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**NOTICE OF SECOND AMENDMENT TO THE 2017 AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS, EASEMENTS AND COVENANTS
TO RUN WITH THE LAND**

NOTICE IS HEREBY GIVEN that the Second Amendment to the 2017 Amended and Restated Declaration of Restrictions, Easements and Covenants to Run with the Land has been approved by more than 2/3 of the owners of such lots, consenting and agreeing, in writing, to the adoption of the following Amendments:

Article 1
Construction

Section 1.1 **Dwellings.** All Lots designated for residential development and use on or within the property shall be subject to these Covenants.

Section 1.2 **Completion.** All work of construction shall proceed diligently and continuously from the time of commencement until fully completed. The construction of any dwelling or structure on the property shall be substantially completed no later than twelve (12) months after construction is commenced and the exterior of all dwellings and structures shall be completed within eighteen (18) months after the commencement of construction, except in the case of impossibility or great hardship. No dwelling shall be occupied until substantially completed. Any dwelling built on speculation for sale shall be completed within this same timeframe, including the completion of exterior finishing, interior finishing of all levels and landscaping of all yard areas. For the purposes of this Declaration the Architectural Committee shall have the sole authority and discretion to determine whether dwelling is substantially completed. In the event a contract or agreement transfers ownership of a lot or lots with the requirement that construction on the lot or lots commences within a certain period of time, the Elkhorn Ridge Golf Estates Homeowner's Association shall be deemed a third-party beneficiary of such



agreement or contract and shall have the standing and authority to enforce such provision on the new Owner.

Section 1.3 **No Mobile Homes.** No tent, tree house, barn, tipi or temporary living or camping structures shall be placed on the property. All construction shall be new. No building or structure previously used at another location nor any building or structure originally constructed as a mobile dwelling or mobile home shall be moved onto the property. Notwithstanding the foregoing, however, construction trailers and “porta-potties” for use in connection with construction on the property shall be permitted but shall be promptly removed when a) no longer used for their designated purpose, or, b) upon substantial completion of the dwelling structure, whichever event the Architectural Committee determines first occurs.

Section 1.4 **Good Repair.** No dwelling, structure or other improvements which are located upon the property shall be permitted to fall into disrepair and all such residences and other improvements shall be maintained in good condition.

Section 1.5 **Signs.** No signs of any kind shall be displayed to the public view on any Lot, provided, however, that it shall be permissible to display on any Lot:

- a. one (1) professionally painted or printed sign of not more than four (4) square feet advertising the property for sale;
- b. one (1) sign of reasonable size and appearance identifying the occupants of a residence;
- c. temporary signs such as relating to siding, lawn care or improvements performed on a Lot; and
- d. administration and directional signs during development, signs necessary to advise of caution or warn of danger, and such signs as may be required by law.

Section 1.6 **No Tanks.** All tanks and elevated tanks, including tanks for fuel, propane, gas or water, must be walled sufficiently to conceal them from view of neighboring Lots, roads and streets. The foregoing shall not apply with regards to tanks and elevated tanks situated on common areas, on Lots owned by the Declarant, or any tanks or cisterns placed by any utility provider at the Declarant’s consent. Moreover, tanks for the storage of propane or natural gas shall be prohibited for any Lots where utilities for gas are provided to the lot line.

Section 1.7 **No Towers.** No towers or antennas are permitted on the lots except for small (20” or less) satellite dishes. Notwithstanding the foregoing, the Declarant may construct and place towers and antennas on Lots owned by the Declarant or common areas.



Section 1.8 **Fire Pits.** Covered or screened open fire pits may be constructed on the property, with the prior approval of the Architectural Committee. Outdoor fireplaces or fire pits that are operated solely on natural gas or liquid propane gas are permissible with prior approval of the Architectural Committee. All fire pits shall be subject to any restrictions placed, from time to time, by local governing authorities.

Section 1.9 **Fences.** No above ground and visible perimeter fences shall be constructed on residential lots within this subdivision.

Section 1.10 **Bark Beetles.** The Black Hills Bark Beetle (*Dendroctonus Ponderose-Hopkins*) and other noxious insects and noxious vegetation are declared to be a public nuisance and shall not be allowed to populate or infect any Lot or tree thereon. It shall be the duty of each Lot owner and occupant to remove all infested trees as may be ordered by the Elkhorn Ridge Golf Estates Homeowner's Association or as ordered or recommended by the district State Forester or similar authority.

