

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

---

**THREE PEAKS RANCH**  
**DECLARATION OF RESTRICTIVE COVENANTS**

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS** is made and entered into this \_\_\_\_ day of February, 2024, by **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, hereinafter referred to as "Declarant".

**WHEREAS**, Declarant owns all of the Development Property; and

**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, upon the Development Property.

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

1. General Declaration. Declarant declares that all of the Lots within the Development Property which 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.

Declarant's current intent as of the date of this Declaration is to divide the Development Property into four (4) Unplatted Lots and fifty two (52) Platted Lots. Developer intends to designate a numbering system for the Lots. Declarant may utilize a different numbering system for the Unplatted Lots and the Platted Lots. Declarant may sometimes refer to the Unplatted Lots as "Tracts" to distinguish them from the Platted Lots.

2. Property Description. The property to be covered by this Declaration shall be

the whole of the Development Property. The Development Property contains approximately 516.48 acres, more or less, in Lawrence County.

**ARTICLE II. DEFINITIONS:**

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

1. "Articles of Incorporation" shall mean the Articles of Incorporation of the Three Peaks 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 or Owner for the operation, maintenance, repair, and replacement of the Common Area (including accumulating reserves to defray any extraordinary maintenance expenses), and the promotion of recreation, health, safety and welfare of the residents of the Development, for the performance of the Association's obligations under this Declaration, the Bylaws, resolutions adopted by the Association, and applicable local, state or federal law and including, without limitation, charges for those items specifically identified in Section 4 of this Article IV.

3. "Association" shall mean the Three Peaks Ranch Homeowners Association, Inc. to be organized by Declarant to administer this Declaration 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" or "Board" shall mean the Board of Directors for the Association. The Board shall consist of directors who shall be elected and hold office in accordance with the Bylaws. The first President of the board shall be vetted by and approved by the Declarant to lead the Board during transition of governance.

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

6. "Common Area" means (i) those portions of the Development that are not designated as Lots and that are intended for the non-exclusive benefit of all Owners, (ii) those facilities, amenities, features and related improvements that are maintained by Declarant or the Association for the non-exclusive benefit of all of the Owners; (iii) the roads and facilities outside of the boundaries of the Development that benefit the Development. The Common Area is intended to be for the non-exclusive mutual use and enjoyment of all Owners and, in certain instances, such as with respect to the roads, the non-exclusive use and enjoyment of others whom Declarant or the Association has granted such rights.

7. "Declarant" shall mean Spearfish Mountain Ranch LLC, a Delaware limited liability company, its successors and assigns.

8. "Declaration" shall mean this Declaration of Restrictive Covenants established by the Declarant for Three Peaks Ranch as set forth herein.

9. "Development" means that certain residential community, to be called "Three Peaks Ranch", consisting of the Lots that Declarant will develop upon the Development Property, and any subdivision or replat of any portion thereof or any property added thereto, and excepting any property removed therefrom.

10. "Development Property" means that certain real property in Lawrence County, South Dakota legally as legally described in the attached Exhibit A.

11. "Lots" or "Lot" shall mean any area of real property within the Development created out of the whole of such Development Property that is either a Platted Lot or an Unplatted Lot.

12. "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 for deed, 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.

13. "Platted Lot" means a Lot that is created by means of the filing of a Plat of Subdivision with the Lawrence County Register of Deeds.

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

15. "Unplatted Lot" means a Lot that is created by conveyance of that Lot by aliquot description.

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

1. **Access Drives:** Each Lot shall be accessed by a private driveway constructed by the Owner of that Lot 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. Operation of such vehicles outside of these hours is not permitted within the development. Tracked vehicles shall not be operated on paved roads. All vehicles operated within the Development shall adhere to the speed limit established by the Board.

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 and roosters shall not be allowed. In case of Lots consisting of five (5) acres or more, up to one (1) larger animal, such as a horse or cow, shall be allowed for every five (5) acres provided they are properly fenced from adjoining properties. All animals are to be restrained, kept on a leash or fenced. All animal shelters, such as barns, sheds, or dog houses, shall be located at the back of the lot and no closer to the front side of the lot than 100 feet. Add exotic animal exclusion sentence.

4. **Antenna and Satellite Dishes:** Television and radio antennae and satellite dishes are to be located as inconspicuous as possible. Communication antennas and dishes 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 all 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 of this Article III regarding animal shelters, the minimum building setbacks for all other structures on any Lot 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.

7. **Changes in Construction:** Until such time as Declarant shall have sold all 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, when Declarant officially transfers governance of the Development to the Board, 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.

9. **Dwelling:** Construction of dwellings shall be provided by a reputable insured and bonded construction company approved by Declarant, and the design and construction of dwellings shall be approved by Declarant’s architectural committee.

