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Lawrence County
Register of Deeds

Sheree L. Green
Deputy

Prepared By:

Keystone Land Development LLC

541 W Jackson Blvd, Suite B

Spearfish, SD 57783

(605)717-1388

OLD TOBOGGAN HILL SUBDIVISION

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made by Charles A Dodds, a single man, of 20593 Maitland Road, Lead, SD 57754, James A. Riggs and Geraldine Riggs, husband and wife, of 1355 Meade Ave., Sturgis, SD 57785, Terry Nagel and Dyan Nagel, husband and wife, of 20641 Maitland Road, Lead SD, 57754, hereinafter referred to collectively as "Declarant." Declarant represents that they comprise the titled owners of the following-described real property situated in Lawrence County, South Dakota:

Tract A of Old Toboggan Hill Subdivision, a subdivision of Grey Eagle, Volunteer, Commercial No. 2, M.S. 1652, Florence, M.S. 1812 and Lot 5 of Hansen Subdivision of M.S. 1652 and M.S. 1812; portions of Maid of Erin Fraction & Commercial, M.S. 1652 and Rowenna No. 1 M.S. 1812 and A 40' Public Access And Utility Easement Thru Lot 6 of Hansen Subdivision of M.S. 1652 & M.S. 1812 all located in the South Half (S½) of Section 12 and the North Half (N½) of Section 13, Township 5 North (T5N), Range Two East (R2E) of the Black Hills Meridian, Lawrence County, South Dakota.

Declarant hereby declares that, from and after the recording of this declaration all the above-described property shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions.

I. RESTRICTIVE COVENANTS

1. **Access Drives:** Each lot shall be accessed by a private driveway to be constructed with proper drainage and culverts.
2. **All-Terrain Vehicles, Motorized Trail Bikes and Tracked Vehicles:** All-terrain vehicles, snowmobiles and motorized trail bikes shall not be operated within "the Development", except on an owner's own lot or in a direct route on the roadway to exit "the Development" or enter "the Development" and to return to lot owner's home.
3. **Animals:** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot within the Development with the exception that dogs, cats and other usual and common household pets may be permitted upon a Lot, provided that they are not kept for any reason other than as household pets. The combined total number of dogs, cats and other household pets permitted per Lot shall not exceed three animals. Pets shall not be permitted to roam free or in the sole discretion of the Declarant or Board, make objectionable noise, or constitute a nuisance or inconvenience to the Owner of any Lot within the Development and shall be removed upon request of the Board. All dogs outside of a residence after 10:00 P.M. shall be personally accompanied by a handler, and the handler shall keep the dog quiet. In no event shall dangerous animals or reptiles be kept in the Development.
4. **Antennae and Satellite Dishes:** Television and radio antennae and satellite dishes are to be located as inconspicuously as possible. They shall be located at the side or rear of the home.
5. **Approval and Conformity:** No building, fence, storage shed, pool, spa, or other structure or improvement of any type shall be commenced, erected or maintained upon the property, 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 by the Board of Directors or its

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representative and in compliance with all local, county, state and federal rules and regulations. All construction must be in accordance with external design and location in relation to surrounding structures and topography. All buildings will have flame resistant roofs of metal or cement based material.

6. **Building Setbacks:** The minimum building setbacks for all structures on any lot shall be sixty (60) feet from the center of the road and thirty (30) feet from all other lot lines. The board of Directors by a 2/3's vote may permit a lesser setback if approved by the adjacent lot owners.
7. **Changes In Construction:** All exterior changes or additions to the approved plans before, during or after construction shall be approved in writing 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 twelve (12) months of commencement of construction unless completion is prevented by inclement weather or an extension is authorized by the Board of Directors.
9. **Dwellings:** No dwelling shall be constructed, erected, or maintained without a minimum of Seven Hundred Fifty (750) finished square feet on the ground floor.

