fees, notwithstanding the provisions of Minn. Stat. §582.01, Subd. 1 and 1a. All such interest, costs, and expenses shall be secured by the lien being foreclosed. The person personally obligated to pay the lien also shall be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the foreclosed interest in the Lot as the Owner thereof.

The Association shall, upon written request, report to any encumbrancer of a Lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due, provided, however, that such encumbrancer first shall have furnished to the Association written notice of such encumbrance.

Section 11. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of the first mortgage or remedies provided in the mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which accrued prior to acquisition of title pursuant to such sale or transfer. Notwithstanding the foregoing, if (i) a first mortgage on a Lot is foreclosed, and (ii) no Owner redeems during the Owner's period of redemption provided by Minnesota Statutes Chapters 580, 581 or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Lot subject to unpaid assessments for Common Expenses levied pursuant to this Declaration which became due, without acceleration, during the six (6) months immediately preceding the first day following the end of the Owner's period of redemption. No such sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming due or from the lien thereof or shall relieve the person personally obligated to pay the lien of personal liability for assessments due prior to such sale or transfer or acquisition of premises. Any delinquent assessments, the lien for which is extinguished by reason of this provision, may be reallocated and assessed to all Lots as a Common Expense.

## ARTICLE VII

### OTHER RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Services. The Association may obtain and pay for the services of any persons or entities, to manage the affairs of the Association, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper discharge of its duties, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with its work or the enforcement of this Declaration.

Section 2. Maintenance Obligations of the Association. The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance," unless specifically stated otherwise) of the Common Elements, if any. The Association shall be responsible for replacement of any entrance monument identifying the Dakota Crossing community located on the Property (exclusive of surrounding plantings, if any, and equipment, if any, used in the irrigation or lighting of the monument and surrounding area, including all plumbing, wiring and underground utilities).

Section 3. Maintenance of Entrance Monument. The Owner of the Lot upon which any entrance monument identifying the Dakota Crossing community is located shall be responsible for the maintenance and repair of the monument, surrounding plantings, if any, and any equipment, if any, used in irrigation and lighting of the monument and surrounding areas, including all plumbing, wiring and underground utilities.

Section 4. Maintenance Obligations of Owners. The Owner of a Lot shall be solely responsible for all maintenance, repair and replacement (collectively referred to as "maintenance") of all portions of his or her Lot and Living Unit, including, but not limited to (i) maintenance of landscaping and lawn, including all boulevard trees; (ii) maintenance of roof and all exterior building surfaces; (iii) maintenance of all interior portions of the Living Unit; (iv) maintenance of walkways located within a Lot, from Living Unit to sidewalk, including removal of snow therefrom; (v) maintenance of driveways, including snow removal; (vi) snow removal from any portion of any sidewalk (public or private) abutting the Owner's Lot; and (vii) maintenance, repair and replacement of mailboxes, in accordance with standard established by the United States Postal Service. Notwithstanding anything to the contrary contained elsewhere herein, the Association may require that any mailbox installed on the Property comply with specific uniform criteria established by the Association, provided such criteria shall, *at a minimum*, comply with the standards of the United States Postal Service. If any Owner fails or refuses to maintain such Owner's Lot and improvements thereto, the Association may, but is not obligated to, perform the necessary maintenance and assess the costs thereof to the affected Lot and its Owner.

Section 5. Optional Maintenance by Association. In addition to the maintenance described in Section 2 of this Article VII, the Association may, with the approval of a majority of Owners who have authority to cast in excess of fifty percent (50%) of the total votes in the Association in person or by proxy at a meeting called for such purposes, undertake to provide ground services (landscaping, snow removal) to the Lots.

Section 6. Damage Caused by Owner. Notwithstanding any provision to the contrary in this Section, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of any Owner or Occupant, or their guests, or by a condition in a Lot or Living Unit which the Owner or Occupant has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter upon any Lot to do so), and the cost thereof may be assessed against the Lot of the Owner responsible for the damage.

Section 7. Maintenance Responsibilities Defined by Board of Directors. Notwithstanding any provisions to the contrary, the Board of Directors shall have the sole and exclusive authority to define the scope of maintenance and repair to be provided by the Association. The Board of Directors is hereby vested with the authority to interpret the Governing Documents and rule on any ambiguities contained therein. The Owners shall be legally bound by any decisions of the Board of Directors pertaining to the determination of the Association's maintenance obligations and the scope and extent thereof.