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)
Barndominiums	1500 sq. ft. (Avg. per floor)

Each dwelling on a Lot must have at least one but not exceeding six (6) garages either attached or detached of not less than 340 square feet and not more than 6,000 square feet.

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

All buildings shall be of new materials, new construction, and set on a permanent foundation. Homes constructed of prefabricated wall, roof, and basement foundation sections shall be allowed. Barndominiums and similar live-in recreational vehicle storage, maintenance, and outdoor lifestyle support structures are permitted by approval of the Board. Manufactured, mobile, single or double wide homes are not permitted. No houses shall be moved onto any Lot from any other location.

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 a Lot must be sufficiently screened to conceal it from the view of neighboring Lots or the road. If an 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. The Declarant hereby reserves the right to grant easements for ingress, egress, installation, construction, reconstruction, maintenance, repair, operation and inspection of utility services over, under, across and through any part of the Development then owned by Declarant in order to provide for the efficient operation of the Development as determined by Declarant.

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. Barndominium construction material shall be approved by the Board. Barndominium construction must resemble a home. A minimum of fifteen (15) percent of the exterior façade shall consist of wood or stone.

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 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 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 ROFR Period (defined below), Declarant reserves a first right of refusal to repurchase any Lot subject to this Declaration in the event the Owner of that Lot receives a bona fide offer to purchase which the Owner intends to accept. In that event, the Owner shall provide Declarant with a copy of such bona fide offer, and shall grant to Declarant the right to exercise this right of first refusal to purchase the Lot subject to the bona fide offer for

a period of thirty (30) days following Declarant's receipt of a copy of the bona fide 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 set forth in the bona fide offer. Any election by Declarant to repurchase the Lot shall be set forth in a written notice provided to the 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 the Owner receives the Election Notice unless the bona fide 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 Declarant as to the Lot in question shall lapse and be null and void, and the 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 the Owner from again extending the right of first refusal to Declarant if the sale to the buyer making the bona fide offer is not completed or if the Owner and the buyer making the bona fide offer agree to sell the Lot on terms and conditions which differ materially from those contained in the bona fide offer. In such event, the Owner shall be required to provide Declarant with a copy of any new bona fide offer or such different terms and conditions between the Owner and the buyer that made the bona fide offer 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 expiring eighteen (18) months after the recording of such deed (or, if a ROFR Election Period extends past such eighteen (18) month period, then expiring at the end 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 "the Owner" in this paragraph 16 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 16 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 the 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 Association and shall be bound by all rules and regulations as may be promulgated and approved by the Association. Each Lot shall be entitled to one vote on matters coming before the 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 Association until such time as all of the Lots have been 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 firearms hunting shall be allowed in the Development, but hunting with a bow and arrow may be allowed by individual 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 as approved the Declarant via the Architectural Committee. 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 Development’s 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, guest homes are allowed in conjunction with Chapter 10 Article 15 Guest Houses in the Lawrence County Zoning Ordinances (Page 133 in Zoning Ordinance Document).**

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 a Lot.

26. **Outbuildings:** No more than three (3) outbuildings shall be constructed on Lots consisting of less than forty (40) acres and shall not exceed six thousand (6,000) square feet total cumulative area. All outbuildings shall be of new construction. 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.

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. Rental of residences for less than twenty-nine (29) consecutive nights shall be permitted by written approval by the Declarant or its representative, or by the Board once governance of the Development has been transferred to the Board.

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 [redacted] 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 Association. Upon sale or conveyance of [redacted] 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 Owners' 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:** 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 types 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 vehicles shall be maintained on a Lot as a residence for more than fourteen (14) consecutive days. Exceptions to this rule are permitted on a case-by-case basis by the Declarant, and then the Board when governance of the development has been transferred accordingly.

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 Local, 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 Three Peaks 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:** Location of all propane tanks must be on-site in vicinity of and blended with the structure of dwelling. Declarant recommends that the propane tanks be buried. The manner and location of tanks (buried or above ground) must be approved by the Board of Directors or their designee.

#### **ARTICLE IV. COMMON AREA MAINTENANCE; ASSESSMENTS**

1. **Common Area Maintenance.** The Association shall be responsible for the

operation, maintenance, repairs and replacement of the Common Area, which includes maintenance, repair and replacement of gates and maintenance, repair and replacement of roads and road ditches not under the jurisdiction of a duly incorporated road district.

2. **General Assessments**: 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 an Owner or Declarant on request. Assessments may be collected on a monthly, quarterly, semiannual or annual basis at the discretion of the Board.

3. **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 the Lots present or represented by proxy at an annual meeting or at a special meeting called for that purpose. 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 all of the Lots within the Development.

