

**EXHIBIT "C"**

**BY-LAWS**

**OF**

**DAKOTA DUNES COMMUNITY ASSOCIATION, INC.**

**HYATT & RHOADS, P.C.**

**Attorneys**

**2400 Marquis One Tower  
Atlanta, Georgia 30303  
(404) 659-6600**

**1275 K Street, N.W.  
Washington, D.C. 20006  
(202) 682-1800**

**101 West Broadway, Suite 1330  
San Diego, California 92101  
(619) 232-0811**

- TABLE OF CONTENTS -

	<u>Page</u>
I. NAME, PRINCIPAL OFFICE, AND DEFINITIONS	1
1. Name.....	1
2. Principal Office.....	1
3. Definitions.....	1
II. ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES	1
1. Membership.....	1
2. Place of Meetings.....	1
3. Annual Meetings.....	1
4. Special Meetings.....	2
5. Notice of Meetings.....	2
6. Waiver of Notice.....	2
7. Adjournment of Meetings.....	2
8. Voting.....	3
9. Proxies.....	3
10. Majority.....	3
11. Quorum.....	3
12. Conduct of Meetings.....	3
13. Action Without a Meeting.....	4
III. BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS	4
A. <u>Composition and Selection.</u>	4
1. Governing Body; Composition.....	4
2. Directors During Class "B" Control Period.....	4
3. Right To Disapprove Actions.....	4
4. Number of Directors.....	5
5. Nomination of Directors.....	6
6. Election and Term of Office.....	6
7. Removal of Directors and Vacancies.....	8
B. <u>Meetings.</u>	8
8. Organizational Meetings.....	8
9. Regular Meetings.....	8
10. Special Meetings.....	9
11. Waiver of Notice.....	9
12. Quorum of Board of Directors.....	9
13. Compensation.....	10
14. Conduct of Meetings.....	10
15. Open Meetings.....	10
16. Action Without a Formal Meeting.....	10

	<u>Page</u>
C. <u>Powers and Duties.</u>	10
17. Powers.....	10
18. Management.....	12
19. Accounts and Reports.....	12
20. Borrowing.....	14
21. Rights of the Association.....	14
22. Indemnification.....	15
23. Enforcement.....	15
IV. OFFICERS	17
1. Officers.....	17
2. Election, Term of Office, and Vacancies.....	17
3. Removal.....	17
4. Powers and Duties.....	17
5. Resignation.....	17
6. Agreements, Contracts, Deeds, Leases, Checks, Etc.....	17
V. COMMITTEES	18
1. General.....	18
2. Covenants Committee.....	18
3. Neighborhood Committees.....	18
VI. MISCELLANEOUS	19
1. Fiscal Year.....	19
2. Parliamentary Rules.....	19
3. Conflicts.....	19
4. Books and Records.....	19
5. Notices.....	20
6. Amendment.....	21

BY-LAWS

OF

DAKOTA DUNES COMMUNITY ASSOCIATION, INC.

Article I

Name, Principal Office, and Definitions

Section 1. Name. The name of the Association shall be Dakota Dunes Community Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The initial principal office of the Association in the State of South Dakota shall be located in Union County at R.R. #1, Box 93B, Dakota Dunes, South Dakota 57049. The Association may have such other offices, either within or outside the State of South Dakota, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Dakota Dunes (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.

Article II

Association: Membership, Meetings, Quorum, Voting, Proxies

Section 1. Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors either within the Properties or as convenient thereto as possible and practical.

Section 3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Meetings shall be of the Voting Members or their alternates. Subsequent regular annual meetings shall be set by the Board so as to occur at least ninety (90) but not more than

one hundred twenty (120) days before the close of the Association's fiscal year on a date and at a time set by the Board of Directors.

Section 4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Voting Members representing at least ten (10%) percent of the total Class "A" votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Voting Members shall be delivered, either personally or by mail, to each Voting Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Waiver of Notice. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member or alternate shall be deemed waiver by such Voting Member of notice of the time, date, and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not

present, a majority of the Voting Members who are present at such meeting, either in person or by alternate, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

The Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, provided that Voting Members or their alternates representing at least twenty-five (25%) percent of the total Class "A" votes of the Association remain in attendance, and provided further that any action taken is approved by at least a majority of the Members required to constitute a quorum.