## ARTICLE VIII

### INSURANCE

Section 1. Maintenance of Insurance. Commencing not later than the time of the first conveyance of a Lot to an Owner other than Declarant, the Association shall maintain

- (a) Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of property owned by the Association, whether real or personal. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available.
- (b) Comprehensive public liability insurance covering the use, operation and maintenance of property owned by the Association, whether real or personal, with minimum limits of \$1,000,000 per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants.
- (c) Fidelity bond, crime or insurance coverage against dishonest acts on the part of directors, officers, manager, trustees, employees or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board. The fidelity bond or insurance shall name the Association as the named insured and shall be written in an amount equal to the greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond in force, or (ii) a sum equal to three months aggregate assessments on all Lots plus reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers, or a waiver of defense based upon the exclusion of persons serving without compensation shall be added.
- (d) Workers' Compensation insurance as required by law.
- (e) Directors and officers' liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.
- (f) Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

***The Association shall not be required to insure any Lot or Living Unit.***

Section 2. Premiums; Improvements; Deductibles. All insurance premiums shall be assessed and paid as a Common Expense. The Association may, in the case of a claim for damage resulting from the acts or omissions of a Lot Owner or Occupant or their guest, licensee or invitee, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Lots of such Owner in any reasonable manner, or (iii) require the Owner of the Lot causing the damage affected to pay the deductible amount directly. The Association's decision as to who shall be charged with paying the deductible amount may, but need not, be based upon fault.

Section 3. Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it). The Association, or any insurance trustee selected by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy maintained by the Association.

Section 4. Waivers of Subrogation. All policies of insurance shall contain waivers of subrogation by the insurer against the Association, or an Owner, members of the Owner's household, officers or directors, as applicable, and, if available, waivers of any defense based on co-insurance or of invalidity from any acts of the insured. Nothing in this section shall prohibit any Owner from subrogating his or her individual insurance coverage (as differentiated from the insurance obtained and maintained by the Association) against the individual insurance coverage of another Owner.

Section 5. Cancellation; Notice of Loss. All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be canceled or substantially modified, for any reason, without at least 30 days prior written notice to the Association.

Section 6. Restoration in Lieu of Cash Settlement. All policies of property insurance maintained by the Association shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable (i) without the prior written approval of the Association (or any Insurance Trustee) or (ii) when in conflict with provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law.

Section 7. No Contribution. All policies of insurance maintained by the Association shall be the primary insurance where there is other insurance in the name of the Owner covering the same property, and may not be brought into contribution with any insurance purchased by Owners. Nothing in this section shall prohibit an Owner's individual insurance coverage (as differentiated from the insurance obtained and maintained by the Association) from providing "gap coverage" for any deductible under the Association's policy assessed to an Owner pursuant to Section 3 hereof.

Section 8. Effect of Acts Not Within Association's Control. All policies of insurance maintained by the Association shall provide that the coverage shall not be voided by or conditioned upon (i) any act or omission of an Owner, unless acting within the scope of authority on behalf of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

## ARTICLE IX

### RIGHTS FOR THE PROTECTION OF FIRST MORTGAGEES

Section 1. Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 2. Liability for Unpaid Assessments. Any first mortgagee who obtains title to or comes into possession of a Lot pursuant to the remedies provided in the mortgage or by foreclosure of the mortgage or by deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale shall not be liable for the unpaid assessments of the Lot which accrue prior to the acquisition of title or possession to such Lot by the mortgagee, except (i) as provided in Article VI,



or (ii) any unpaid assessments or charges with respect to the Lot may be reallocated equally among all Lots.

Section 3. Examination of Books and Records. First mortgagees, including holders, insurers and guarantors of first mortgages shall have the right to examine the books and records of the Association, as set forth more fully in the Bylaws.

## ARTICLE X

### ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment of Architectural Control Committee. There is hereby created an Architectural Control Committee (ACC) to regulate and enforce the terms, conditions, covenants and restrictions of this Declaration as more fully provided herein.