4. **Particulars About Assessments**: Until such time as all of the Lots within the Development have been sold or conveyed, Declarant shall retain the right to veto the amount of any general or special Assessment.

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) Common Area Maintenance

5. **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 .

6. **Water:** Water to the Development is provided by the City of Whitewood to a water association that will operate and manage the water system serving the Development. The water association will read water meters on each Lot and bill each Owner for its water usage based on the water meter reading. This billing is separate and apart from Assessments imposed by the Board.

7. **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.

8. **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)

9. **Operations prior to Association Formation.** Prior to the formation of the Association and the appointment of the initial Board, the Declarant shall act in stead of the Board, so that (a) the Declarant will set the amount of the Assessments provided for in this Article IV, (b) each Owner shall be obligated to pay those Assessments to the Declarant, and (c) the Declarant shall be obligated perform all of the obligations that the Association is obligated to perform such as, by way of example, road maintenance.

## **ARTICLE V. GENERAL**

1. **Administration:** This Declaration 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;
- 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;
- G. Determine the amount, payment period, payment schedule and levy of Assessments pursuant to this Declaration; and
- H. Enter upon any Lot to the extent necessary for the purpose of maintaining, repairing and replacing any improvements in, on, under or upon the Development or for otherwise performing any obligations herein provided without being guilty of any trespass.

2. **Duration and Amendments:**

A. 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 Association, its legal representatives, successors and assigns, individual Lot Owners and/or the Declarant. 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) (which instrument must, during the ten (10) year period following the filing of this Declaration with the Lawrence County Register of Deed's Office, also be signed by the Declarant) and which instrument shall be 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 all 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 or unless the required number of Owners sign the proposed amendment or a resolution approving the amendment (in which case notice of the adopted amendment shall be provided to the other Owners promptly after the adoption of same). Notwithstanding the foregoing, so long as Declarant owns the majority of the Lots in the Development, Declarant need only provide five (5) days' notice of the amendment to the other Owners. 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. For avoidance of doubt, for purposes of determining whether a proposed amendment is consented to by majority of the Lots described within the Development, the determination shall be calculated as a fraction, expressed as a percentage, the numerator of which is the number of Lots in the Development whose Owner consents to the amendment (it being understood that if, for example, the same party is the Owner of two (2) Lots, the consent of that party shall mean that two (2) Lots have consented even though the Owner of both lots is the same party) and the denominator shall be the total number of Lots in the Development.

B. Notwithstanding anything in subsection (a) above or anything else in this Declaration to the contrary, until the last Lot in the Development is sold, Declarant shall have the unilateral right to amend this Declaration by recording an executed amendment in the office of the Lawrence County Register of Deeds Office, unless such amendment would materially and adversely affect any Lot not owned by Declarant, in which case such amendment shall require the consent of the Lot Owner so materially and adversely affected, and such amendment shall be of full force and effect, valid and binding upon the execution thereof, notwithstanding that the not every Owner of a Lot at the time of such amendment consented to, joined in, or executed the same. Without limiting the generality of the foregoing, (a) Declarant reserves to itself the right, either via amendment to this Declaration or separate instrument, to create, grant, make, define or limit easements affecting a Lot for the benefit of the Development as a whole if Declarant determines that same are necessary or desirable for the efficient operation of the Development, and the establishment and maintenance of such easements shall not be deemed to materially and adversely affect a Lot so long as (i) the easement does not touch any building site on the Lot, (ii) the easement does not adversely affect the view from the Lot of surrounding areas, and (iii) the easement does not adversely affect ingress to or egress from the Lot or other easements that benefit the Lot; (b) Declarant may, by amendment to this Declaration or separate instrument, declare such easements upon portions of the Development wherein Declarant owns both the property burdened by the easement and the property benefitted by the easement, and same shall not be deemed void by the doctrine of merger so long as the instrument in question expressly states that Declarant does not intend the easements in question to be extinguished by the doctrine of merger; and (c) Declarant reserves to itself the right, either via amendment to this Declaration or separate instrument, to remove portions of the Development from the provisions of this Declaration or to incorporate additional property into the Development and subject said property to the requirements of this Declaration, and same shall not be deemed to materially and adversely affect a Lot, so long as same does not materially and adversely affect ingress to or egress from that Lot or easements granted for the benefit of that Lot.

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

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, reliable overnight courier service such as Federal Express or UPS, 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 this Declaration 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 this Declaration. 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.

E. In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of this Declaration, the Bylaws, or rules or regulations of the Board, whenever such violation or breach may be cured or abated by affirmative action, the Board, upon not less than ten (10) days' prior written notice to the Owner, shall have the right to enter upon that part of any Lot with respect to which the violation or breach exists to remove or rectify the violation or breach.