Section 8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 9. Proxies. Voting Members may not vote by proxy but only in person or through their designated alternates.

Section 10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total number.

Section 11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by alternate of the Voting Members representing a majority of the total vote of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Section 12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Voting Members, or any action which may be taken at a meeting of the Voting Members, may be taken without a meeting if written consent setting forth the action so taken is signed by all of the Voting Members entitled to vote with respect to the subject matter thereof, and any such consent shall have the same force and effect as a unanimous vote of the Voting Members.

Article III  
Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of an Owner which is a corporation or partnership, the person designated in writing to the secretary of the Association as the representative of such corporation or partnership shall be eligible to serve as a director.

Section 2. Directors During Class "B" Control Period. Subject to the provisions of Section 6 below, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

(a) when seventy-five (75%) percent of the Units permitted by the Conceptual Land Use Plan for the property described on Exhibits "A" and "B" of the Declaration have certificates of occupancy issued thereon and have been conveyed to Persons other than the Declarant or builders holding title solely for purposes of development and sale;

(b) December 31, 2009; or

(c) when, in its discretion, the Class "B" Member so determines.

Section 3. Right To Disapprove Actions. This Section 3 may not be amended without the express, written consent of the Class "B" Member as long as the Class "B" membership exists.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove actions of the

Board and any committee, as is more fully provided in this Section. This right shall be exercisable only by the Class "B" Member, its successors, and assigns who specifically take this power in a recorded instrument. The right to disapprove shall be as follows:

No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) The Class "B" Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meetings with Article III, Sections 8, 9, and 10, of these By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board, any committee thereof, or the Association. The Class "B" Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class "B" Member shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Board of Directors or any committee thereof and to be taken by the Board, such committee, the Association, or any individual member of the Association, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Class "B" Member, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 4. Number of Directors. The number of directors in the Association shall be not less than three (3) nor more than seven (7), as provided in Section 6 below. The

initial Board shall consist of three (3) members as identified in the Articles of Incorporation.

**Section 5. Nomination of Directors.** Except with respect to directors selected by the Class "B" Member, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association, with at least one (1) representative from each Voting Group. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Voting Members to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled. The Nominating Committee shall nominate separate slates for the directors to be elected at large by all Voting Members, and for the director(s) to be elected by and from each Voting Group. Nominations for each slate shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Voting Members and to solicit votes.

**Section 6. Election and Term of Office.**  
Notwithstanding any other provision contained herein:

(a) Within thirty (30) days after the time Class "A" Members, other than the Declarant or a builder holding title solely for purposes of development and sale, own twenty-five (25%) percent of the Units permitted by the Conceptual Land Use Plan for the property described in Exhibits "A" and "B" or whenever the Class "B" Member earlier determines, the Association shall call a special meeting at which Voting Members representing the Class "A" Members shall elect one (1) of the three (3) directors, who shall be an at-large director. The remaining two (2) directors shall be appointees of the Class "B" Member. The director elected by the Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (b) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) Within thirty (30) days after the time Class "A" Members, other than the Declarant or a builder holding title

solely for purposes of development and sale, own fifty (50%) percent of the Units permitted by the Conceptual Land Use Plan for the property described in Exhibits "A" and "B", or whenever the Class "B" Member earlier determines, the Board shall be increased to five (5) directors. The Association shall call a special meeting at which Voting Members representing the Class "A" Members shall elect two (2) of the five (5) directors, who shall serve as at-large directors. The remaining three (3) directors shall be appointees of the Class "B" Member. The directors elected by the Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within thirty (30) days after termination of the Class "B" Control Period, the Association shall call a special meeting at which Voting Members representing the Class "A" Members shall elect three (3) of the five (5) directors, who shall serve as at-large directors. The remaining two (2) directors shall be appointees of the Class "B" Member. The directors elected by the Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting occurs within thirty (30) days after termination of the Class "B" Control Period, this subsection shall not apply and directors shall be elected in accordance with subsection (d) below.