Section 2. Committee Membership. Unless otherwise provided by the Board, the Architectural Control Committee shall consist of the members of the Board. During the period of Declarant Control provided in Article IV Section 3 hereof, Declarant shall have the authority and power to appoint successors and/or replacements by duly recorded instrument until (i) Declarant has conveyed fee title to all Lots within the Property, *and* (ii) a Living Unit has been constructed and a certificate of occupancy has been issued on each and every Lot.

Section 3. Review by Committee. For so long as the Board shall exist, no building, structure, fence, swimming pool, tennis court, or other structure shall be commenced, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration therein (generally referred to herein as "Alterations") be made until the plans and specifications showing the nature, kind, shape, height, materials, color, surrounding landscaping, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by a majority of the Board. For all proposed construction or improvements of a permanent nature proposed to be placed upon any Lot, the following procedures shall govern requests for Alterations under this Article:

- (a) Complete detailed plans, specifications and related information regarding any proposed Alteration, in form and content acceptable to the Board, shall be submitted to the Board at least ninety (90) days prior to the projected commencement of construction. Lot Owner shall, at a minimum, comply with the restrictions set forth in Article XI hereof. No Alterations shall be commenced prior to approval.
- (b) The Board shall give the Owner written notice of approval or disapproval. If the Board fails to approve or disapprove within ninety (90) days after receipt of said plans and specifications and all other information requested by the Board, then approval shall be deemed denied.
- (c) If no request for approval is submitted, approval is denied.
- (d) All fees and costs incurred by the Association in conjunction with any such request for approval, including attorneys' fees and costs or fees and costs of other professionals, shall be borne by the requesting party. Any such fee or cost which the requesting party fails to pay shall be assessed to the subject Lot and Owner of such Lot, and shall be a lien against such Lot and the personal obligation of such Lot Owner in the same manner and with the same priority and effect as assessments under Article VI hereof.

- (e) The Declarant is exempt from the provisions of this Article.

Section 4. Remedies for Violations. The Association may undertake any measures, legal or administrative, to enforce compliance with this Article and shall be entitled to recover from the Owner causing or permitting the violation all attorneys' fees and costs of enforcement, whether or not legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Lot and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Lot and to restore any part of the Living Unit or Lot to its prior condition if any Alterations were made in violation of this Article, and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Lot.

Section 5. Modification to Allow Access to the Disabled. Subject to the provisions of applicable law, an Owner, at Owner's expense, may make improvements or Alterations to a Lot as necessary for the full enjoyment of the Lot by any person residing in the Lot who has a handicap or disability, as provided in the Fair Housing Amendments Act, United States Code, Title 42, Section 3601, et seq., and the Minnesota Human Rights Act, Chapter 363, and any amendments to those acts. The Association may not prohibit such improvements or Alterations referred to in this Section 5, but may reasonably regulate the type, style and quality of the improvements or Alterations as they relate to health, safety and architectural standards.

Section 6. Hold Harmless. The Owner who causes an Alteration to be made, regardless of whether the Alteration is approved by the Board, shall be solely responsible for the construction standards and specifications relating to the Alteration, and the construction work. The Owner, and not the Association, is responsible for determining whether any Alteration is in violation of any restrictions imposed by any governmental authority having jurisdiction over the Property. In no event shall the Association's review or approval of plans, specifications or related information be deemed to constitute an opinion or statement by the Association as to the adequacy or structural soundness of the Alterations or their compliance with governmental laws, codes, ordinances or regulations. The Owner shall hold the Association harmless and indemnify the Association, and its officers and directors, from and against any expenses, claims, damages, losses or other liabilities, including, without limitation, attorneys' fees and costs of litigation, arising out of (i) any Alteration which violates any governmental laws, codes, ordinances or regulations; (ii) the adequacy of the specifications for construction of the Alterations; and (iii) the construction of the Alterations.

Section 7. Waiver of Liability. The Board shall be concerned about aesthetic characteristics only and does not assert architectural expertise. In the course of its duties, the Board may request certain design modifications in the interest of producing overall Lot improvements more complimentary to or compatible with the Dakota Crossing community. It is the sole duty and responsibility of the applicant to employ an architect or other person to design the requested modifications in a safe and architecturally sound manner. Each Owner of any interest in the Property, his heirs, successors and assigns, as a condition of his ownership, waives any right to damages which result from architectural design requested by the Board and/or ACC. The Board/ACC shall exercise its best judgment as to aesthetic characteristics of architectural design and its judgment shall be final. To the fullest extent permitted by applicable law, no member of the Board/ACC shall be personally liable to the Owners, or any of them, and all Owners hereby waive and forever discharge the members from time to time of the Board/ACC, for breach of any fiduciary duty of such Owners.