F. All costs and expenses incurred by the Board in connection with any action, proceedings or self-help in connection with exercise of its rights and remedies under this Declaration, including, without limitation, court costs, attorney fees and all other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum legal general rate permitted by South Dakota law until paid, shall be charged to and assessed against the defaulting Owner.

6. **Invalidity and Severability:** All of the covenants, conditions and restrictions of this Declaration 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.

7. **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 this Declaration, the Bylaw or the 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.

**[Signature appears on following page]**



**IN WITNESS WHEREOF**, Declarant has executed this Declaration as of date first set forth above.

**DECLARANT:**

SPEARFISH MOUNTAIN RANCH LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Gerard J. Keating

Title: Manager

On this the \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned officer, personally appeared Gerard J. Keating, who acknowledged himself to be the manager of Spearfish Mountain Ranch LLC, a Delaware limited liability company, and that he, as such manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as manager.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

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

Section 19: S1/2S1/2S1/2NW1/4SW1/4SE1/4, S1/2S1/2SW1/4NE1/4SW1/4SE1/4, SW1/4SW1/4SE1/4, NW1/4SE1/4SW1/4SE1/4, NW1/4NE1/4SE1/4SW1/4SE1/4, S1/2NE1/4SE1/4SW1/4SE1/4, S1/2SE1/4SW1/4SE1/4, SW1/4SW1/4SE1/4, S1/2NE1/4NE1/4NE1/4SW1/4SE1/4SE1/4, S1/2N1/2NW1/4NW1/4SE1/4SE1/4SE1/4, SE1/4NE1/4NE1/4SW1/4SE1/4SE1/4, S1/2N1/2N1/2SE1/4SE1/4SE1/4, NE1/4SE1/4NE1/4SW1/4SE1/4SE1/4, S1/2N1/2SE1/4SE1/4SE1/4, S1/2S1/2N1/2SW1/4SE1/4SE1/4, S1/2S1/2SE1/4SE1/4;

Section 30: S1/2S1/2NE1/4NE1/4, SE1/4NE1/4;

Section 29: S1/2N1/2N1/2NW1/4NW1/4, W1/2SW1/4NW1/4NW1/4NE1/4NW1/4, S1/2N1/2NW1/4NW1/4, S1/2NW1/4NW1/4, SW1/4NW1/4SW1/4NE1/4NW1/4, SW1/4NW1/4, NW1/4NW1/4SE1/4NW1/4, S1/2NE1/4NW1/4SE1/4NW1/4, S1/2NE1/4NE1/4SE1/4NW1/4, S1/2N1/2N1/2SW1/4NE1/4, S1/2NW1/4SE1/4NW1/4, S1/2N1/2SW1/4NE1/4SE1/4NW1/4, S1/2SW1/4NE1/4SE1/4NW1/4, SE1/4NE1/4SE1/4NW1/4, S1/2NW1/4SW1/4NE1/4, SW1/4NE1/4SW1/4NE1/4, N1/2SE1/4NE1/4SW1/4NE1/4, N1/2S1/2SE1/4NE1/4SW1/4NE1/4, W1/2SE1/4SE1/4SE1/4NE1/4SW1/4NE1/4, S1/2SE1/4NW1/4, SW1/4SW1/4NE1/4, W1/2SE1/4SW1/4NE1/4, W1/2W1/2W1/2E1/2SE1/4SW1/4NE1/4, E1/2NW1/4NW1/4SW1/4, NE1/4NW1/4SW1/4, E1/2SW1/4NW1/4SW1/4, NE1/4SW1/4, E1/2NW1/4SE1/4SW1/4, NE1/4SE1/4SW1/4, E1/2SE1/4SE1/4SW1/4, NW1/4NW1/4SE1/4, W1/2NE1/4NW1/4SE1/4, W1/2NW1/4NW1/4NE1/4NE1/4NW1/4SE1/4, S1/2N1/2NE1/4NE1/4NW1/4SE1/4, S1/2NE1/4NE1/4NW1/4SE1/4, SE1/4NE1/4NW1/4SE1/4, S1/2N1/2N1/2NW1/4NE1/4SE1/4, S1/2N1/2NW1/4NE1/4SE1/4, S1/2N1/2NW1/4NE1/4NE1/4SE1/4, S1/2NW1/4NE1/4NE1/4SE1/4, S1/2N1/2NE1/4SE1/4, S1/2NW1/4SE1/4, S1/2NE1/4SE1/4, SW1/4SE1/4, SE1/4SE1/4;

All Located in Township 6 North, Range 4 East of the Black Hills Meridian, Lawrence County, South Dakota. Containing 516.48 Acres more or less.