

Prepared by:  
Roger A. Tellinghuisen  
DEMERSSEMAN JENSEN  
TELLINGHUISEN & HUFFMAN, LLP  
516 5th Street, PO Box 1820  
Rapid City, SD 57709-1820  
(605) 342-2814

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**SPEARFISH MOUNTAIN RANCH**  
**DECLARATION OF RESTRICTIVE COVENANTS**

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by **SPEARFISH MOUNTAIN RANCH LLC, a Delaware Limited Liability Company**, d/b/a Spearfish Mountain Ranch with its principal office at c/o Keating Resources, 107 South Main St., PO Box 130, Atkinson, NE 68713 hereinafter referred to as "Declarant".

**WHEREAS**, Declarant owns all of the property described on the attached Exhibit A which is located in Lawrence County and which shall hereafter be referred to as the "Development Property";

**WHEREAS**, Declarant intends to impose the following covenants, conditions, restrictions, and reservations upon the Development Property as hereinafter set forth.

**NOW, THEREFORE**, the Declarant does hereby declare and make the following covenants and impose the following conditions, restrictions, and reservations, hereinafter "Declaration", upon the Development Property as legally described in the attached Exhibit A.

**ARTICLE I. PROPERTY SUBJECT TO DECLARATION:**

1. General Declaration. It is Declarant's intent to develop all of the property described on Exhibit A. At the present time, Declarant intends to develop the Development Property and to subdivide several Lots out of the whole of the Development Property. Declarant intends to sell and convey such Lots and each Lot shall be subject to this Declaration and any additional covenants, conditions, restrictions and private easements as may be imposed upon such Lot by Declarant.

Declarant declares that all of the real property within the Development Property which

shall be subdivided into and designated Lots shall be limited to single family residential use, shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon, or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any additional covenants, conditions, restrictions and private easements as may be imposed by Declarant as amended or modified from time to time.

2. Property Description. The property to be covered by this Declaration shall be the whole of the Development Property. The Development Property contains approximately 680 +/- acres, more or less in Lawrence County and is described in the attached Exhibit A which is incorporated herein by this reference.

## **ARTICLE II. DEFINITIONS:**

For the purposes of this declaration, the following words or terms shall be defined as follows:

1. "Articles" shall mean the Articles of Incorporation of the Spearfish Mountain Ranch Homeowners Association, Inc. to be incorporated by Declarant as the same may from time to time be amended or supplemented.

2. "Assessment" shall mean any charge levied and assessed as either a general or special assessment against any Lot, Owner or Lessee for the maintenance and/or improvement of the roads within the Development and the promotion of recreation, health, safety and welfare of the residents of the Development as established by the Homeowners Association Board of Directors in accordance with the Homeowners Association Bylaws.

3. "Association" shall mean the Spearfish Mountain Ranch Homeowners Association, Inc. to be organized by Declarant to administer this Declaration of Restrictive Covenants for the Spearfish Mountain Ranch and to enforce the rights, powers and duties set forth in this Declaration, its Articles of Incorporation and Bylaws and shall include its successors and assigns.

4. "Board of Directors", "Board" shall mean the Board of Directors for the Homeowners Association. The Board shall consist of such number of directors who shall be elected and hold office in accordance with the Bylaws.

5. "Bylaws" shall mean the Bylaws of the Homeowners Association as the same may from time to time be amended or supplemented.

6. "Class A Lot" shall mean any Lot within the Development that has been built upon and is ready for occupancy.

7. "Class B Lot" shall mean any Lot within the Development which is owned by a party other than the Declarant, but has not been built upon, nor is it ready for occupancy.

8. "Covenants" shall mean the Declaration of Restrictive Covenants established by the Declarant for the Spearfish Mountain Ranch as set forth herein.

9. "Declarant" shall mean Spearfish Mountain Ranch LLC, a Delaware Limited Liability Company, with its principal office at c/o Keating Resources, 107 South Main St., PO Box 130, Atkinson, NE 68713, its successors and assigns.

10. "Development" means all of the Lots legally described above and any subdivision or replat of any portion thereof or any property added thereto by Petition for Inclusion, and excepting any property removed therefrom by Petition for Exclusion.

11. "Development Plan" is defined in the preamble.

12. "Lots", "Lot" shall mean any area of real property within the Development subdivided as described in Article I out of the whole of such Development Property, either designated as a Lot or similar designation on any plat recorded in the Lawrence County Register of Deeds Office or conveyed by aliquot description in a deed recorded in the Lawrence County Register of Deeds Office.