## ARTICLE XI

### LAND USE REQUIREMENTS AND RESTRICTIONS

Section 1. Residential Structures. All Lots within the Property shall be used only for single-family residential purposes. No building or structure shall be erected, altered, placed or permitted to remain on any Lot except a single-family residence structure and accessory structures, related thereto, together with an attached garage. No sheds, yard barns or other detached storage buildings shall be allowed on any Lot.

Section 2. Drainage and Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat unless vacated by action of the municipal authority. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

Section 3. Easement for Public Utilities. The Property shall be subject to non-exclusive, appurtenant easements for all utilities, water and sewer, septic, metering and control devices, cable television and other electronic communications, and similar services, which exist from time to time, as constructed or referred to in the Plat, or as otherwise described in this Declaration or any other duly recorded instrument, including, but not limited to, an easement benefiting the City and running under, over and through the Property for maintenance, repair and replacement of public utilities such as water, sewer and sanitary and storm sewer services. Each Lot, and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the other Lots for all such services, including without limitation any sewer or water lines servicing other Lots. Each Lot shall also be subject to an exclusive easement in favor of the Association, the City and all utilities companies providing service to the Lots for the installation and maintenance of utilities metering devices.

Section 4. Entrance Monument Easement. The Property shall be subject to non-exclusive appurtenant easements for entrance monuments purposes as follows:

- (a) *Location of Easement*. The entrance monument easement shall be over the southeastern corner of Lot 9, Block 4 (10 ft x 10 ft square).

Lot 9, Block 4, shall also be subject to an ingress and egress easement for reasonable access to perform the duties required hereunder.

- (b) *Purpose of Easement*. The easement granted under this Section shall be for the installation and replacement of an entrance monument.
- (c) *Maintenance and Replacement of Easement*. The Association shall be responsible for replacement of the entrance monument, as described in Article VII, Section 2 of the Declaration. The Owner of the Lot over which the entrance monument easement has been established hereunder shall be responsible for the maintenance and repair of the entrance monument and surroundings, as described in Article VII, Section 3 of this Declaration.

Section 5. Setback. Every building, structure, or other improvement, other than fences, swimming pools, terraces and steps shall be set back in accordance with the setback ordinances, rules and regulations of the City, including those established and approved by the City which are

specific to the Dakota Crossing community, and the ordinances, rules and regulations of any other governmental body which may have or acquire jurisdiction over the Property. The placement of all structures and improvements is subject to the approval of the Board/ACC as set out in Article X herein.

Section 6. Alterations. No exterior alteration on any original residential Living Unit or other structure, and no additional structures, shall be made or installed unless and until the Board/ACC approves in writing the nature, kind, shape, materials and locations of the alteration or addition, as more fully described in Article X hereof.

Section 7. Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or Occupant be denied reasonable access to his or her Lot or the right to utility services thereto. The easements set forth in this Section shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Property for purposes of maintenance, repair, replacement and reconstruction. All easement rights shall include a right of reasonable access to maintain, repair and replace the utility lines and related equipment.

Section 8. Easements for Benefit of Additional Real Estate. Declarant hereby grants nonexclusive access, utility and use easements on and over the Property in favor of the Additional Real Estate effective from the date hereof until the date (if ever) the Additional Real Estate is subjected to the terms of this Declaration as provided in Article XV hereof.

## ARTICLE XII

### PROHIBITED ACTIVITIES AND USES

Section 1. Nuisances. No noxious or offensive activities shall be carried upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 2. Livestock and Poultry; Domesticated Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property except that dogs, cats or other household domesticated pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. All household domesticated pets, most often dogs and cats, shall be restricted from entering onto any Lot other than the Lot of its owner, and the owner of any such household domesticated pet shall be responsible for the immediate cleanup and disposal of pet droppings. Notwithstanding the foregoing, the Association specifically reserves the right to promulgate rules and regulations regarding pets on the Property, including, but not limited to, the size of pets permitted and/or the prohibition of pets on the Property.