Section 1.11 **Easements.** No structure, building, or other material which may damage or interfere with an easement for the installation or maintenance of utilities or which may change, obstruct, or retard direction or flow of any drainage channel, other than sidewalks, shall be placed or permitted to remain upon the property. An easement over and under the ground is reserved by the Declarant in an area ten (10) feet (five feet on each side) in width on front, side, and back Lot lines of each Lot, to be exercised in such a manner by the owner of any Lot for utility (including water, fuel, sewer and lines of transmission of electric power, impulses or signals) installation, maintenance and drainage; said easement shall pass to and vest in the Elkhorn Ridge Golf Estates Homeowner's Association upon the Declarant's transfer of enforcement rights to the Elkhorn Ridge Golf Estates Homeowner's Association. Review your plat for easements and building envelopes specific to your lot.

Section 1.12 **Advance Approval by Declarant.** Up to the time when Declarant transfers enforcement authority to the Elkhorn Ridge Golf Estates Homeowner's Association pursuant to section 3.3, all new construction shall require pre-approval by the Declarant, consistent with this Declaration in article 5 and the uniform and pleasing appearance of the development of the property.

Article 2 **Use/Restrictions**

Section 2.1 **Use.**

- a. **Rubbish** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept, except in clean, dry and sanitary containers. Owners must haul garbage off their Lot within a reasonable time or use a privately owned garbage pickup service.



- b. No Wrecked Vehicles No motor vehicles, including cars, buses, tractors, trailers and all parts thereof that are not in normal running condition and in average use shall be kept on a Lot except within an enclosed structure; it being specifically understood that this covenant is to prohibit and forbid the keeping of any wrecked motor vehicles not in use and operation and any other like parts or the debris upon the within described property. Rebuilding or refinishing of autos outdoors shall not be permitted, ordinary and minor necessary repairs excepted.
- c. Storage Any unsightly equipment and material including garden and maintenance machinery and equipment, snow removal equipment, lumber and construction materials, scrap and any other like equipment and materials shall be stored inside the residential structure at all times, except when in use. Only one structure per site shall be permitted. No outbuildings shall be permitted on a residential site. Firewood for personal use may be stored outdoors provided the firewood stack is consolidated in one location and does not exceed any of the following dimensions: 4' wide x 12' long x 5' high.
- d. No Home Occupations No Home Occupations (as defined in section 10.1) shall be conducted or carried on upon any Lot.

Section 2.2 No Mining. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel, or earth. Declarant reserves the right to extract gravel and sand and to remove topsoil for development or any other purpose on property owned by the Declarant.

Section 2.3 Pets, Animals, Horses. Except as hereinafter specified, no animals (including horses), livestock or poultry of any kind shall be raised, bred or kept on any Lot. Cats, dogs and other household pets (e.g., fish, hamsters, gerbils, birds, etc.) may be kept provided that they are not kept, bred or maintained for any commercial purpose. No swine or unaltered goats are allowed. Dogs must be kept on a leash or confined within the Owner's property and there shall be a limit of four (4) pets per Lot. There shall be a limit of three (3) cats per Lot. Barking dogs must be muzzled. Kennels must not be readily visible from the roads or highways and the location and size must be approved by the Architectural Committee prior to construction. All pets not on an owner's Lot must be leashed or otherwise confined.

Section 2.4 Conformity with Zoning Rules and City Ordinances. Each Lot shall conform to applicable zoning regulations and rules, and all Ordinances of the City of Spearfish. If these covenants contain restrictions greater than applicable regulations, rules and ordinances, then these covenants shall take precedence.

Section 2.5 No Noxious Activities/Weeds. No noxious or offensive activities may be carried on any Lot. Each Lot shall be maintained in such a condition that it is free of noxious weeds whether or not the Lot is occupied.



Section 2.6 **Parking.** No overnight parking on a road or common area is permitted unless otherwise permitted by the City of Spearfish. All recreational vehicles (RVs), including motorhomes, campers, boats (motorized and non-motorized), all-terrain vehicles and snowmobiles shall be parked in garages. "Parking of motorized vehicles in normal running condition and in average use is permitted only in accordance with the ordinances of the City of Spearfish or on paved driveways located on lots."