13. "Member" shall mean every Owner of a Class A or Class B Lot.

14. "Owner" shall refer to the record owners, whether one or more persons or entities, of the fee simple title of any Lot within the Development. In the case of a contract sale, the contract purchaser shall be deemed for purposes of this declaration to be the owner. In the case of Lots, the title to which is vested of record in a trustee pursuant to the laws of South Dakota, legal title shall be deemed to be in the Trustor. The term shall not include those having such interest solely as security for the performance of an obligation. The rights of the owner may be exercised by any other party or entity if such party or entity has the express written consent of the owner.

15. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage, or legal adoption.

### **ARTICLE III. RESTRICTIVE COVENANTS:**

1. Access Drives: Each Lot shall be accessed by a private driveway constructed with proper drainage and culverts and a minimal width of 12 feet with turning radius sufficient for easy access in case of fire. All private driveways which cross a ditch or barrow pit of any roadway within the Development and which would obstruct the flow of water through said ditch or barrow pit, must have a culvert installed in the ditch prior to the construction of the driveway. Such culvert shall be a minimum of 18" in diameter and the cost thereof shall be borne by the Owner.

2. All-Terrain Vehicles, Snowmobiles, Trail Bikes and Tracked Vehicles: All-terrain vehicles, snowmobiles and trail bikes may be operated within the Development provided

they proceed from the property Owner's Lot on the most direct route from such Lot to a designated trail between the hours of 7:00 a.m. and 9:00 p.m. Tracked vehicles shall not be operated on paved roads. All vehicles operated within the Development shall adhere to the speed limit.

3. Animals: There shall be no limit on the number of dogs or cats allowed, provided the same are for household enjoyment and not for commercial purposes. Pigs shall not be allowed. In the case of lots consisting of forty (40) acres or more, up to one (1) larger animal, i.e. horse, cow, etc. shall be allowed for every five (5) acres provided they are properly fenced from adjoining properties. No larger animals shall be allowed on lots consisting of less than forty (40) acres. All animals are to be restrained, kept on a leash or fenced. All animal shelters, i.e. barns, sheds, dog houses, etc. shall be located at the back of a Lot and no closer to the front or side of a Lot than one hundred (100) feet.

4. Antenna and Satellite Dishes: Television and radio antennae and satellite dishes are to be located as inconspicuously as possible. They shall be located at the side or rear of the home. No television or radio antennae shall be higher than 15 feet above the highest point of the residence. No satellite dishes larger than 24" in diameter shall be allowed.

5. Approval and Conformity: Until such time as Declarant shall have sold 90% of the Lots in the Development, no building, fence, storage shed, pool, spa, outbuilding or other structure or improvement of any type shall be commenced, erected or maintained upon any Lot, nor shall there be any additions or changes to the exterior of any residence or other structure except in compliance with plans and specifications approved in writing in advance by the Declarant. Thereafter, all such approvals shall be obtained from the Board of Directors and shall be in accordance with the external design and location in relation to surrounding structures and topography.

6. Building Setbacks: Subject to the provisions of Section 3 regarding animal shelters, the minimum building setbacks for all other structures on any Lot consisting of less than forty (40) acres shall be twenty-five feet (25') from the edge of the road fronting the Lot, twenty-five feet (25') from the center of other road easements within the Development and twenty feet (20') from all other Lot lines. On any Lot consisting of forty (40) acres or more, the minimum building setbacks for all structures shall be seventy-five feet (75') from the edge of the road fronting the Lot and from all other Lot lines.

7. Changes in Construction: Until such time as Declarant shall have sold 90% of the Lots in the Development, all exterior changes or additions to the approved plans before, during or after construction shall be approved in writing in advance by the Declarant. Thereafter, all such approvals shall be by the Board of Directors or its representative prior to the changes or additions being implemented.

8. Continuity of Construction: The exterior of all structures started in the Development shall be completed within eighteen (18) months from commencement of construction unless completion is prevented because of inclement weather. On any Lot

consisting of forty (40) acres or less, the exterior of all structures thereon shall be of quality construction and shall harmonize with other structures and the surrounding terrain.

9. Dwelling: No dwelling shall be constructed, erected, or maintained without a minimum of the following finished square footage (excluding garages):

Ranch Style Home	1,500 sq. ft.
Split Foyer	1,200 sq. ft.
One & One-Half Story Home	1,200 sq. ft. (Main floor) 600 sq. ft. (Second floor)
Two Story Home	1,200 sq. ft. (Main floor) 600 sq. ft. (Second floor)
Tri-Level or More	1,000 sq. ft. (Avg. per floor)

Each dwelling on a Lot consisting of forty (40) acres or less must have at least one (1) but not exceeding four (4) garages either attached or detached of not less than 350 square feet and not more than 2,000 square feet. For dwellings on Lots consisting of forty (40) acres or more, there shall be at least one (1) garage, but there shall not be a maximum limit to the number of garages that may be placed on the Lot.