Section 3. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste or household refuse shall be kept in sanitary containers. All containers or other equipment for the storage or disposal of such materials shall be kept within the garage forming a part of a Living Unit.

Section 4. Temporary Structures. No structure of a temporary character, trailer, tent, shack, barn or other out-building shall be used on any Lot at any times as a residence, either temporarily or permanently. One construction trailer may be maintained on a Lot from the time construction of the Living Unit has commenced until a Certificate of Occupancy has been issued, provided that all necessary approvals of the City have been obtained.

Section 5. Signs. No signs of any kind that are not in compliance with applicable city ordinance shall be displayed to the public view on any Lot except as follows:

- (a) Signs designating the location of easements; or
- (b) Signs not more than five square feet advertising the Lot for sale or rent by the then Owner; or
- (c) Any sign or signs used by the Declarant or its designee to advertise the availability of Lots until such time as Declarant or its designee no longer owns or has an interest in any Lot within the Property.

Section 6. Vehicles. No buses, house trailers, unlicensed automobiles, aircrafts, tractors, trailers of any kind, commercial vehicles, motor homes, campers, all-terrain vehicles (ATVs), snowmobiles or watercraft shall be parked, kept or stored on the Property except on a temporary basis unless parked, kept or stored within a closed garage. For the purposes of this Section, "temporary" is defined as no more than fourteen (14) days per year.

Section 7. Tower Structures. No poles, posts, towers, or antenna may be installed that exceed seven (7) feet in height from grade. Satellite dishes having a diameter not greater than one meter may be attached to the Living Unit.

### **ARTICLE XIII**

#### **DECLARANT RIGHTS**

Section 1. Declarant Rights. The Declarant expressly reserves the exclusive and unconditional authority to exercise the following declarant rights, for as long as it owns or retains an interest in a Lot, or for such shorter period as may be specifically indicated:

- (a) To elect, or cause persons designated by it to elect, the officers and members of the Board in accordance with Article IV, Section 3 hereof and Section 6.1 of the Bylaws.
- (b) To complete improvements indicated on the plat of the Property, if any, or otherwise included in Declarant's development plans or allowed by this Declaration, and to make alterations in the Lots to accommodate its sales facilities.
- (c) To construct, operate and maintain sales offices, management offices, signs advertising the Property, and models (which models may be any Lot which Declarant may from time to time own or in which Declarant may hold an interest).
- (d) To use easements through and over the Property for the purpose of making improvements within the Property and for the purpose of exercising its special declarant rights.
- (e) To create Lots or Common Elements within the Property.
- (f) To subdivide Lots or convert Lots into Common Elements.
- (g) To relocate boundaries between Lots and to otherwise alter Lots owned by Declarant.

- (h) To merge or consolidate the Association with another association of the same form of ownership.
- (i) To require that as long as Declarant owns any unsold Lot for sale or has the right to add any portion of the Additional Real Estate as provided in Article XV, below, Declarant's written consent shall be required for any amendments to the Governing Documents or Rules and Regulations which directly or indirectly affect or may affect Declarant's rights under the Governing Documents.
- (j) To add Additional Real Estate, as more fully described in Article XV, below.

## ARTICLE XIV

### COMPLIANCE BY OWNER

Section 1. Right of Action in Owners and Association. Failure of any Owner to comply with the provisions of the Governing Documents, Rules and Regulations, decisions of the Association and such amendments thereto as may be made from time to time shall give rise to a cause of action in the Association and any aggrieved Owner for the recovery of damages, or for injunctive relief, or both.

Section 2. Entitlement to Relief. The Association may commence legal action to recover sums due, for damages, for injunctive relief or to foreclose a lien owned by it, or any combination thereof, or an action for any other relief authorized by the Governing Documents or available at law or in equity. Legal relief may be sought by the Association against any Owner or by an Owner against the Association or another Owner to enforce compliance with the Governing Documents, Rules or decisions of the Association. However, no Owner may withhold assessments payable to the Association, or take (or omit) other action in violation of the Governing Documents or Rules as a measure to enforce such Owner's position, or for any other reason.

