

WHEREAS, Julian J. Wolff, Fred A. Wolff, John E. Hinker, Merle Meier and Clarence Rath, a partnership doing business as Black Hills Forest Acres of Spearfish, South Dakota, hereinafter referred to as "Developer" is the owner of the following described property, to-wit:

Blocks 1, 2, 3, and 4 and street right of ways, a Subdivision of Section 20, Township 6 North, Range 4 East of the B.H.M., Lawrence County, South Dakota, as shown by the plat thereof recorded as Document # 78-4400 in the Office of the Register of Deeds of Lawrence County, South Dakota, and

WHEREAS, the Developer desires to make the following declarations as to the limitations, restrictions and uses to which the lots above described may be put, hereby specifies that said declarations shall constitute covenants to run with all the land and shall be binding upon the grantees of any portion of said property and all other persons claiming under or through them and for the benefit of and limitations of all future owners of land within the development, it being the intention of the Developer that such restrictions are designed for the purpose of keeping said platted property desirable, uniform and suitable in architectural design and to be limited to the uses herein specified.

NOW, THEREFORE, the undersigned Developer does hereby declare and make the following restrictions and covenants:

I.

COMMITTEE: That a committee shall be appointed to supervise and enforce these covenants, which committee shall exist, continue and perform according to the following:

- (a) That the developers, being five in number, shall constitute the first committee and that the committee shall thereafter be composed of five members only.
- (b) That the owner of each lot shall have the right to vote for a committee member and that members other than developers may be elected to the committee according to the following formula:
 - (1) After 20% of the lots in the developed area have been sold, the owners of those lots may elect one member to the committee.
 - (2) That after 40% of the lots are sold, the owners of those lots may elect up to two members to the committee.
 - (3) After 80% of the lots are sold, the owners of such lots may elect up to four members to said committee.
 - (4) After 100% of the lots are sold, the owners of such lots may elect all five members to said committee.

- (c) No building, fence, wall or other structure shall be commenced, erected or maintained, nor shall any addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, heights, materials, floorplans, exterior color (exterior color to be of earthtones), and location of such structure shall have been submitted to and approved in writing by the committee.
- (d) In the event the committee fails to approve or disapprove such design and location within thirty days after said plans and specifications have been submitted to it, such approval will not be required and this covenant will be deemed to have been fully complied with.
- (e) That in approving or disapproving proposed plans and specifications, the committee shall be guided by:
 - (1) All applicable federal, state and local laws;
 - (2) The Lawrence County zoning plan and zoning ordinances and any amendments thereto;
 - (3) The terms and conditions set forth in these covenants and restrictions; and
 - (4) The consideration and peculiar circumstances involved with each lot, the type of dwelling and building to be erected thereon, topography and terrain features, architectural design, effect of such construction upon other construction in the area and future construction as to view, preservation of the environment and other related matters.
- (f) That in approving any proposed plans and specifications, the committee does not thereby make any representations or guaranty, or assumes any responsibility or liability whether or not in fact such plans or specifications comply with items (1), (2), (3) and (4) of section (e) set forth above. Such remains the sole obligation and responsibility of the owner to comply therewith.
- (g) The committee shall have the authority to maintain such suits at law or in equity to enforce the provision of these covenants and to restrain the violation or threatened violation of such covenants and to recover actual and punitive damages for such violations.
- (h) That the committee may, upon written application and notice to all other owners of lots within the area, grant variances to these covenants, which variances, however, cannot conflict with either state or federal law, rules and regulations of state or federal govern-

ment, the Lawrence County Comprehensive Plan and the Lawrence County zoning ordinance as amended.

- (i) That the committee shall also have the right and authority to hear grievances of owners of lots within the developed area, that hearing on such grievances shall be open to the other lotowners within the developed area and that said committee shall have the authority to mediate disputes between lotowners within the developed area regarding the application of these covenants.

II.

LOT SIZE: All lots in the above described property shall be not less than one acre in size and shall be known and described as residential lots. All structures shall be single family dwellings not to exceed two stories in height and a private garage for not more than two cars. That only one residence shall be built upon each lot and that no lot shall be subdivided or used except as an entire tract, except as provided hereinafter by Section VII.

III.