Plans and specifications shall be approved by the design review committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the design review committee, the members thereof, nor the Declarant assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. Neither the design review committee, any member thereof, nor the Declarant shall be liable to any owner or other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans drawings and specifications, whether or

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not defective, or (b) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications.

All plans for construction must be submitted for written approval to the Board of Directors or its representative.

All building shall be of new materials, new construction, and set on a permanent foundation. No houses shall be moved onto any lot from any other location. Homes constructed of pre-fabricated wall and roof sections are allowed. Mobile, single or doublewide homes are not permitted.

In addition to the requirements set forth in Paragraph 41 below, all structures must also comply with the latest editions of the local, county, state, and national building codes, rules, regulations and ordinances existing at the time of the issuance of any building permit, including, but not limited to the following:

U.B.C. Standards of the Uniform Building Code

U.S.F.A. United States Fire Administration:

N.E.C.A. National Electrical Code Association

South Dakota Plumbing and Electrical Codes

Lawrence County Ordinances

- 10. Utility Easements:** Easements for installation, maintenance, repair and removal of utilities and drainage facilities over, under and across the property are reserved. Full rights of ingress and egress shall be had by Declarant and any bona fide utility company at all times over the easement areas for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance operation or installation of such utility. The easements shall be a (15) fifteen foot strip adjacent to all lot lines.

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11. **Easements:** Easements for installation and maintenance of utilities, public or private, including water or sewer services, are reserved with a fifteen (15) foot strip adjacent to all lot lines.
12. **Exterior Colors:** The color combinations of exterior materials must be subtle and tasteful to blend with the environment. Earthen tones are required. Extreme contrast 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.
13. **Fences:** Wood and rail-type fences of quality material and construction are permitted if they are kept in a good state of repair and do not interfere with access to any easements for utilities and roadways. No barbed or plain wire fences are permitted within "the development." However, the outer boundary between the lots and the National Forest or non-development property are exempt from this restriction.
14. **Firearms:** No firearms shall be discharged within "the Development".
15. **Fireplaces (Outdoors) and Fires:** No incinerators, open fire pits, open burning or unscreened outdoor fireplaces shall be allowed. Controlled burning for safety purposes directed by any governmental unit shall be permitted.
16. **Garbage and Trash:** No garbage or trash shall be maintained on any Lot so as to be visible from another Lot. 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.

17. **Gardens:** Gardens for domestic consumption only will be permitted. All gardens shall be set back at least thirty (30) feet from any lot line.
18. **Homeowners Association:** Declarant will act for the Old Toboggan Hill Homeowners Association until such time as the Association has been established. The Association must be formed once 85% of the lots have been sold, and shall then elect a minimum of three officers.
19. **Hunting:** No hunting shall be allowed in "the Development".
20. **Landscaping:** All ground disturbed by construction shall be returned to a natural condition or landscaped within twelve (12) months of completion of dwelling.
21. **Logging:** Removal of more than ten trees of 8" or more in diameter requires pre-approval in writing by the Board.
22. **Lot Size:** No lot shall be subdivided into smaller lots or conveyed in less than full original dimensions as conveyed. 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 filed in the Lawrence County Register of Deeds Office. Should any replatted lots be subsequently separated and replatted into multiple lots, all additional lots created shall be subject to all assessments that would have accrued against each lot except for the combination into a single lot. No lots, which have been combined, can be replatted into more lots than originally existed. In addition to the acreage for each conveyed lot, each residential lot owner will also receive title to an undivided one-fourteenth (1/14th) interest in and to Lots 15, 16 and 17, which have been platted and designated as "Open Space[s]" and each such lot owner shall be solely responsible for their proportionate share of the property taxes levied on Lots 15, 16 and 17, in addition to that which is levied against their respective residential lot.