(d) At the first annual meeting of the membership after the termination of the Class "B" Control Period, the directors shall be selected as follows: All directors shall be elected by the Voting Members representing the Class "A" Members, with one (1) director being elected from each Voting Group and any remaining directorships filled at large by the vote of all such Voting Members. Three (3) directors shall be elected for a term of two (2) years and two (2) directors shall be elected for a term of one (1) year. Setting the initial term of each director shall be at the sole discretion of the Nominating Committee. At the expiration of the initial term of office of each member of the Board of Directors and at each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years.

Each Voting Member shall be entitled to cast one (1) vote with respect to each vacancy to be filled from each slate on which such Voting Member is entitled to vote. There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected. The directors elected by the Voting

Members shall hold office until their respective successors have been elected by the Association. Directors may be elected to serve any number of consecutive terms.

Section 7. Removal of Directors and Vacancies. Any director elected by the Voting Members may be removed, with or without cause, by the vote of Voting Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. A director who was elected at large solely by the votes of Voting Members other than the Declarant may be removed from office prior to the expiration of his or her term only by the votes of a majority of Voting Members other than the Declarant. Upon removal of a director, a successor shall then and there be elected by the Voting Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Voting Members who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than thirty (30) days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and it may appoint a successor. Any director appointed by the Board shall be selected from the Voting Group represented by the director who vacated the position and shall serve for the remainder of the term of such director.

B. Meetings.

Section 8. Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

**Section 10. Special Meetings.** Special meetings of the Board of Directors shall be held when called by written notice signed by the President of the Association or by any three (3) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

**Section 11. Waiver of Notice.** The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**Section 12. Quorum of Board of Directors.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total Class "A" vote of the Association at a regular or special meeting of the Association; provided any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.

Section 14. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 15. Open Meetings. Subject to the provisions of Section 16 of this Article, all meetings of the Board shall be open to all Voting Members, but Voting Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Voting Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding Voting Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

Section 16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

Section 17. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Voting Members or the membership generally.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to establish policies relating to, and shall be responsible for performing or causing to be performed, the following, in way of explanation, but not limitation:

(a) preparation and adoption, in accordance with Article X of the Declaration, of annual budgets in which there shall be established the contribution of each Owner to the Common Expenses and Neighborhood Expenses;

(b) making assessments to defray the Common Expenses and Neighborhood Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Unit's proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;

(c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair, and replacement of its property and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(m) making available to any prospective purchaser of a Unit, any Owner of a Unit, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Unit and all other books, records, and financial statements of the Association; and

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties.

**Section 18. Management.** The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 17 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

**Section 19. Accounts and Reports.** The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the fifteenth (15th) day following the due date unless otherwise determined by the Board of Directors); and

(g) an annual report consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited or reviewed basis, as determined by the Board, by an

independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement. After the Class "B" Control Period, the annual report shall include certified financial statements.

Section 20. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Area of Common Responsibility without the approval of the Voting Members of the Association. The Board shall also have the power to borrow money for other purposes; provided, the Board shall obtain Voting Member approval in the same manner provided in Article X, Section 4, of the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these By-Laws, or the Articles of Incorporation, during the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Voting Members representing at least fifty-one (51%) percent of the Members other than the Declarant and the Declarant's nominees.

Section 21. Rights of the Association. With respect to the Area of Common Responsibility, and in accordance with the Articles of Incorporation and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, both within and without the Properties. Such agreements shall require the consent of two-thirds (2/3) of all directors of the Association.

The Association shall not be bound, either directly or indirectly, by any contract, lease, or other agreement (including any management contract) executed during the Class "B" Control Period unless such contract, lease or other agreement contains a right of termination exercisable by either party without penalty at any time, with or without cause, upon not more than ninety (90) days notice to the other party.