Until such time as Declarant shall have sold 90% of the Lots in the Development, all plans for construction must be submitted for written approval to the Declarant. Thereafter approval shall be obtained from the Board of Directors or its representative.

All unfaced visible surfaces of concrete masonry or concrete foundation walls and piers shall blend unobtrusively with the adjacent materials. Surfaces of more than 24 inches in height may not be painted or mortar finish washed, but must receive a metal, stucco, rock, stone or brick finish.

All buildings shall be of new materials, new construction, and set on a permanent foundation. No houses shall be moved onto any Lot from any other location. Homes constructed of pre-fabricated wall and roof sections shall be allowed. Manufactured, mobile, single or double wide homes are not permitted.

All structures must comply with the latest editions of the local, state and national building codes, rules and regulations, including, but not limited to the following:

I.B.C. Standards of the International Building Code  
U.S.F.A. United States Fire Administration  
N.E.C.A. National Electrical Code Association  
South Dakota State Plumbing Code

Any tanks (gas or fuel oil) for use in connection with any residence constructed on said property must be sufficiently screened to conceal it from the view of neighboring Lots or the road. If the Owner elects to bury said tanks or storage containers, all such storage tanks or

containers must meet State or EPA regulations.

10. Easements: Easements for installation and maintenance of utilities, public or private, including water, electric, gas, cable, telephone, or sewer services, are reserved within a twenty (20) foot strip on either side of all Lot lines. Special easements also exist for access to any water storage and wells.

Within all such easements, whether public or private, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, access to individual Lots, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements on it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

11. Exterior Colors and Materials: The color combination of exterior materials must be subtle and tasteful to blend with the environment. Earthen tones in shades of brown or dark green are encouraged. Extreme contrasts in color of paints, stains, and masonry are discouraged. Roofing materials must be of darker tones. All color schemes must be approved in writing by the Board of Directors or its representative. No prefabricated metal siding building or other tin sided building or structure shall be built, erected or allowed on any Lot consisting of less than forty (40) acres.

12. Fences: For Lots less than forty (40) acres, the construction of any type of fence must have written approval of the Board of Directors or its representative. For Lots of forty (40) acres or more, the construction of fences must comply with the provisions of SDCL 43-23 et seq.

13. Firearms: On Lots consisting of less than forty (40) acres, no firearms shall be discharged within the Development. On Lots consisting of forty (40) acres or more, shotguns may be discharged, but the discharge of rifles and handguns shall not be permitted within the Development.

14. Garbage and Trash: No garbage or trash shall be maintained on any Lot so as to be visible from another Lot or the roadway. All garbage and trash will be placed in tight garbage cans of the type in normal use in this locality and shall be disposed of at least every seven (7) days. No refuse pile, garbage or unsightly objects are allowed on any Lot.

15. Fireplaces (outdoors) and Fires: No outdoor fires, incinerators, open fire pits, or related structures or devices shall be operated except as permitted by applicable State or Federal Laws.

16. Right of First Refusal: During the ROFO Period (defined below), Declarant reserves a first right of refusal to repurchase any Lot subject to these Covenants in the event the Owner receives a bona fide offer to purchase which Owner intends to accept. In that event, Owner shall provide Declarant with a copy of such bona fide purchase offer, and shall grant to