Section 2.7 **Firearms.** Guns, rifles, shotguns, pistols, muzzle loaders and "bb guns" or any may not be discharged on the property.

Section 2.8 **Dead Trees.** No dead trees, either standing or cut, are allowed on any Lot unless neatly stacked as firewood in accordance with Section 2.1 c. above.

Section 2.9 **Pools.** No above-ground swimming pools shall be allowed on any Lot. The foregoing shall not apply to temporary "kiddie pools" of less than ten feet (10') in circumference. In-ground swimming pools shall not be constructed in front or side yards. Landscaping features that include water pools shall be constructed and maintained in a manner that does not create stagnant pools conducive to a breeding area or habitat for insects or noxious vegetation.

Section 2.10 **No Lot Splitting.** No Lot shall be subdivided or re-platted into additional lots without the express written consent of the Declarant until such time as this responsibility is transferred to the Elkhorn Ridge Golf Estates Homeowner's Association.

Section 2.11 **Golf Carts.** Each residential structure may maintain a maximum of two (2) electric powered golf carts provided that such carts comply with rules, regulations and standards of Elkhorn Ridge Golf Club or its designees, successors and assigns ("Golf Club"). Private gas golf carts are specifically prohibited on the golf course playing areas. At a minimum and to the extent these requirements are consistent with the Golf Club rules and regulations, such golf carts must match the manufacture's model and color of the Golf Club cart fleet at the time of purchase by Owner, with a canopy, less than ten years old, standard non-modified appearance, with standard original equipment size tires, and maintained to minimize exhaust or operational noise (including golf cart stereo or sound system volume) and GPS system that is part of the Elkhorn Ridge Golf Club's GPS Network, at the homeowner's expense. Golf carts shall access the golf course only through access points identified and authorized by the Golf Club. Golf Club policies, rules, regulations and standards regarding course access, cart appearance and cart operation are subject to change and modification at the discretion of the Golf Club. Golf Carts shall be stored in accordance with Section 2.6 above.

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SPECIFICALLY PROHIBITED



Article 3 Enforcement

Section 3.1 Enforcement. The provisions of this Declaration may be enforced by any proceeding at law or in equity, including but not limited to injunctive relief, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any person to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or the right to do so thereafter. Any matter relating to this Declaration shall be exclusively venued in the Fourth Judicial Circuit Court of the County of Lawrence, South Dakota and South Dakota law shall apply to the interpretation and enforcement of this Declaration. Each owner hereby makes himself, herself or itself available to the jurisdiction of said Court for the purposes of the enforcement of this Declaration and consents to personal jurisdiction in said Court. Should the Declarant or the Owner's Association be the prevailing party in any action or proceeding brought pursuant to Section 3.1, then, and in that event, the owner or member against whom such action or enforcement proceeding is maintained shall be responsible to reimburse and indemnify the Declarant or Owner's Association for any and all reasonable and necessary attorney's fees, costs, expenses, expert fees, witness fees, investigation and research fees, or anything of such nature or similar thereto as the Declarant or Owner's Association shall expend, in addition to the relief or remedy which may otherwise be granted. All such expenses and fees shall become the individual financial responsibility of the owner or member to the Declarant or Owner's Association and shall be enforceable in any manner authorized by South Dakota law.

Section 3.2 Enforcement by Declarant. Declarant shall have the power to enforce this Declaration until such time as it transfers its authority to enforce this Declaration to the Elkhorn Ridge Golf Estates Homeowner's Association. Said transfer shall not diminish the Declarant's rights, power and authority as an owner of a Lot or Lots as set forth herein.

Section 3.3 Form of Transfer of Authority. At such time as Declarant transfers its authority to enforce this Declaration and to collect and disburse membership fees and late fees, Declarant will file a written recordable instrument with the Register of Deeds evidencing such transfer and the recording of the same shall be sufficient notice in all respects as to its legal effect and notice to third parties.

Section 3.4 Enforcement by Elkhorn Ridge Golf Estates Homeowner's Association. Following the Declarant's transfer of authority regarding this Declaration, the Elkhorn Ridge Golf Estates Homeowner's Association shall be from that date vested with the full power and authority to enforce and carry out the provisions of this Declaration.