SET BACK REQUIREMENTS: That no building shall be located on any of the lots nearer than 25 feet to any side lot line, and 25 feet to any front lot line or road easement, whichever is greater. For the purpose of this provision, eaves, steps, and open stoops and porches not exceeding 10 feet in width shall not be considered as a part of the building, provided however, that this shall not be construed to permit any portion of a building or a lot to encroach upon another lot.

IV.

UTILITIES: That all utilities shall be placed underground unless it be deemed impractical or inappropriate by the committee.

V.

DRIVEWAYS: Driveway approaches from streets to lots within the subdivision shall contain a culvert or tile with a minimum diameter of twelve inches. That no such approach shall be constructed without first being approved by the committee as provided for hereinabove.

VI.

OUTBUILDINGS: Suitable or necessary outbuildings to serve the principal structure may be permanently constructed, but must conform to exterior appearance and design for the principal structure on the lot. All dwellings or structures shall be placed on a permanent foundation.

VII.

SUBDIVISION: No one, except the Developer, shall at any time ever replat, subdivide or re-subdivide any lot into a smaller lot or in any other manner change the plat as filed; provided,

however, lotowners may acquire land from adjacent lots for the purpose of increasing the size of their lot, but any lot so increased in size may never contain more than one detached single family dwelling.

VIII.

USE RESTRICTIONS: No noxious or offensive trade or activity as defined by law shall be carried on upon any lot in said addition nor shall anything be done which may or becomes an annoyance or nuisance as defined by law to the neighborhood or individuals residing or owning property therein.

IX.

SIGNS: No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale or rent or signs used by builder to advertise the property during the construction and sale. On vacant lots, no lot signs shall be over three square feet. That informational and directional signs approved by the committee shall not be subject to this restriction.

X.

EASEMENTS: Easements and rights of way are hereby reserved as shown or described in the recorded plat of the development and there shall be a permanent easement six feet in width on each side of all lot lines and within the boundaries of and beneath all dedicated roadways for the construction, location and maintenance of utilities, including but not limited to electricity, gas, cable television, and water and sewer pipes and mains.

XI.

GARBAGE: No trash, ashes or other refuse shall be thrown or dumped on any land within the development. There shall be no burning of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse and other such receptacles shall be screened from public view and protected from disturbance.

XII.

TREES: Living trees naturally existing upon a lot, except to the extent necessary for construction purposes, shall not be cut, trimmed or removed from the property except that trees may be trimmed and thinned in accordance with guidelines applicable thereto as established by the Forest Service and the developer.

XIII.

CONTINUITY OF CONSTRUCTION: All structures commenced in the development shall be prosecuted diligently to completion and shall be completed within six months of the commencement of construction, unless such completion is prevented by inclement weather.

XIV.

TEMPORARY STRUCTURES: No trailer, basement, tent, shack, garage or mobile home or any other building shall be used as a

residence temporarily or permanently nor shall any structure of a temporary character be used as a residence at any time.

XV.

DWELLING: All construction shall be of new material and new construction. Design, size, and exterior color is of the utmost importance and the decision of the committee will be final. No houses shall be moved onto any lot from any other lot or from outside the above described property. Variances to the above can be applied for through the committee.

XVI.

ANIMALS: No animals, livestock or poultry of any kind shall be raised, bred or kept on any lots, except that riding horses if not stalled, fed or maintained upon the property overnight. Dogs, not to exceed a total of one, cats or other household pets may be kept provided that they are not bred, kept or maintained for any commercial service or purpose and provided that such do not constitute a public nuisance or cause unreasonable disturbance. Dogs, cats or other household pets shall be leashed or otherwise appropriately contained and sheltered.

XVII.

MOTOR VEHICLES: No motor vehicles, cars, buses, tractors, trailers that are not in normal running condition and in average daily use shall be kept on any of the above described property. Trucks larger than one (1) ton will not be permitted in the development, except during construction of homes, for home and lot maintenance and moving of household furnishings. It is the intent of this covenant to prohibit and forbid the keeping of any wrecked motor vehicles or those not in use and operation and any other like debris on any of the above described property.

XVIII.

WATER: No water wells or private water systems shall be drilled, maintained or utilized on any lot for so long as there remains in existence a community water system.

XIX.