**Section 22. Indemnification.** The Association shall have power to indemnify every officer, director, employee, agent, and committee member of the Association in such manner and in such amounts as may be permitted pursuant to South Dakota Laws, Sections 47-22-65.1 to 47-22-65.8, inclusive, as such statutes may be amended from time to time; provided, however, no such indemnification by the Association shall exceed the amounts authorized by such statutes. To the extent permissible under South Dakota law, the officers, directors, employees, agents, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. To the extent permissible under South Dakota law, the officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and to the extent permissible under South Dakota law, the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, employee, agent, or committee member, or former officer, director, employee, agent, or committee member, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 23. Enforcement.** The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit. In the event that any occupant, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested within the allotted ten (10) day period, the hearing shall be held in executive session affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board of Directors or the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

Article IV  
Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Voting Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

## Article V Committees

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors may appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article III, Section 23 of these By-Laws.

Section 3. Neighborhood Committees. In addition to any other committees appointed as provided above, there shall be a Neighborhood Committee for each Neighborhood which has no formal organizational structure or association. Such Neighborhood Committees shall consist of three (3) members; provided, however, by vote of at least fifty-one (51%) percent of the Owners within the Neighborhood this number may be increased to five (5).

The members of each Neighborhood Committee shall be elected by the vote of Owners of Units within that Neighborhood at an annual meeting of such Owners. The first annual meeting shall be called within sixty (60) days after conveyance of fifty-one (51%) percent of the Units in the Neighborhood to persons other than a builder or developer. The Owners of Units within the Neighborhood holding at least one-third (1/3) of the total votes of Units in the Neighborhood, represented in person or by proxy, shall constitute a quorum at any meeting of the Neighborhood. The Owners of Units within a Neighborhood shall have the number of votes assigned to their Units in the Declaration. Committee members shall be elected for a term of one (1) year or until their successors are elected. Any director elected to the Board of Directors from a Neighborhood shall be an ex officio member of the Committee. It shall be the responsibility of the Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with

the Declaration. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board of Directors.

In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the procedures and requirements applicable to the Board of Directors set forth in Article III, Sections 8, 9, 10, 11, 12, 13, 14, 15, and 16, of these By-Laws; provided, however, the term "Voting Member" shall refer to the Owners of Units within the Neighborhood, the term "Board of Directors" shall refer to the Neighborhood Committee, the term "director" shall refer to the members of the Neighborhood Committee, and the term "President" shall refer to the chairman of the Neighborhood Committee. Each Neighborhood Committee shall elect a chairman from among its members who shall preside at its meetings and who shall be responsible for transmitting any and all communications to the Board of Directors and shall be the Voting Member from that Neighborhood. Each Neighborhood Committee shall also elect a vice-chairman from among its members to be the alternate Voting Member.

## Article VI Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with South Dakota law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts between the provisions of South Dakota law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of South Dakota law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules and regulations of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees

shall be made available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, Member of the Association, or by the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in the Unit at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

**Section 6. Amendment.** Prior to the conveyance of the first Unit, Declarant may unilaterally amend these By-Laws. After such conveyance, the Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as it still owns property described in Exhibits "A" or "B" of the Declaration for development as part of the Properties, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

Thereafter and otherwise, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five (75%) percent of the total Class "A" votes in the Association, including seventy-five (75%) percent of the Class "A" votes held by Members other than the Declarant, and the consent of the Class "B" Member, so long as such membership exists. In addition, the approval requirements set forth in Article XIV of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. The Veterans Administration ("VA"), so long as the VA is guaranteeing any Mortgage on a Unit within the Properties, or the Department of Housing and Urban Development ("HUD"), so long as HUD is insuring any Mortgage on a Unit within the Properties, shall have the right to approve amendments to these By-Laws for so long as there is a Class "B" membership. Any amendment to be effective must be recorded in the public records of Union County, South Dakota.

If an Owner consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

2095g -- 10/12/89

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Dakota Dunes Community Association, Inc., a South Dakota corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 14th day of May, 1990.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 14th day of May, 1990.