Declarant the right to exercise this right of first refusal to purchase the Lot subject to the bona fide purchase offer for a period of thirty (30) days following Declarant's receipt of a copy of the bona fide purchase offer (such period, the "ROFR Election Period"). At any time within the ROFR Election Period, Declarant may elect to repurchase the Lot on the same terms and conditions as the bona fide offer. Any election by Declarant to repurchase the Lot shall be set forth in a written notice provided to Owner prior to the expiration of the ROFR Election Period (such written notice, an "Election Notice"). Upon the exercise of this right of first refusal, the closing for the sale and repurchase of the Lot shall occur not later than thirty (30) days following the date Owner receives the Election Notice unless the bona fide purchase offer provides for a different closing date. In the event Declarant shall fail to elect to repurchase the Lot subject to the bona fide offer prior to the expiration of the ROFR Election Period, the right of first refusal granted to Owner as to the Lot in question shall lapse and be null and void, and Owner, and all successors and assigns of the Owner shall be free to sell that Lot without any further restriction of the right of first refusal in favor of Declarant. Any failure of the part of Declarant to exercise the right of first refusal granted herein shall not, however, excuse Owner from again extending the right of first refusal to Declarant if the sale to the bona fide buyer is not completed or if Owner and its bona fide buyer agree to sell the Lot on terms and conditions which differ materially from those contained in the bona fide purchase offer. In such event, Owner shall be required to provide Declarant with a copy of any new bona fide offer or such different terms and conditions between Owner and its original bona fide buyer and Declarant shall be granted a right of first refusal to purchase the Lot on such different terms and conditions in accordance with this paragraph. The right of first refusal provided for in this paragraph applies to each Lot sold by Developer to an Owner beginning on the date of the recording of the deed for the conveyance of the Lot in question and expires twenty (24) months after the recording of such deed (or, if a ROFR Election Period extends past such twenty (24) month period, then the expiration of that ROFR Election Period) (as applicable, the "ROFR Period") without the need for any party to take any further action or record any further document. All references to "Owner" in this paragraph mean only the first Owner that receives a deed for the Lot in question from Declarant and not any subsequent Owner of that Lot. Notwithstanding anything in this paragraph to the contrary, the term "bona fide offer" as used in this paragraph includes a transfer of a Lot for no or nominal consideration, unless Declarant waives its right of first refusal as to that transfer in writing, in which event (a) the right of first refusal shall continue to be applicable as to any subsequent transfer of the Lot in question during the ROFR Period, but (b) the beginning of the ROFR Period shall continue to be measured from the recording of the first deed from Declarant to the first Owner of that Lot.

17. Homeowners Association: Each person(s) who purchases a Lot or enters into a contract for deed to purchase a Lot as described above shall become and thereafter continue to be a member of the Homeowners Association and shall be bound by all rules and regulations as may be promulgated and approved by said Association. Each Lot shall be entitled to one vote on matters coming before the Homeowners Association, to be cast by the then record owner of said Lot. In the event that a Lot is owned in joint ownership between two or more people, the owners shall decide among themselves who will cast the single vote for such Lot. Declarant shall be entitled to designate a representative to occupy a permanent position on the Board of Directors on behalf of Declarant which appointee shall be entitled to all powers and privileges otherwise

available to elected Board members.

Declarant shall retain the right to veto any action or decision of the Homeowners Association until such time as 90% of the Lots which are classified pursuant hereto as Class A or Class B Lots have been sold or conveyed or December 31, 2024, whichever occurs later. Thereafter, Declarant shall retain the right to cast one vote for each Lot owned by Declarant on all matters coming before the Association until all of Declarant's property within the Development is sold or conveyed.

18. Hunting: No firearms may be discharged on Lots consisting of less than forty (40) acres within the Development. Shotguns, but not rifles or handguns, may be discharged on Lots consisting of forty (40) acres or more. No firearm hunting shall be allowed in the Development, but hunting with a bow and arrow may be allowed by individual property owners owning at least forty (40) acres or more of contiguous property within the Development.

19. Landscaping: All landscaping must be completed within six (6) months after substantial completion of the dwelling. The extent of landscaping shall be determined by the Lot Owner. Ground disturbed by construction shall be returned to a natural condition or landscaped within six (6) months after substantial completion of the dwelling.

20. Logging: On Lots less than forty (40) acres, removal of more than five (5) trees of 8" or more in diameter requires pre-approval in writing by the Board. On Lots consisting of forty (40) acres or more, removal of more than twenty-five (25) trees of 8" or more in diameter requires pre-approval in writing by the Board. Notwithstanding the foregoing, trees surrounding a home or permissible structure shall be removed or thinned in accordance with the Developments approved Fire Protection Plan.

21. Lot Size: No Lot shall be subdivided into smaller lots or conveyed in less than full or original dimensions. However, two or more adjacent Lots may be combined into one Lot and conveyed as one Lot. Replatted Lots, combining two or more adjacent Lots, shall be subject to general and special assessments as a single Lot after the Lots have been replatted and such replat filed in the Lawrence County Register of Deed's Office. Should any replatted Lots be subsequently separated and replatted into multiple Lots, all additional Lots created shall be subject to all assessments which would have accrued against each Lot except for the combination into a single Lot.

22. Lot Restrictions: No more than one (1) single family dwelling may be constructed on any Lot or combination thereof. However, on Lots of forty (40) acres or more, ancillary residences each consisting of at least 500 square feet on the ground floor may be constructed for use as guest housing for the temporary lodging of guests of the Lot Owner. The exterior of any ancillary residence shall be harmonious with the exterior of the principal dwelling.