HOMEOWNERS ASSOCIATION: That each and every person or entity who purchases a lot in this subdivision from the Developer or any other person or entity, or enters into a contract for the purchase of a lot in this subdivision, shall immediately join and be deemed a member of the Whitewood Forest Acres Homeowners Association, shall remain in good standing therewith for so long as such interest is held, and shall be bound by and abide by all rules and regulations as exist or as may hereinafter be duly promulgated by the Whitewood Forest Acres Homeowners Association.

XX.

DURATION: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of

and binding upon each lot in the development and each of the lot-owners therein, his successors, representatives and assigns and shall continue in full force and effect for a term of 25 years from and after the date of the recording in the office of the Register of Deeds of Lawrence County, South Dakota, of these restrictions and covenants. At the expiration of such 25-year period, these covenants shall be automatically extended for successive terms of ten years each, except and unless prior to the expiration of the initial term or prior to the expiration of any ten-year period, an instrument asking for the discontinuance of such restrictions or any part of such restrictions duly executed by the then owners of at least 60% of the lots in said development is duly acknowledged and recorded in the office of the Register of Deeds of Lawrence County, South Dakota. The filing of which document shall terminate or modify these agreements and covenants as may be provided therein. "Owner" shall be defined as all persons or entities possessing a legal or equitable interest in a given lot, excluding mortgagees, as appears from the records of the Lawrence County Register of Deeds Office.

XXI.

SEVERABILITY: Invalidation of any one or more of these covenants by judgment or order of a court, or decree shall in no way affect the validity of the remaining provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and signatures this 19th day of August, 1980.

BLACK HILLS FOREST ACRES
A Partnership

Julian J. Wolff
Julian J. Wolff - Partner

Fred A. Wolff
Fred A. Wolff - Partner

John E. Hinker
John E. Hinker - Partner

Merle Meier
Merle Meier - Partner

Clarence Rath
Clarence Rath - Partner

State of South Dakota)
County of Lawrence) ss.

On this 19th day of August, 1980, before me, the undersigned officer, personally appeared Julian J. Wolff, Fred A. Wolff, John E. Hinker, Merle Meier and Clarence Rath, known to me to be the persons whose names are subscribed to the foregoing Declaration of Zoning Restrictions and Covenants and acknowledged

that they executed the same for the purposes therein contained
as partners of Black Hills Forest Acres.

IN WITNESS WHEREOF, I have hereunto set my hand and offi-
cial seal.

(SEAL)

My Commission Expires:
November 8, 1984

Janet C. Lambert
Notary Public

DOC. NO. 80-2488

1980 AUG 21 PM 1:07

CLIVE C. FOREMAN
SANDHILL COUNTY
REGISTER OF DEEDS

Fee 8.00

Document prepared by:
Hood & Nies, P.C.
PO Box 759
Spearfish, SD 57783

605-642-2757



Doc #: 2012-06112
Date: 12/17/2012 14:00:00
Sheree L. Green
Register of Deeds
Lawrence Co. - Fee \$30.00

**FIRST AMENDMENT TO DECLARATION
OF ZONING RESTRICTIONS AND COVENANTS FOR
WHITEWOOD FOREST ACRES**

WHEREAS, the Declaration of Zoning Restrictions and Covenants dated August 19, 1980 was recorded in Doc. No. 80-2488 in the office of the Lawrence County Register of Deeds of and concerning the following described real property (the "Declaration"):

Blocks 1, 2, 3, and 4 and street right of ways, a Subdivision of Section 20, Township 6 North, Range 4 East of the B.H.M., Lawrence County, South Dakota, as shown by the plat thereof recorded as Document No. 78-4400 in the office of the Register of Deeds of Lawrence County, South Dakota; and,

WHEREAS, Whitewood Forest Acres Homeowners Association was created by a Declaration dated August 19, 1980 was recorded in Doc. No. 81-269 in the office of the Lawrence County Register of Deeds of and concerning the following described real property:

Blocks 1, 2, 3, and 4 and street right of ways, a Subdivision of Section 20, Township 6 North, Range 4 East of the B.H.M., Lawrence County, South Dakota, as shown by the plat thereof recorded as Document No. 78-4400 in the office of the Register of Deeds of Lawrence County, South Dakota; and,