Section 3.5 Time Limitations. The conditions, covenants and restrictions of this Declaration shall run with and bind the property and shall inure to the benefit of and be enforceable by the owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded,



after which time said covenants shall be automatically extended for successive periods of ten (10) years. The Elkhorn Ridge Golf Estates Homeowner's Association shall have the power to renew or restate this Declaration prior to or subsequent to this Declaration's expiration.

Section 3.6 In addition to the above remedies, the provisions of this Declaration may be enforced by the City of Spearfish in accordance with SDCL 11-5.

Article 4
Elkhorn Ridge Golf Estates Homeowner's Association

Section 4.1 Membership. Each owner of a Lot shall be a member in the Elkhorn Ridge Golf Estates Homeowner's Association, to be formed at a later date. Except as otherwise provided herein, membership voting rights shall be determined by the Articles and By-Laws of the Elkhorn Ridge Golf Estates Homeowner's Association.

Section 4.2 Declarant's Membership. Declarant shall be a Preferred Member and shall be entitled to exercise any and all rights and privileges defined in Section 10.1 herein until Declarant elects to relinquish such status by written and signed document.

Section 4.3 Fees. An annual membership fee (based upon lot ownership, with or without a constructed residence) shall be assessed to all members on the first (1st) day of January of each calendar year. The per lot membership fee amount will be established annually by the governing board of the Homeowners Association and shall be due on the fifteenth (15th) day of January. All late fees and penalties shall be established annually by the governing board of the Homeowners Association. Any unpaid annual fees, plus late fees and collection costs including reasonable attorneys' fees incurred in collecting delinquent fees shall be a continuing lien on the owner's Lot and the personal obligation of the Lot's owner at the time the fee became delinquent. The Declarant shall at all times be exempt from the obligation or duty to pay or be liable for any membership fees or late fees.

Section 4.4 Use of Fees. The membership fees and late fees shall be used to enforce and carry out this Declaration, to maintain and improve any common areas, and to do such things as authorized by the Articles and Bylaws of the Elkhorn Ridge Golf Estates Homeowner's Association.

Section 4.5 Collection. Declarant may collect and disburse membership fees and late fees until such time as the Declarant transfers its authority to enforce this Declaration to the Elkhorn Ridge Golf Estates Homeowner's Association at which time Declarant will pay all such funds to the Homeowner's Association and the Elkhorn Ridge Golf Estates Homeowner's Association shall then be vested with full authority regarding the collection and disbursement of fees and late fees. In the event of any such collection actions which result in litigation, the prevailing party shall also be entitled to an award of reasonable attorney fees, costs and sales tax as part of the party's remedies.

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Article 5
Architectural Committee

Section 5.1 **Committee Composition.** The Owner's Association may form and oversee an Advisory Architectural Review Committee. Such Advisory Committee shall not supersede the authority of the Declarant set forth in the By-Laws and/or Articles. The Declarant retains the right individually, or through proxy, to supervise, oversee and, if necessary, veto the authority of the Advisory Committee. This provision shall remain in effect until such time as the Declarant shall have transferred permanent authority to the Advisory Committee pursuant to Section 5.3 of the 2017 Amended and Restated Declaration of Restrictions, Easements and Covenants to Run with the Land. All authority of the Architectural Review Committee set forth in Section 5.2 is specifically reserved to the Declarant until such time as Declarant has relinquished that authority, in writing. Otherwise, the Advisory Architectural Review Committee shall review and make recommendations according to the authority of Section 5.2, but only the Declarant shall have final authority for approval or disapproval.

Section 5.2 **Authority.** The Architectural Review Committee shall have those powers given to it by the Elkhorn Ridge Golf Estates Homeowner's Association as may be modified, enlarged or restricted from time to time. The Architectural Review Committee may be vested with the authority regarding:

- a. Acceptability of proposed structure and residence colors and exterior surfaces;
- b. Acceptability of construction plans and specifications as to workmanship, materials, harmony with existing structures, location of buildings on Lots, size, height of walls;
- c. Acceptability of trees and hedges as to location, size, height and variety of species including fire protection issues; and
- d. Acceptability of signs.
- e. Establishment of policies pertaining to vacation rentals of residential structures within the development.
- f. Determination of whether a structure is "substantially completed" or "completed" for the purposes of this Declaration.
- g. Implement the Architectural Standards Manual and policies of the Board; receive, review and approve or disapprove plans and variances; and, assess and collect fines for non-compliance with the Architectural Standards Manual.