23. Mining: No portion of the Development shall be used to explore for or remove oil or minerals of any kind.



24. Nuisances: No Owner shall permit anything to be done or kept on or within his or her Lot, or on or about the Development, which will obstruct or interfere with the rights of other Owners, occupants, or other authorized persons to use and enjoy the Development. Use and enjoyment include freedom from unreasonable noise and barking dogs. No Owner may permit any nuisance nor commit or allow any illegal act to occur on their Lot.

25. Outdoor Storage: No outdoor storage of any material, firewood containers, automotive accessories, equipment or other items shall be kept or stored between the homes and the roadways(s) fronting the property.

26. Outbuildings: No more than one (1) outbuilding shall be constructed on any Lot consisting of less than forty (40) acres and shall not exceed three thousand (3,000) square feet total area on the main floor. No more than five (5) outbuildings shall be constructed on any Lot consisting of forty (40) acres or more and shall not exceed fifteen thousand (15,000) square feet total cumulative area for such buildings. All outbuildings shall be of new construction. Outbuildings shall be no closer to the street or adjoining lot than the dwelling and shall be subject to the same guidelines as the dwelling for construction and maintenance.

27. Residential Use: Each Lot shall be used only for single family residential purposes. However, Owners may use a portion of their home for limited business purposes. Businesses requiring regularly scheduled appointments shall not be allowed. No extraordinary traffic is allowed.

The limited rental of residences to the same lessee shall be allowed provided any such rental shall be for a minimum of twenty-nine (29) consecutive nights. No subleasing of a residential rental shall be allowed.

28. Roads: All roads within the Development are for the Owners, their guests and Declarant or any successor or assign of Declarant. No parking is allowed on the roads or utility easements. Declarant will initially construct and gravel the platted roads. Until such time as 18 Lots are sold or conveyed, Declarant will pay up to 50% of the road maintenance costs annually – the other 50% shall be the responsibility of the Homeowners Association. Upon sale or conveyance of 18 Lots within the Development, such roads shall, without further action by Declarant, become the responsibility of the Association and all subsequent road work, including without limitation, maintenance, improvement or construction and cost shall be borne by the Association and assessed to the Owners as determined by the Association. In the event a road district is incorporated within the boundaries of the Development, subsequent road work, including without limitation, maintenance, improvement or construction and cost shall be borne by such road district.

29. Safe Conditions: Without limiting any other provisions in this Article, each Owner shall maintain his or her Lot in a safe, sound, sanitary manner and in good repair at all times. Owners shall correct any condition and refrain from any activity which might interfere with other Owner's rights.

30. Sewage Disposal Systems: Only sewage disposal systems designed and approved by a licensed engineer shall be permitted in the Development. All septic tanks must have an inspection access and must be pumped at least once every three (3) years and evidence of such must be kept and provided to the Board of Directors or their agents prior to the annual meeting on the first Monday of June each year.

31. Signs: No signs, billboards or other advertising devices shall be used on any Lot except for identification of a residence, road name, speed, direction or sale. Signs may be directive or informative and shall not be more than six (6) square feet in size. Signs erected by the Association and the Declarant are exempt. Sale signs must be removed upon the day of the sale.

32. Temporary Structures: On Lots less than forty (40) acres, no trailer, basement, tent, shack, garage, barn or other outbuilding shall be built on any Lot for use as a residence, either temporarily or permanent.

33. Utilities: Electrical and telephone services may be clustered in a utility easement located near a property corner. The extension of services from these locations to a residence is the responsibility of the Owner. No utility extensions shall be undertaken without notification and written approval of the Board of Directors.

34. Vehicles: No more than three properly licensed motor vehicles, trailers or other type of motorized or non-motorized vehicles, not in normal daily use may be kept outside on any Lot. Equipment of this type shall not be kept between the home and the roadway(s) fronting the property. No campers or recreational vehicle shall be maintained on a Lot as a residence for more than fourteen (14) consecutive days.

35. Violation of Law: No Owner shall permit anything to be done or kept on his or her Lot which would be in violation of any local, state or federal law.

36. Weed Control: The Owner of any Lot shall be responsible for the control of weeds and noxious plants on their property. Such weed control and weed control products shall be in accordance with appropriate State and Federal laws.

37. Fire Protection Plan: The Owner of any Lot shall comply with the Development's Fire Protection Plan on file with the Lawrence County Planning & Zoning Office.