Section 3. Sanction and Remedies. In addition to any other remedies or sanctions, expressed or implied, administrative or legal, the Association shall have the right, but not the obligation, to implement anyone or more of the following actions against Owners and Occupants and/or their guests, who violate the provisions of the Governing Documents or Rules:

- (a) Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- (b) Impose late charges as determined by the Board for each past due assessment or installment thereof, and interest at up to the highest rate permitted by law.
- (c) In the event of default of more than thirty (30) days in the payment of any assessment or installment thereof, all remaining installments of assessments assessed against the Lot owned by the defaulting Owner may be accelerated and shall then be payable in full. If all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration, reasonable advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
- (d) Impose reasonable fines, penalties or charges for each violation of Governing Documents or Rules.

- (e) Suspend the rights of any Owner or Occupant and their guests to use any amenity; provided, however, that this limitation shall not apply to those portions of the Property providing utilities service and access to the Lot. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the Governing Documents or Rules, as the case may be, and for up to thirty (30) days thereafter, for each violation.
- (f) Restore any portions of the Property damaged or altered, or allowed to be damaged or altered, by an Owner or Occupant or their guests in violation of the Governing Documents or Rules, and to assess the cost of such restoration against the responsible Owners and their Lots.
- (g) Enter any Lot in which, or as to which, a violation or breach of the Governing Documents or Rules exists which materially affects, or is likely to materially affect in the near future, the health or safety of other Owners or Occupants, or their guests, or the safety or soundness of any Living Unit or other part of the Property or the property of the Owners or Occupants, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Lot which is causing the violation; provided, however, that any improvements which are a part of a Lot may be altered or demolished only pursuant to a court order or with the agreement of the Owner.
- (h) Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for the foreclosure of mortgages by action or under a power of sale in the state where the Property is located.

Section 4. Rights to Hearing. In the case of imposition of any of the remedies authorized by Section 3 (d), (e), (f) or (g) of this Article, the Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least ten (10) days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty (30) days of receipt of the hearing request by the Board, and with at least five (5) days' prior written notice to the offender. If the offending Owner fails to appear at the hearing, then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearing established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within a reasonable time following the hearing, if not delivered to the offender at the hearing.

Section 5. Lien for Charges, Penalties, Etc. Any assessments, fines, penalties, charges or interest imposed under this Article shall be a lien against the Lot of the Owner or Occupant against whom the same are imposed and the personal obligation of such Owner in the same manner and with the same priority and effect as assessments under Article VI. The lien shall attach as of the date of imposition of the remedy, but shall not be final as to violations for which a hearing is held until the Board gives written notice following the hearing. All remedies shall be cumulative, and the exercise of, or failure to exercise, any remedy shall not be deemed a waiver of any right to pursue any others.

Section 6. Costs of Proceeding and Attorneys' Fees. With respect to any collection measures, or any measure or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Governing Documents or Rules, whether or not finally determined by a court or arbitrator, the Association may assess the Owner involved and his or her Lot with any expenses incurred in connection with such enforcement, including, without limitation, fines or charges previously imposed by the Association, reasonable attorneys' fees, and interest (at the highest rate permitted by law) on the delinquent amounts owed to the Association.

Section 7. Liability for Owners' and Occupants' Acts. An Owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such Owner's acts or omissions, or by that of Occupants or guests in the Owner's Lot, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Occupant. However, any insurance deductible amount and/or increase in insurance rate resulting from the Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Lot.

Section 8. Enforcement by Owners. The provisions of this Article shall not limit or impair the independent rights of other Owners to enforce the provisions of the Governing Documents or Rules as provided therein.

## ARTICLE XV

### ADDING ADDITIONAL REAL ESTATE

Section 1. Reservation of Right to Add Additional Real Estate. The Declarant reserves the right to execute and record one or more amendments to this Declaration subjecting all or any part of the Additional Real Estate to the terms of this Declaration. The Declarant may subject portions of the Additional Real Estate to this Declaration at different times. The Declarant make no assurances regarding: (a) the configuration or boundaries of the portions of the Additional Real Estate which the Declarant may subject to the terms of this Declaration; (b) the order in which the Declarant will subject portions of the Additional Real Estate to the terms of this Declaration; or (c) that the Declarant will subject any of the Additional Real Estate to the terms of this Declaration. The Declarant is not obligated to subject any of the Additional Real Estate to the terms of this Declaration.