In all other respects, however, the Architectural Review Committee shall lack the authority or power to independently modify, enlarge, or amend this Declaration. Approval from the Architectural Review Committee as to any matter within the authority of said committee shall not be unreasonably withheld. The Architectural Review Committee shall not have any power to disapprove of landscape, design or other elements within their authority once it has granted an approval with regard to any particular Lot or owner regarding the same.

Section 5.3 **Declarant.** Declarant shall be the sole member of the Architectural Review Committee until such time as it relinquishes that role in a signed writing. Such a relinquishment shall be revocable unless otherwise designated in the signed writing.

Article 6 **Variances**

Section 6.1 Variances shall only be permitted by a request to vary from these covenants, and as these covenants are modified accordingly. Variances may be granted based upon a majority vote of the Architectural Review Committee. If a variance is denied by the Architectural Review Committee, the applicant may appeal that decision to the Elkhorn Ridge Golf Estates Homeowner's Association Board of Directors, whose decision shall be final.

Articles 7 **Lot Appearance Maintenance Requirement**

Section 7.1 **Pleasing Appearance.** It is the intent of the Declarant that the Lots shall retain a pleasing and well-maintained appearance.

Section 7.2. **Maintenance.** Accordingly, the Declarant reserves the right to undertake or contract for necessary maintenance, landscaping, lawn watering, tree, bush or shrub trimming, snow removal and lawncare which is not adequately provided by a Lot Owner upon notice to the Lot Owner. The Declarant or its agents are vested with the right to enter upon any Lot (with the exception of entering into any structure or dwelling without consent) without liability for trespass to correct any such deficiencies. The cost of such corrected deficiencies will be paid by a Lot Owner within thirty (30) days. Unpaid amounts may be filed as a mechanic's lien against any Lot. This section 7.2 in no way obligates the Declarant to do or perform any maintenance whatsoever.

Section 7.3 The type and use of chemicals and fertilizers on lawns from a commercial or private entity must be applied and recorded by the applicator according to SD state pesticide laws. These records may be requested by the golf course management.

Section 7.4 **Surface Drainage.** The surface drainage on each lot shall not adversely affect adjacent properties.



Article 8
Water, Septic/Sanitation and Roads

Section 8.1 Private Wells. No private wells shall be allowed on any Lot. No well will be allowed on any Lot except that the Declarant may construct and drill wells on Lots owned by the Declarant.

Section 8.2 Septic No outdoor toilets shall be erected or maintained on any Lot except as otherwise permitted by section 1.3.

Section 8.3 Water Use Restrictions. The Elkhorn Ridge Golf Estates Homeowner's Association may from time to time implement and enforce water use restrictions for Lots. By way of illustration, the Elkhorn Ridge Golf Estates Homeowner's Association may restrict water use for lawn care purposes to certain days. Such restrictions shall not apply to property owned by the Declarant, common areas, or any property owned by the City of Spearfish or otherwise used as a community golf course.

Article 9
Zone-Specific Provisions

Elkhorn Ridge Development has many different uses in various areas. Article 9 includes covenants that apply to residential development areas north of Interstate 90.

Section 9.1 Multi-Family Areas. The provisions of this section 9.1 shall, in addition to the other provisions herein, apply to the Multi-Family Areas. Written approval from the Architectural Committee of house and landscape plans shall be obtained in advance of any construction on either the Multi-Family or Single Family residential lots.

- a. Appearance. Homes in this zone must have design elements that are harmonious with a golf course setting. Some of the design considerations will include: steep pitch and elaborate rooflines, covered porches, exterior finishes of log, timber, stone and brick.
- b. Setback. Building setback lines (including eaves, overhangs, and cantilevers) shall meet or exceed the minimum setbacks required by the City of Spearfish at the time the building permit is issued.
- c. Minimum Square Footage for Multi-Family Dwelling. No more than one (1) dwelling shall be erected or maintained on any single Lot. No dwelling shall be erected which has a gross livable floor area of less than one thousand three hundred (1,300) square feet if a single-story dwelling or no less than two thousand



(2,000) square feet (including basement) if a multi-level dwelling with at least 1,150 square feet on the main floor.