38. Open Space: Within the Spearfish Mountain Ranch Development are certain areas which may be designated on a plat on file with the Lawrence County Register of Deed's Office as "open space" or "common area". Such open spaces or common area shall be conveyed to the Association which shall hold the same in trust for the benefit of the Owners of property within the Development. Such open space or common area shall never be developed for commercial or residential purposes, but may be developed by the Association for recreational

purposes.

39. Propane Tanks: All propane tanks must be buried on-site. The manner and location of buried tanks must be approved by the Board of Directors or their designee.

#### **ARTICLE IV. COVENANTS FOR ASSESSMENT**

It is the duty of the Board of Directors to determine the amount of the general assessment for each Lot subject to assessment. General assessments are due and payable on dates specified by the Board. The Board shall make reasonable efforts to determine the amount of the general assessment and to give written notice of the assessment for each Lot to the Owner with due dates of periodic installments to be paid. In addition, Declarant shall be entitled to written notice of the annual assessment (both general and special) determined by the Board or imposed by the Board. The Board shall maintain a roster of the Lots and the general assessments due and shall make the roster available for the inspection by a Member or Declarant on request. Assessments may be collected on a monthly, quarterly, semiannual or annual basis at the discretion of the Board.

Until such time as 90% of the Lots within the Development have been sold or conveyed or December 31, 2024, whichever occurs later, Declarant shall retain the right to veto the amount of any general or special assessment. Thereafter, Declarant shall retain the right to cast one vote on all assessment matters for each Lot owned by Declarant, whether general or special, coming before the Board of Directors until all of Declarants property within the Development is sold or conveyed.

Each Owner, whether or not it is expressed in any deed or document of conveyance, agrees to pay the general assessments or charges levied on a monthly, quarterly or annual basis, and special assessments or charges to be fixed, established and collected from time to time, as hereinafter provided. The general assessments, together with interest thereon, at the judgment rate from time to time from and after the date the same becomes due and payable, together with costs of collection, shall be charged on each Lot subject to assessment and shall be a continuing lien against which such assessment is made. Each assessment, together with interest thereon, and costs of collection, in addition to becoming a lien against each Lot, shall also be a joint and several personal obligation when the assessments become due and payable upon the then owners of record and upon anyone who acquires ownership thereafter.

General or special assessments shall be used to maintain and improve within the Development and promote the welfare and safety, and to protect the investment of the Owners and residents of the Development. Assessments shall be used for, but not be limited to, the following:

- (a) Operating Expenses
- (b) Management and Administration
- (c) Taxes
- (d) Insurance Costs
- (e) Reserves

- (f) Improvement of Roads (if not under the jurisdiction of a duly incorporated road district)
- (g) Maintenance of Roads (if not under the jurisdiction of a duly incorporated road district)

1. **General Assessments:**

- A. The Board may set the general assessments on Class A Lots up to \$1,500 per year, subject to increase as provided. The Board may set the general assessment on Class B Lots at 50% of the general assessment on Class A Lots.
- B. Assessments after November 1, 2022 may be increased by the Board of Directors no more than a maximum amount of ten percent (10%) each year without a vote of the Owners. The maximum general assessment may be increased by a resolution approved by two-thirds of the Owners of Class A and Class B Lots present or represented by proxy at an annual meeting or at a special meeting called for that purpose. Declarant shall retain the right to veto any assessment increases until such time as Declarant has sold or conveyed 90% of the Lots within the Development. Thereafter, Declarant shall be entitled to cast one vote for each Lot still owned by Declarant on matters coming before the Association until Declarant has sold or conveyed all of the Declarant's remaining property within the Development.
- C. The general assessment for each Class B Lot shall begin on the 1st day of the month following the date of purchase or date of Contract for Deed of the Lot by the Owner. Any assessment shall be prorated for the balance of the assessment. The general assessment for each Class A Lot begins on the 1st day of the month following the date of change of status from a Class B to a Class A Lot. Any assessment shall be prorated for the balance of the assessment period in relation to the general assessment, which would have been imposed if so subject and shall become due and payable and a lien on the Lot.

2. **Special Assessments:** Special assessments, in addition to the general assessments, may be imposed by the Board for capital replacements. Special assessments shall only be levied by a resolution approved by two-thirds of the Owners of Class A and Class B Lots present or represented by proxy at an annual meeting or at a special meeting called for that purpose. Class B Lots shall be subject to one-half of any special assessment imposed upon Class A Lots. Any special assessment shall be on a per Lot basis only. Declarant shall retain the right to veto any special assessment until such time as Declarant has sold or conveyed 80% of the Lots within the Development. Thereafter, Declarant shall be entitled to cast one vote on matters coming before the Association until Declarant has sold or conveyed all of the Declarants remaining property within the Development.

