

SPEARFISH MOUNTAIN RANCH LLC
WATER SERVICE AGREEMENT

This Spearfish Mountain Ranch LLC Water Service Agreement (“Agreement”) is made effective this 21st day of October, 2021, by and between the City of Whitewood, a municipal corporation organized under the laws of the State of South Dakota, of 1025 Meade Street, Whitewood, South Dakota 57793, (“City”) and Spearfish Mountain Ranch, LLC, a Delaware Limited Liability Company (“SRM”) care of Keating Resources, LLC, 107 South Main Street, P.O. Box 130, Atkinson Nebraska 68713, (“Association”). The term “Association” includes all of Association’s successors or assigns, and the parties contemplate the assignment of this Agreement by SRM to a homeowner’s association that services the water users subject to this Agreement.

WHEREAS, Association desires to provide for the water needs of the Spearfish Mountain Ranch Addition located on the real property described on **Exhibit “A”** attached hereto and incorporated herein by this reference, and desires to construct, maintain and operate its system of water hook-ups and facilities and all expansions thereof, required to supply the needs of all residents of Spearfish Mountain Ranch Addition, and

WHEREAS, Association further desires to receive a supply of water from the main distribution system of the City.

NOW, THEREFORE, the parties hereby agree as follows:

1. City agrees to sell and deliver clean, safe water meeting the same standards as water delivered within Whitewood City limits to Association subject to the conditions stated herein.
2. Association agrees to purchase water from the City for use only within the described property subject to the conditions stated herein.
3. All water furnished shall be measured by water meters and a separate meter shall be connected to each separate residence. The meters shall be furnished by the individual lot owner and installed by a licensed plumber. It is understood by the parties that the Association has been and will continue to be developing residential lots and that there shall be no hook-up fee assessed against lots in the Association’s subdivision at the time improvements are constructed and meters are installed.
4. Association shall pay to the City the rural residential rate charged by the City for water usage, which is referenced as “residential water users with hookups outside the city” in Whitewood City Ordinance § 51.056(B). As indicated in Whitewood City Ordinance § 51.056(B), the rural residential rates are triple the rates for residential water users within city boundaries. It is understood and agreed between the City and the Association that the water rates and minimum charge for rural residential water may be changed from time to time by the City Council, and Association agrees to pay

the increased or decreased rates and minimums applicable to rural residential water as set by the City Council. The City shall read only the Association's master meter, rather than all of the meters in the subdivision, and will bill the Association for the total water used by the Association as a whole. The Association is responsible for reading the individual homeowners' meters and collecting the individual homeowners' water payments. The City may read the master meter and bill therefore on a monthly or quarterly basis, whichever is more convenient for the City.

5. Association agrees that in the event it shall become necessary for City to impose water restrictions on the City consumers at some time, City may impose equal restrictions on the use of water by rural residential users, including Association. It is understood that these restrictions may include a reduction in the amount of water supplied by City and may include a total shut-off if necessary for the immediate preservation of the health and safety of the residents of City.
6. Association agrees to maintain a water line and distribution system from the point of connection with the City water main. In addition, Association shall be responsible to do all water testing required by the South Dakota Department of Environment and Natural Resources and to submit said testing to the State. Association shall be responsible to remedy any water problems identified by the Department of Environment and Natural Resources for the water transmitted over its distribution lines.
7. It is understood and agreed that City shall have the right to inspect at the connection point and meter pit and City shall maintain the master meter and metering pit.
8. City expressly reserves the right to temporarily discontinue the supply of water to any of the pipes laid or to be laid by Association whenever it is necessary to insure the proper operating of the City water system or when required for the immediate preservation of the safety or health of the residents of City, or otherwise as allowed by applicable Whitewood City Ordinances, as amended from time to time.
9. No failure or delay in performance of the executed Agreement by either party shall be deemed to be a breach thereof when such failure or delay is occasioned by or due to any acts of God, strikes, lockouts, wars, riots, epidemics, explosions, sabotage, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension of its obligations.
10. The term of this Agreement shall be ten years from its effective date and shall automatically renew for another ten-year term unless either party gives written notice of its intention to terminate the Agreement no less than twenty-four (24) months prior to the termination of the first ten-year term. In the event that timely, written notice of termination is given by either party, this Agreement shall expire and be of no further force and effect at the expiration of the first ten-year term.