- d. Garages. Each dwelling shall include a minimum of a 22' by 22' two-car garage and may include one additional garage space not to exceed 13'x25'.
- e. Garbage Containers. Garbage containers shall be stored inside the structure and left outside and in view only on the day of scheduled collection.
- f. Property Management. The duplex zone may have a lawn care and snow removal maintenance program that is required with a monthly service fee.

Section 9.2 Single Family Detached Areas. The provisions of this section 9.2 shall, in addition to the other provisions herein, apply to the Single Family Detached Areas.

- a. Appearance. Homes in this zone must have design elements that are harmonious with a golf course setting. Some of the design considerations will include: steep pitch and elaborate rooflines, covered porches, exterior finishes of log, timber, stone and brick.
- b. Setback. Building setback lines (including eaves, overhangs, and cantilevers) shall meet or exceed the minimum setbacks required by the City of Spearfish at the time the building permit is issued.
- c. Minimum Square Footage for Single Family Detached Dwelling. No more than one (1) dwelling shall be erected or maintained on any single Lot. No dwelling shall be erected which has a gross livable floor area of less than one thousand four hundred (1,400) square feet if a single-story dwelling or less than two thousand five hundred (2,500) square feet (including basement) if a multi-level dwelling with at least 1,150 square feet on the main floor.
- d. Garages. Each dwelling shall include a minimum of a 22' by 22' two-car garage and may include one additional garage space not to exceed 13'x25'.
- e. Garbage Containers. Garbage containers shall be left outside and in view only on the day of scheduled collection.

Article 10 **Miscellaneous**

Section 10.1 Definitions. Captions, titles and headings in this Declaration are for convenience only and do not expand or limit the meaning of the provisions herein. Whenever the context permits, the singular shall include the plural, and the plural shall include the singular. The following terms shall have the following meanings in this Declaration:

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- a. Common Area. “Common Area” means all real property and improvements owned by the Elkhorn Ridge Golf Estates Homeowner’s Association or Declarant which is designated for the common use and enjoyment of the owners. Common Areas do not include roads.
- b. Golf Course Hazards. “Golf Course Hazards” include all hazards associated with a golf course or other landscaping and related or similar activities including (without limitation) the following, recognizing that there are other hazards known or which should be known relating to living in proximity to a golf course or other recreational areas:
- (1) Errant Golf Balls. There is an inherent risk of errant golf balls and golfers retrieving such balls from Lots. There is a risk of injury or death from errant golf balls.
 - (2) View Impairment. There is no guarantee of a view over and across any golf course will be preserved without impairment, nor is there any obligation of any operator of any golf course to prune (or not prune) any trees or other landscaping or to reconfigure (or not reconfigure) the trees, landscaping, layout, tees, bunkers, holes, fairways or greens.
 - (3) Fertilizers. Pesticides, fertilizers and other chemicals may be utilized.
 - (4) Over-Spray. Over-spray from irrigation or sprinkler systems may occur.
 - (5) Noise. Golf course activities including tournaments may result in significantly increased light, noise, inconvenience, traffic, activity and other impacts.
 - (6) Limitation in Access. Access to golf course may be prohibited directly from any Lot. Each owner agrees not to access any golf course, clubhouse or related facilities except at designated entry points and agrees to instruct all guests and invitees accordingly.
 - (7) Maintenance. Mowing, earthmoving, irrigation, grooming, and landscaping may be conducted during early morning and evening hours and include the use of tractors, pumps, blowers, compressors and utility vehicles in close proximity to Lots.