3. **Reserves:** The Board may establish a reserve fund for replacements and for general operating expenses by the allocation and payment of monthly or other term of an amount to be designated. Such fund or funds shall be deemed to be a common asset of the Association and shall be deposited in an FDIC insured accounts as the Board deems appropriate. The reserve shall be used for replacements of improvements or for operating contingencies of a non-recurring nature. The proportionate interest of any Lot Owner in any reserve shall be considered an appurtenance of the Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot which it appertains and shall be deemed to be transferred with the Lot.

4. **Notice of Payment Status:** The Board shall, upon request at any reasonable time, furnish to any Lot Owner liable for assessment a certificate signed by an officer or other authorized agent of the Board stating whether such assessment is paid or unpaid. This certificate shall be conclusive evidence that payment has been received. A charge may be levied for each certificate issued.

5. **Breach of Payment:** Any general or special assessment not paid on the date due shall be deemed delinquent and shall accrue interest at the judgment rate. Such delinquent assessment with accrued interest and the cost of collection shall be a continuing lien on the Lot. The assessment shall be binding upon the Lot Owner, his heirs, devisees, personal representatives and assigns. The obligation of an Owner to pay an assessment shall also remain his or her personal, joint and several obligations. (See ENFORCEMENT)

## **ARTICLE V. GENERAL**

1. **Administration:** This Declaration of Covenants shall be administered by the Board of Directors. The Board is empowered and has the right to implement, provide, perform and enforce any or all of the following within the Development:

- A. The provisions set forth in this Declaration of Restrictive Covenants;
- B. Adopt and enforce bylaws on behalf of the Association;
- C. Adopt and enforce reasonable rules and regulations, which Owners, their families, guests and visitors shall comply with;
- D. Adopt and enforce reasonable penalties for violations of rules, regulations and failure to pay assessments;
- E. Provide for the construction, improvement and maintenance of any Association property as deemed reasonably necessary;
- F. Contract with third parties for necessary services; and

G. Determine the amount, payment period, payment schedule and levy of assessments pursuant to these covenants.

2. **Duration and Amendments:** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Homeowners Association, its legal representatives, successors and assigns, individual Lot Owners and/or the Declarant. During the ten (10) year period following the filing of these Covenants with the Lawrence County Register of Deed's Office, these Covenants may not be amended except upon the consent of three-fourths (3/4) of the then property Owners and the Declarant. Thereafter, this Declaration may be amended at any time, except where permanent easements or other permanent rights of interests are created, or rights or interests are created in third persons, by an instrument signed by Owners of a majority of the Lots described within the Development (one vote per Lot owned) and placed on record where this Declaration is recorded. Notwithstanding the preceding sentence, Declarant shall retain the right to veto any amendment approved by a majority of the Owners until such time as Declarant shall have sold or conveyed 90% of the Lots within the Development. No such amendment shall be effective unless written notice of the proposed amendment is sent to every Owner and Declarant at least thirty (30) days prior to action being taken on the proposed amendment. No change of circumstances or conditions shall amend any of the provisions of this Declaration, which may be amended only in the manner described. None of the provisions of this Declaration shall be construed as a condition subsequent or as creating a possibility of reverter.

3. **Incorporation by Reference on Resale:** If any Owner sells or transfer a Lot(s), any deed affecting the transfer shall contain a provision incorporating these covenants, conditions and restrictions. Failure to do so shall not be deemed to defeat, alter or terminate any of these covenants, conditions and restrictions.

4. **Notice:** Any notice required to be sent to any Owner of a Lot(s), Declarant or any mortgagee, shall be deemed to have been given when mailed by first class mail or by email accompanied by a delivery receipt to the Owner, Declarant or mortgagee at the mailing address or email address appearing on the records of the Association at the time of the mailing or emailing. It shall be the duty of each Owner, Declarant and mortgagee to provide written notice of addresses or changes of address, for either mailing or emailing or both, to the Association.

5. **Enforcement:**

A. If any person violates any of the provisions of this document it shall be lawful for the Association, Declarant or any Lot Owner in the Development to initiate proceedings to enforce the provisions of this document, to restrain the person violating them and recover damages, actual and punitive.