[SEAL]

105

2095g

*Dennis M. Lala*  
Secretary

EXHIBIT "D"

Declaration of Easements and Covenant to Share Costs

THIS DECLARATION is made this 14th day of May,  
19 90, by DAKOTA DUNES DEVELOPMENT COMPANY, an Iowa corporation  
("Declarant").

BACKGROUND STATEMENT

Declarant is the owner of all that property which is subject to the Declaration of Covenants, Conditions and Restrictions for Dakota Dunes, recorded in Misc. Book 29, Page 149, of the public records of Union County, South Dakota (such Declaration is herein referred to as the "Residential Declaration" and all property subject thereto, together with any property which may from time to time be added by amendment, is herein referred to as the "Residential Property"). Declarant is also the owner of all that property subject to the Declaration of Covenants, Conditions and Restrictions for Dakota Dunes Commercial Association, which shall in the future be recorded in the public records of Union County, South Dakota (such Declaration is herein referred to as the "Commercial Declaration," all property subject thereto, together with any property which may from time to time be added by amendment, is herein referred to as the "Commercial Property," and the owners association created thereunder is herein referred to as the "Commercial Association"). Acknowledging that the future owners and occupants of the Commercial Property will benefit from the performance by Dakota Dunes Community Association, Inc. ("Association") of certain of its maintenance responsibilities under the Residential Declaration and hereunder, Declarant desires to provide for an equitable allocation of the costs of such maintenance between the Association and the owners of the Commercial Property.

NOW, THEREFORE, Declarant hereby declares that all of the Residential Property and all of the Commercial Property shall be held, sold, and conveyed subject to the covenants, conditions, and easements contained herein, which are made for the express benefit of the Association and the present and future owners of the Residential Property and the Commercial Property, and which shall run with the title to the Residential Property and the Commercial Property and shall bind all parties having any right, title, or interest in the Residential Property or the Commercial Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall

inure to the benefit of the Association and each owner of any part of the Residential Property or Commercial Property.

**Article I**  
**Easements**

**Section 1. Easements for Maintenance.** There are hereby reserved to the Association blanket easements over, under and across the Commercial Property for access, ingress and egress, maintenance and repair to the extent reasonably necessary for the Association to perform its maintenance responsibilities under the Residential Declaration and hereunder.

**Article II**  
**Obligation To Share Costs**

**Section 1. Responsibility and Obligation for Assessments.** Each and every owner of any portion of the Commercial Property, by acceptance of a deed therefor, whether or not it shall be expressed in such deed, covenants and agrees to pay an annual assessment to the Association to cover a portion of the costs incurred by the Association in maintaining, repairing, replacing, and insuring the Maintenance Property, if any, as defined below. The obligation of each such owner to pay this assessment shall be a separate and independent covenant on the part of each owner, and no diminution or abatement of the assessment or setoff shall be claimed or allowed by reason of any alleged failure of the Association to adequately perform such maintenance responsibilities, if any, the sole remedy of each owner for failure of the Association to perform being suit at law or in equity.

**Section 2. Maintenance Property.** The Maintenance Property, as such term is used herein, shall refer to, without limitation, all grass, landscaping, landscaped medians, and rights-of-way, including any improvements thereon, surrounding major entry features and signage indicating the entrance to the planned unit development known as Dakota Dunes, and any other property which is used by or benefits jointly the owners of Commercial Property and the owners of Residential Property, which the Association is obligated to maintain or insure under the Residential Declaration.

**Section 3. Computation of Assessments.** On an annual basis, the Association shall determine an estimated budget for maintaining, repairing, replacing, and insuring the Maintenance Property, if any, in a manner consistent with, and to the level of, the Community-Wide Standard established under the Residential Declaration during the upcoming year, including an

appropriate amount to be placed in a reserve fund for capital repairs and replacements. Such budget shall be adjusted to excess or deficiency in the budget assessed for the immediately preceding year as compared to actual expenses for that period. The Association shall use fifty percent (50%) of such annual budget, as adjusted, plus any unreimbursed costs incurred by the Association during the previous fiscal year to collect amounts due hereunder (hereinafter "Commercial Basis"), as the basis for computing the total annual assessment obligation for the Commercial Property. The total annual assessment payable by each owner of any portion of the Commercial Property shall be determined by the following formula:

$$\begin{array}{l} \text{Total Points Assigned} \\ \text{to Unit owned by} \\ \text{Commercial Owner} \\ \text{Total Points for} \\ \text{all Units within} \\ \text{Commercial Property} \end{array} \times \begin{array}{l} \text{Commercial Basis} \\ \text{(Dollars)} \end{array} = \text{Assessment}$$

"Points" for each unit within the Commercial Property shall be computed according to the formula set forth in Exhibit "C" to the Commercial Declaration.