- c. Golf Course Parties. "Golf Course Parties" means the owners, owner shareholders, officers, directors, developers, designers, contractors, employees, invitees, guests and personal representatives (including their assigns and heirs) of the golf course and its related facilities and operations.
- d. Home Occupations. "Home Occupations" means a business, professional or other activity conducted for financial gain excepting such activities which will not result in any increased noise or activity visible from a neighboring Lot or road, nor result in any increased traffic on the property. By way of illustration, Home Occupations include private daycare centers and hair salons if such activities result in discernable increased noise, activity or traffic.
- e. Homeowner's Association. "Homeowner's Association" means the ELKHORN RIDGE GOLF ESTATES HOMEOWNER'S ASSOCIATION, a South Dakota nonprofit corporation, at such time as such an entity is formed.
- f. Livable Floor Area. "Livable Floor Area" means covered areas within a dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, attics and basements.
- g. Lots. A "Lot" shall mean and refer to any plat of land shown upon any recorded plat or subdivision map of the property. As to any unplatted area, "Lot" means a contiguous parcel of real property on the property owned by an owner.
- h. Owner. "Owner" shall mean the record owner, whether one or more persons, trusts or entities, of a fee or undivided fee interest to any Lot, excluding roads or common areas, which is part of the property, including contract sellers, but excluding those having such interest merely as a security for the performance of an obligation. Where a Lot is owned jointly or as tenants in common by more than one individual, trust or entity, the Lot shall be considered to have one Owner for purposes of voting and membership and all such joint owners may only submit one vote jointly; neither the Elkhorn Ridge Golf Estates Homeowner's Association nor the Declarant shall have any obligation to mediate or resolve internal disputes with regards to voting rights between joint owners of a Lot. Each Lot shall be counted as a separate Lot for purposes of Owner rights. Accordingly, by way of example, if an individual owns two (2) Lots, that individual shall have two (2) votes and two (2) memberships in the Elkhorn Ridge Golf Estates Homeowner's Association.
- i. Preferred Member. "Preferred Member" means a member of the Elkhorn Ridge Golf Estates Homeowner's Association entitled to the voting rights of one hundred fifty (150) members and an Owner entitled to the voting rights of one hundred fifty (150) owners regardless of the number of Lots owned. No



membership fees or late fees shall be assessed against a Preferred Member. No meeting quorum shall be deemed to be a quorum unless the Preferred Member is present in person or by valid proxy. A Preferred Member may relinquish Preferred Member status in a signed writing which relinquishment shall be revocable unless otherwise designated in the signed writing.

- j. Road. A “Road” means a road designated as such by the Declarant or dedicated as such on any plat upon or across the property.
- k. Structure. “Structure” means any residence, garage, shed, or related thing other than trees, landscaping, and movable things, the placement of which is upon or within a Lot.

Section 10.2 Cumulative. Each of the covenants, restrictions, conditions and provisions of this Declaration are cumulative and independent of each other and if any are held to be or become waived, invalid or otherwise unenforceable, the remaining provisions shall be in no way affected or impaired but shall remain in full force and effect.

Section 10.3 Limitation of Liability. The Declarant, its members, shareholders, officers, directors, trustees, agents or employees, shall not be liable to any party whatsoever for any act, decision, or omission unless the act, decision or omission was in bad faith, fraud or malice.

Section 10.4 Amendments. This Declaration may be amended by an instrument signed by a majority of the Lot Owners subject to this Declaration. Any amendment must be properly recorded in the office of the Register of Deeds. As to each amendment of this Declaration, each owner of a Lot shall be entitled to one (1) vote. If more than one owner of a Lot, the owners must decide among themselves how to cast their one vote. Fractional voting will not be allowed. Owners of more than one Lot shall be entitled to one vote for each Lot owned. Preferred Member may vote the number of votes referenced in § 10.1 (i) herein.

Section 10.5 Future Use. The property is being developed by the Declarant. The Declarant reserves the right to amend this Declaration consistent with its development plan in accordance with this Declaration’s provisions regarding amendments. The Declarant also reserves the right to alter and amend this Declaration so as to permit different developmental uses within different areas and on different sets of Lots and to specify the application of different covenants, restrictions, conditions and easements in different areas of the property. The Declarant reserves the right to re-plat any of the property.