B. Enforcement of these covenants and restrictions shall be by legal proceedings against any person violating any covenant or restriction either to restrain or enjoin violation or to recover damages, and against the property or any Lot to enforce any lien created by these covenants. The failure to enforce any covenant or restriction

shall in no event be deemed a waiver or work as an estoppel of the right to do so.

C. If an assessment is not paid within thirty (30) days after the due date, the Association may bring an action against the Owner. The Association may also foreclose a lien against the Lot in the amount provided by law. In either event, the Association shall recover from the Owner or out of the proceeds of a foreclosure, accrued interest at the judgment rate and costs of collection, including but not limited to reasonable attorney's fees. No Owner may waive or otherwise escape liability for assessments provided for in this Declaration by non-use or abandonment of his or her Lot.

D. In a voluntary conveyance of a Lot, the grantee of the Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the Lot.

6. **Development Plan:** Declarant intends to eventually develop all of the Development Property. However, no specific time frame exists for the development of any particular phase of the Development Property; nor will the phases of development necessarily follow any particular order. Whether or when any particular portion of the Development Property is developed shall be at the discretion of Declarant.

7. **Invalidity and Severability:** All of these covenants, conditions and restrictions are deemed severable. In the event any one or more of these covenants, conditions and restrictions are declared invalid, all remaining covenants, conditions and restrictions shall remain in effect.

8. **Binding Effect and Compliance:** Each Owner, the Owner's heirs and assigns or any person acquiring any rights or privileges therefrom shall be fully bound by and shall comply with the provisions of this Declaration, the Bylaws and Articles of Incorporation of the Association, decisions and resolutions of the Board of Directors or their authorized agent and any amendments adopted to these covenants or Bylaw or Articles of Incorporation. Failure to comply with these provisions, decisions or resolutions shall be grounds for action to recover sums due, damages and/or action for injunctive relief.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**[Signature appears on following page)**

**EXHIBIT A**  
**LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY**

Township 6 North, Range 4 East of the Black Hills Meridian, Lawrence County, South Dakota:

Section 19: SE1/4NE1/4, N1/2SE1/4, N1/2S1/2SE1/4, LESS AND EXCEPT THE S1/2S1/2S1/2N1/2S1/2SE1/4.

Section 20: SW1/4 and S1/2NW1/4.

Section 20: SE1/4, EXCEPTING therefrom platted lots and dedicated streets in Whitewood Forest Addition and Whitewood Forest Addition #2, also EXCEPTING therefrom Tract Y including Tract A of the SW1/4NW1/4 of Section 21 and the unplatted portions of the SE1/4NE1/4 and N1/2SE1/4 of Section 20, all located in T6N, R4E, B.H.M., Lawrence County, South Dakota, according to Plat Document No. 2020- 5672.

Section 29:

N1/2N1/2N1/2NW1/4NW1/4,

NE1/4NW1/4 LESS AND EXCEPT THE W1/2W1/2W1/2SW1/4NE1/4NW1/4;  
AND LESS AND EXCEPT THE W1/2W1/2SW1/4NW1/4NE1/4NW1/4;  
AND LESS AND EXCEPT THE W1/2SW1/4NW1/4NE1/4NW1/4;

SE1/4NW1/4 LESS AND EXCEPT W1/2SW1/4SE1/4NW1/4;  
AND LESS AND EXCEPT THE S1/2SW1/4NW1/4SE1/4NW1/4;  
AND LESS AND EXCEPT THE W1/2NW1/4SW1/4NW1/4SE1/4NW1/4;  
AND LESS AND EXCEPT THE W1/2W1/2NW1/4NW1/4SE1/4NW1/4;

NW1/4NE1/4; W1/2NE1/4NE1/4; W1/2SW1/4NE1/4; W1/2E1/2SW1/4NE1/4;  
NE1/4NE1/4SW1/4NE1/4; N1/2SE1/4NE1/4SW1/4NE1/4; N1/2S1/2SE1/4NE1/4SW1/4NE1/4;  
W1/2SW1/4SW1/4SE1/4NE1/4SW1/4NE1/4; W1/2W1/2W1/2E1/2SE1/4SW1/4NE1/4;  
N1/2NE1/4NE1/4NE1/4; N1/2S1/2NE1/4NE1/4NE1/4; W1/2W1/2SE1/4NE1/4NE1/4;  
SW1/4SW1/4NE1/4NE1/4NE1/4;

AND

Tract Y including Tract A of the SW1/4NW1/4 of Section 21 and the unplatted portions of the SE1/4NE1/4 and N1/2SE1/4 of Section 20, all located in T6N, R4E, B.H.M., Lawrence County, South Dakota, according to Plat Document No. 2020-5672.