Section 4. Payment of Assessments. Within thirty (30) days of receipt of notice of an annual assessment, each owner of any portion of the Commercial Property shall pay to the Association the entire amount due. Any assessment delinquent for a period of more than thirty (30) days shall incur a late charge in such amount as the Association may from time to time reasonably determine. If the assessment is not paid when due, a lien, as herein provided, shall attach to the property of the delinquent owner within the Commercial Property, as applicable. In addition, the lien shall include interest (not to exceed the maximum lawful rate) on the principal amount due and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may institute suit to collect such amounts and to foreclose its lien. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all its members. The Association, acting through its Board and on behalf of its members, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

**Article III**  
**General**

Section 1. **Notice.** Any notice provided for in this Declaration shall be served personally or shall be mailed by registered or certified mail, if to the Association, to the president or secretary of the Association or, if to the owner of any portion of the Commercial Property, to the owner of the property within the Commercial Property at the address of such property or such other address as is registered with the Association. All such notices shall, for all purposes, be deemed delivered (a) upon personal delivery to the party or address specified above; or (b) on the third (3rd) day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

Section 2. **Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarant if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Commercial Property subject to this Declaration; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any portion of the Commercial Property; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on any portion of the Commercial Property; provided, however, any such amendment shall not adversely affect the title to any property subject to the Commercial Declaration unless the owner thereof shall consent thereto in writing. Further, so long as the Declarant has an option unilaterally to subject additional property to the Residential Declaration as provided in that instrument, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any owner or occupant subject to the Commercial Declaration, nor shall it adversely affect title to the property of any owner subject to the Commercial Declaration without the consent of the affected owner or occupant.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a majority of the directors of the Association and at least a majority of the directors of the

Commercial Association, and, so long as the Declarant has an option unilaterally to subject additional property to the Residential Declaration as provided in that instrument, the consent of the Declarant. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

**Section 3. Duration.** The provisions of this Declaration shall run with and bind the land and shall be and remain in effect for a period of thirty (30) years after the date that this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless such extension is disapproved by at least a majority of the directors of the the Association and at least a majority of the directors of the Commercial Association, and, so long as the Declarant has an option unilaterally to subject additional property to the Residential Declaration as provided in that instrument, the consent of Declarant. Every purchaser or grantee of any interest in any portion of the Residential Property or the Commercial Property, by acceptance of a deed or other conveyance therefor, agrees that the provisions of this Declaration may be extended and renewed as provided in this Section.

**Section 4. Binding Effect.** This Declaration shall be binding upon and shall inure to the benefit of every owner of any portion of the Residential Property or the Commercial Property, and shall also inure to the benefit of the Association.

**Section 5. Interpretation.** This Declaration shall be governed by and construed under the laws of the State of South Dakota.

**Section 6. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 7. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall

include the neuter and feminine.

Section 8. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 9. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 14th day of May, 1990.

DAKOTA DUNES DEVELOPMENT COMPANY, an Iowa corporation

By: [Signature]

Its: Vice President

Attest: [Signature]

Its: Corporate Secretary

STATE OF SOUTH DAKOTA

COUNTY OF UNION

On this the 14th day of May, 1989, before me, JONATHAN P. BROWN, the undersigned officer, personally appeared ROBERT A. PETERSON, who acknowledged himself to be the VICE President of Dakota Dunes Development Company, an Iowa corporation, and that he, as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President.

My term of office expires on 10/15/94

Jonathan P. Brown  
NOTARY PUBLIC