WHEREAS, a First Amendment to Declaration of Whitewood Forest Acres Homeowners Association dated December 28, 1995 was recorded January 4, 1996 as Doc. No. 96-52 in the office of the Lawrence County Register of Deeds of and concerning the following described real property:

Blocks 1, 2, 3, 4, of a subdivision platted as Document No. 78-4400, and Lots 1, 2, 3, 10, 11, 12, 13, and 14 of Block 5 of Whitewood Forest Addition #2, and street right-of-ways, Section 20, T6N, R4E, B.H.M., Lawrence County, South Dakota; and,

WHEREAS, the Articles of Incorporation of the Whitewood Forest Acres Homeowners Association, a Domestic Nonprofit Corporation, incorporation said homeowners association dated December 29, 2009 were recorded as Doc. No. 2010-02616 in the office of the Lawrence County Register of Deeds of and concerning the following described real property:

Blocks 1 to 5, a Subdivision of Section 20, T6N, R4E, BHM, Lawrence County, South Dakota; and

WHEREAS, at least 60% of the lot owners subject to the foregoing Declaration of Zoning Restrictions and Covenants ("Declaration") desire to amend the Declaration by a duly acknowledged and recorded Amendment,

NOW THEREFORE, THIS AGREEMENT:

1. This Amendment affects the following described real property, to wit:
Blocks 1, 2, 3, and 4 and street right of ways, a Subdivision of Section 20, Township 6 North, Range 4 East of the B.H.M., Lawrence County, South Dakota, as shown by the plat thereof recorded as Document No. 78-4400 in the office of the Register of Deeds of Lawrence County, South Dakota.
2. We amend all references to the Whitewood Forest Acres Homeowner's Association to refer to the nonprofit corporation formed under the Articles of Incorporation of the Whitewood Forest Acres Homeowners Association, a Domestic Nonprofit Corporation, dated December 29, 2009 and recorded as Doc. No. 2010-02616 in the office of the Lawrence County Register of Deeds, which is referred to below as the "Association" or by name.
3. We amend ARTICLE I, COMMITTEE, introduction, (a), (b), and (c) by replacing them with the following new introduction, (a), (b) and (c), but the rest of ARTICLE I will remain unchanged:

COVENANTS COMMITTEE: The Covenants Committee shall be appointed by the Board of Directors of the Association to supervise and enforce the covenants. The Chairperson of said Committee will be a member of the Board of Directors. A total of five members of the Association will be appointed. Three members of the Committee are required to approve any new construction change(s) or additions to the property subject to the Covenants.

- (a) No lot improvement(s) building, fence, wall, driveway/improvement(s) or other structure will be commenced or erected, nor shall any addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, heights, materials, floor plans, exterior colors, and location of such construction/improvements shall have been submitted to and approved by the Committee. Exterior Colors: The color combination of exterior materials must be subtle and tasteful to blend with the environment. Earthen tones are required. Extreme contrasts in color of paints, stains, and masonry are prohibited.
 - (b) In the event the Committee fails to approve or disapprove such design(s) and location(s) within thirty days after said plans and specifications have been submitted to it, such approval will not be required and covenant will be deemed to have been fully complied with.
 - (c) The Committee has been given sole approval authority for all construction/change(s) by the Board of Directors of the Association; however, if the owner(s) disagree with the decision of the Committee, an appeal may be made to the Board of Directors. The decision of the Board of Directors is final.
4. We amend ARTICLE II, LOT SIZE, by replacing it with the following:

LOT SIZE: All lots in the above-described property subject to the Declaration shall not be less than one acre in size and shall be described as residential lots. All structures shall be single-family dwellings not to exceed two stories, or as approved by the Covenants Committee, in height and shall have a private garage

for not less than two cars. Carports are prohibited. Each dwelling shall have a minimum of 1200 square feet on the main level. In extenuating circumstances waiver(s) may be granted by the Covenants Committee for lot size, typography or drainage considerations. That only one residence shall be built upon each lot and that no lot shall be subdivided or used except as an entire tract. Owner(s) with adjoining lots may, with Covenants Committee approval, build a dwelling up to or over the common lot line of the lots providing that such construction does not violate Lawrence County zoning regulations. Only one dwelling will be built upon adjoining lots and utility easements must be considered.