Section 10.6 Disclaimer of Liability. A golf course or expanded golf course may be developed on or adjacent to the property. Each Owner for the Owner and the Owner’s invitees, personal representatives, assigns and heirs (collectively, Owner’s Related Parties) hereby acknowledges and *knowingly assumes the risk of* the Golf Course Hazards (defined in section 10.1), and each Owner and Owner’s Related Parties assumes the risk of property damage, property value

reduction, personal injury (including death), potential for nuisance and trespass created by, related to, or arising in connection with the Golf Course Hazards and releases, waives, discharges, covenants not to sue, indemnifies and agrees to hold harmless the Golf Course Parties (defined in section 10.1 from any and all liability to the Owner or Owner's Related Parties for any losses, costs, attorney fees, claims, demands, suits, judgments, or other obligations arising out of any Golf Course Hazard or related hazard or risk. The foregoing shall not relieve any golfer from claims or liability under South Dakota law for any injury or damage caused by any the golfer.

Section 10.7 Nonapplication to Declarant. Except as may be otherwise provided, this Declaration shall not apply to the Declarant or any Lots owned by the Declarant and none of the provisions herein may be enforced against the Declarant in the interests of allowing the Declarant to develop the property.

Section 10.8 Miscellaneous. The recitals of this Declaration are incorporated by this reference. The Article and section headings are for convenience only and will not be used in the interpretation of this Declaration. Any Exhibit attached hereto showing a map of the zones of the property is for convenience only and shall not supersede the legal descriptions for each zone set forth in Article 9 to the original and First Amendment to the 2017 Amended and Restated Declaration of Restrictions, Easements and Covenants to Run with the Land. Any reference to the Declarant shall also include any affiliates or subdivision of the Declarant. This Declaration shall run with the land and is binding on successors, heirs, personal representatives and assigns.

This Notice of Second Amendment to the 2017 Amended and Restated Declaration of Restrictions, Easements and Covenants to Run with the Land is intended to amend the "Notice of First Amendment to the 2017 Amended and Restated Declaration of Restrictions, Easements and Covenants to Run with the Land" recorded as Document #2018-04749 on October 9, 2018 at 10:06 am and the "Notice of 2017 Amended and Restated Declaration of Restrictions, Easements and Covenants to Run with the Land" recorded as Document #2017-05420 on November 17, 2017 at 10:32 am and "Declaration of Restrictions Easements and Covenants to Run with the Land recorded as Document #2010-01497 on April 1, 2010 at 16:55 in the office of the Lawrence County, South Dakota Register of Deeds affecting Tract G of Elkhorn Ridge Addition, City of Spearfish, Lawrence County, South Dakota, located in the NE1/4, E1/2NW1/4SW1/4 and N1/2 of Section 15, Township 6 North, Range 3 East, BHM, Lawrence County, SD."

The real property that is affected by this Second Amendment to the 2017 Amended and Restated Declaration of Restrictions, Easements and Covenants to Run with the Land is described as:

Tract G of Elkhorn Ridge Addition, City of Spearfish, Lawrence County, South Dakota, located in the NE1/4, E1/2NW1/4SW1/4 and N1/2 of Section 15, Township 6 North, Range 3 East, BHM, Lawrence County, SD.



AND

Phase 3A

Lots 13-18 of Block 4, Lots 1-3 of Block 8, Lot 1-2 of Block 9, Lot 1 of Block 10, Elkhorn Ridge Addition, Section 15, T6N, R3E, BHM, City of Spearfish, Lawrence County, South Dakota.

AND

Phase 3B

Lots 3-12 of Block 9, Lots 2-6 of Block 10 and Lot A, Elkhorn Ridge Addition, Section 15, T6N, R3E, BHM, City of Spearfish, Lawrence County, South Dakota

AND

Tract G less Elkhorn Ridge Addition, Less Elkhorn Ridge Golf Estate and Less Right of Way, Elkhorn Ridge Addition; Lots G9 & G10, Elkhorn Ridge Addition; Lot G8 Less Elkhorn Ridge Golf Estate and Right-of-Way, Elkhorn Ridge Addition; Lot A, Lots 13-18 of Block 4, Lots 1-3 of Block 8, Lots 1-12 of Block 9, Lots 1-6 of Block 10, Elkhorn Ridge Addition; all located in Section 15, T6N, R3E, BHM, City of Spearfish, Lawrence County, South Dakota.

The records of all ballots and votes on the Amended and Restated Declaration will be maintained in the files of the Secretary of the Association.

Dated this 30 day of September, 2020.

DSBW, LLC

By:


JIM SCULL, President

ATTEST:


PATRICK WYSS, Vice Operating Manager