In spite of the foregoing, this Agreement shall be reviewed by the parties and possibly renegotiated when there are at least sixty water connections in the subdivision. After the sixty connections are reached, the Agreement will be reviewed, and also reviewed when twelve water hookups are added thereafter.

11. In the event that City annexes or acquires any portion of the water system installed by Association, it is specifically agreed that Association or any successor in interest shall not claim or seek any reimbursement or claim for monies against City for any portion of said system that were so installed by Association. In the event of annexation, City agrees to release Association of any further obligation for the maintenance of said water system previously belonging to Association, and to assume full responsibility for any and all future maintenance of said water system.
12. This Agreement shall inure to the benefit of and be binding upon the respective parties hereto and their successors and assigns. Association agrees to provide City notice of any assignments, in whole or in part, of its rights under this Agreement.
13. Future development adjacent to the land described in **Exhibit A** may be incorporated into this Agreement by the mutual consent of City and Association and/or any of Association's successors or assigns.
14. Association expressly agrees that the water purchased from City shall be exclusively used for domestic purposes and Association expressly agrees that this Agreement shall become null and void in the event that the water is used for nondomestic purposes. City expressly agrees not to charge Association for any water used for purposes of fire suppression or other emergency purpose.
15. Until such time as City may annex the water system, Association agrees to indemnify and hold City harmless against any liability or claims for damages for any injury or injuries, including death, to any person or persons or property of any kind whatsoever, from any cause or causes whatsoever which in any way arise or are alleged to arise from the sale and distribution of water to Association or the inability of City to furnish the water herein provided.
16. Neither the waiver by either party hereto of a breach or a default under any of the provisions of this Agreement, nor the failure of either party, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provision, right or privilege.
17. This Agreement shall be interpreted in accordance with the laws of State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, 7th Judicial Circuit, Pennington County, South Dakota.

18. This Agreement may only be amended or replaced by a written amendment signed by an authorized representative of both parties and attached to this Agreement. This Except for a homeowner's association that services the water users subject to this Agreement, this Agreement may not be assigned without the express prior written consent of the City.
19. Association will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will solely be responsible for obtaining current information on such requirements. To the maximum extent allowed by law, Association consents to governance by Whitewood City Ordinances, as amended from time to time. All applicable Whitewood City Ordinances, as amended from time to time, unless stated otherwise herein, are hereby incorporated into this Agreement by this reference.
20. This Agreement constitutes the complete, final and exclusive agreement and supersedes any and all prior oral or written representations, understandings or agreements between the parties regarding water services.
21. Any term or provision of this Agreement that is found invalid shall be severable and not affect the validity of the other parts of this Agreement.
22. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notice shall be given by and to the Whitewood City Council, the City of Whitewood Mayor, or Whitewood City Finance officer, on behalf of the City, and by and to Association on its own behalf, or by such other authorized designees or assignee as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when sent.
23. This Agreement shall be interpreted according to its terms and not for or against either party regardless of the party who drafted the Agreement. This Agreement may be executed in counterparts

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective, duly authorized officers as of the day and year first above written.

CITY OF WHITEWOOD

SPEARFISH MOUNTAIN RANCH, LLC

By: Mitchell H. Hae
Mayor

By: [Signature]
Its Member-Manager

ATTEST

By: [Signature]
City Finance Officer

State of South Dakota)
) ss.
County of Lawrence)

On this 25th October day of ~~November~~, 2021, before me, the undersigned officer, personally appeared **Mitch Harmon** and **Cory Heckenlaible**, who acknowledged themselves to be the Mayor and City Finance Officer, respectively, of the City of Whitewood, a municipal corporation, and that they, as such Mayor and City Finance Officer, respectively, being authorized to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City by themselves as Mayor and City Finance Officer, respectively.

IN WITNESS WHEREOF, I have set my hand and official seal.



(SEAL)

Jessica Bestgen
Notary Public
My Commission Expires: 8/11/20

State of South Dakota)
) ss.
County of Lawrence)

On this 21st October day of ~~November~~, 2021, before me, the undersigned officer, personally appeared Gerald Keating, who acknowledged himself to be the Member-Manager of Spearfish Mountain Ranch LLC, and that (s)he, as such Member-Manager being authorized to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Association by him/herself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Cory C. Heckenlaible
Notary Public
My Commission Expires: January 29, 2027