Section 2. Restrictions on Additional Real Estate. All Additional Real Estate the Declarant subjects to the terms of this Declaration will be restricted to residential use. For purposes of this Section, property that is subject to drainage and utility easements in favor of the public, the Association or the City is deemed to be used for a residential use.

Section 3. Additional Real Estate Subject to Declaration When Added. Lots created when a Developer subjects Additional Real Estate to the terms of this Declaration will be subject to and benefited by all of the covenants, restrictions and easements contained in this Declaration. An amendment subjecting Additional Real Estate to the terms of this Declaration may contain additional covenants, restrictions and easements the Declarant deems necessary to reflect the different character of the Additional Real Estate that is the subject of the amendment, but any additional covenants, restrictions or easements contained in an amendment subjecting Additional Real Estate to the terms of this Declaration affect only the Additional Real Estate described in such amendment. An amendment subjecting Additional Real Estate to the terms of this Declaration may subject portions of the Additional Real Estate to easements in favor of the Association. In the event that the Additional Real Estate or any portion thereof is not subjected to the terms of the Declaration, the Additional Real Estate shall in no way be affected by or subject to the terms of this Declaration.



Section 4. Release of Right to Add Additional Real Estate. If Declarant determines it will not subject any or some portion of the Additional Real Estate it owns to the terms of this Declaration, the Developer may, but is not required to, record a statement to that effect in the Scott County land records and upon the recording of the statement, the Declarant's right to subject the Additional Real Estate described in the statement to the terms of this Declaration terminates.

## ARTICLE XVI

### GENERAL PROVISIONS

Section 1. Rules and Regulations. The Board shall have authority to propose and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property; provided, however, that the Rules and Regulations shall not be inconsistent with the Governing Documents. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the authority granted in this Article. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.

Section 2. Duration. The covenants, restrictions and easements of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Owner of any Lot subject to this Declaration, his or her respective legal representatives, heirs, successors and assigns, for a time of twenty (20) years from the date this Declaration is recorded; after which time said covenants, restrictions and easements shall be automatically renewed for successive ten (10) years.

Section 3. Amendments. The covenants and restrictions of this Declaration may be amended as follows:

- a) By the Declarant only, and at its discretion, until Declarant is no longer the Owner of any Lot in the Property or Additional Real Estate and a certificate of occupancy has been issued by the City with respect to every Lot therein.
- b) Thereafter, by consent of not less than sixty-seven percent (67%) of the Owners of the Lots. Consent of Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. An Affidavit of the Secretary or President of the Association as to the outcome of the vote, or the execution of the foregoing consents, shall be adequate evidence thereof for all purposes including, without limitation, the recording of the amendment.

Any amendment of this Declaration must be in writing, which writing must be properly recorded or filed in the office of the Scott County Registrar of Titles/Recorder.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity by any Owner or Owners, or the Association, against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or recover damages and failure by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event of any litigation to enforce or interpret the terms hereof, the court shall have the authority to award costs and reasonable attorney's fees to the prevailing party.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 6. Conflict among Documents. In the event of any conflict among the provisions of this Declaration, the Bylaws or any Rules and Regulations approved by the Association, this Declaration shall control, and as between the Bylaws and the Rules and Regulations, the Bylaws shall control.

**IN WITNESS WHEREOF**, the undersigned has caused this Declaration to be executed as of the day and year first above written.

THE RYLAND GROUP, INC.,  
a Maryland corporation

By: [Signature]

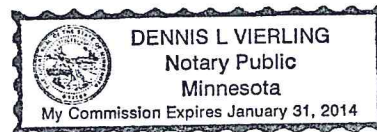
Its: Division President

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF HENNEPIN    )

This foregoing instrument was acknowledged before me this 11 day of November, 2013, by Michael W. DeVoe the Division President of The Ryland Group, Inc., a Maryland corporation, on behalf of the corporation.

[Signature]  
Notary Public

**This instrument drafted by:**  
Hellmuth & Johnson (NTP)  
8050 W. 78<sup>th</sup> St.  
Edina, MN 55439  
(952) 941-4005  
1516572\_1 – 13387.0031



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Lots 1 through 3, inclusive, Block 1;  
Lots 1 through 20, inclusive, Block 2;  
Lots 1 through 24, inclusive, Block 3;  
Lots 1 through 19, inclusive, Block 4

All in Dakota Crossing, Scott County, Minnesota