5. We amend ARTICLE VI, OUTBUILDINGS, by replacing it with the following:

OUTBUILDINGS, CLOTHESLINES, FENCES & KENNELS: Suitable or necessary outbuildings, to include storage sheds to serve the principal structure, must be approved by the Covenants Committee. They must be permanently constructed and conform to the exterior appearance and design of the principal structure on the lot. All outbuildings and storage sheds shall be placed on a permanent concrete foundation. Building permits are required as applicable. Clotheslines shall not be visible from the street. Wooden fences are permitted with approval of the Covenants Committee; however, wooden fences are prohibited for areas of the front yard. Chain link fences and outdoor kennels to include dog runs are prohibited.

6. We amend ARTICLE VIII, USE RESTRICTIONS, to add the following provisions, but the rest of ARTICLE VIII will remain unchanged:

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

Weed Control: The owner of any lot shall control and eliminate weeds and noxious plants on the owner's property. Such weed control and weed control product use shall be in accordance with appropriate Local, State and Federal laws.

Additional Use Restrictions:

- (1) Mercury vapor/large floodlights are prohibited.
 - (2) Outdoor propane/fuel tanks are prohibited.
 - (3) The burn pile (as available) is for brush cuttings and tree remnants. No garbage, pet waste, plastic bags, hazardous material or chemicals are to be left at the pile.
 - (4) All culverts to include home sites and lots that have culverts installed must be kept cleaned and free of debris by the owner.
 - (5) Garbage is to be maintained in closed containers and placed outside no earlier than the night before scheduled pickup.
 - (6) No firearms are to be discharged in the development.
 - (7) No hunting shall be allowed in the development.
7. We amend ARTICLE IX, SIGNS, by addition of the following sentence, but the rest of ARTICLE IX will remain unchanged: "For Sale and Advertising signs must be removed the day of the closing of the sale."

8. We amend ARTICLE XII, TREES, by addition of the following sentence, but the rest of ARTICLE XII will remain unchanged: "The owner(s) of any lot are responsible for the removal of dead and/or infected trees as identified by South Dakota Department of Agriculture and/or Forestry Service experts. Lot owner(s) will be notified in writing of the identified problem and provided sixty (60) days to bring resolution of the problem satisfactory to the health and well-being of trees and/or other plants on other lots in the property subject to the Declaration. Should resolution not be provided by the lot owner(s) in the prescribed time, the Association will resolve the problem at the expense of the lot owner(s), including but not limited to treatment or removal of dead and/or infected trees, or trees which have a heightened probability of infection.

9. We amend ARTICLE XIII, CONTINUITY OF CONSTRUCTION, by replacing it with the following:

CONTINUITY OF CONSTRUCTION: All structures/change(s) commenced in the development shall be prosecuted diligently to completion and shall be completed in twelve months, or as agreed to with the Covenants Committee for small projects. Completion shall include new landscaping and/or returning any disturbed land to acceptable standards as approved by the Covenants Committee. Weather and other acts of God may require a waiver/extension which must be approved in writing by the Covenants Committee.

10. We amend ARTICLE XVI, ANIMALS, by replacing it with the following:

ANIMALS: No animals, livestock or poultry of any kind shall be raised, bred or kept on any lots, except that riding horses if not stalled, fed or maintained upon the property overnight. Dogs not to exceed a total of two, cats, or other household pets may be kept provided that they are not bred, kept or maintained for any commercial service or purpose and provided that such do not constitute a public nuisance or cause unreasonable disturbance. Dogs, cats, or other household pets shall be leashed or otherwise appropriately contained and sheltered. Whitewood Forest Acres Homeowners Association adheres to Lawrence County Animal Ordinances.

11. We amend ARTICLE XVII, MOTOR VEHICLES, by addition of the following sentence, but the rest of ARTICLE XVII will remain unchanged: "All terrain vehicles, snowmobiles, and trail bikes shall not be operated within the property subject to the Declaration unless licensed for use on public roads. In no instance are such vehicles to be operated on the common areas of the development."

12. Unless amended herein or by any prior Amendment, the Declaration remains unchanged.

Dated this 9th day of DECEMBER, 2012, by the undersigned lot owners, constituting at least 60% of the lot owners subject to the Declaration, who have approved this Amendment.