23. **Lot Restrictions:** No more than one single-family dwelling, as defined by Lawrence County Ordinances, may be constructed on any lot.
24. **Mining:** No portion of "the Development" shall be used to explore for or remove oil or minerals of any kind.
25. **Nuisances:** No Owner shall permit anything to be done on or about 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 includes unreasonable noise and barking dogs. No owner may permit any nuisance nor commit or allow an illegal act to occur on their lot.
26. **Outbuilding/Minimum Area:** Any detached outbuilding, including but not limited to any detached guestroom (not used as a primary residence or rental unit), shop, additional garage, or other outbuilding may be allowed. These buildings shall have a minimum of five hundred (500) square feet and not exceed one thousand (1000) square feet, shall be designed to match the main home, shall be of new construction and be constructed of substantially the same new materials as the main home, and must also be approved by the Board of Directors and may also be subject to approval by the local governing authority responsible for issuance of any building permit for said construction, prior to the start of construction. All outbuildings must be constructed onsite upon a permanent foundation.
27. **Residential Use:** Each Lot shall be used only for single-family residential purposes. Any other purpose must be approved by the Board of Directors.
28. **Roads:** All roads within "the Development" are for owners and their guests. No parking is allowed on the roads or utility accesses.

29. **Safe Conditions:** Without limiting any other provision in this Section, each owner shall maintain his or her Lot in a safe, sound, and sanitary condition and repair at all times. Owners shall correct any condition and refrain from any activity that might interfere with other owners.
30. **Sewage Disposal Systems:** Only engineered sewage disposal systems shall be permitted in "the Development."
31. **Signs:** No signs, billboards or other advertising devices shall be used on any Lot except for identification of a residence, road, speed, direction, or sale. Signs may be directive or informative and will not be more than eight (8) square feet in size. Signs erected by the Old Toboggan Hill Homeowners Association are exempt. Sale signs must be removed the day of the sale.
32. **Temporary Structures:** No trailer, basement, tent shack, garage, barn, or other outbuildings shall be built on any Lot for use as a residence, either temporarily or permanently. No camper, tent or recreational vehicle shall be placed on any Lot for more than fifteen consecutive days within a calendar year.
33. **Utilities:** Electrical, and telephone services are 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 by the Board.
34. **Vehicles:** No unlicensed vehicles or more than three (3) properly licensed motor vehicles, trailers, or other types of motorized or non-motorized vehicle, not in normal daily use may be kept 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 (14) consecutive days within a calendar year.

35. **Violation of Law:** No owner shall permit anything to be done or kept on his or her Lot that would be in violation of any local, state or federal law.
36. **Common Areas:** Common Areas shall mean and refer to any area described or designated as common green areas, recreation areas or hiking trails. Common areas are for the enjoyment of all Lot owners within the Old Toboggan Hill subdivision and will be maintained as deemed appropriate by the board of Directors.
37. **Association and Declarant Not Liable:** The open and natural Common Areas may be populated by plants and animals that may pose risks to users of Common Areas. In addition, the terrain of common Areas and any improvements thereon (such as trails, walkways, or sitting areas, if any) may pose risks to users due to the degree of slope, surface conditions such as accumulation of snow and ice, etc. The designation of Common Areas by the Declarant, or any development or improvement thereof by the Declarant or the Association, does not constitute any representation by them of the fitness or safety of the Common Areas or any improvements thereon for any particular purpose or use. Each user of Common Areas or improvements thereon is deemed to assume all risks inherent in such use. Neither Declarant, the Association nor any of the respective members thereof, shall be liable in any manner whatsoever for any claims, actions, liability, damages, costs or expenses of any kind, arising from any use made by any person of the Common Areas or any improvements thereon or any risk to which such user may be exposed.
38. **Septic Tank Maintenance:** Septic tanks will be pumped and inspected by a certified septic tank system installer every five (5) years.
39. **Monitoring Well Testing:** Each homeowner will be responsible for the testing of the monitoring well in accordance with requirements provided by the County of Lawrence.

40. Well-Sharing: Well-sharing is strongly encouraged when feasible between lot owners. Well-sharing is cost effective for lot owners and is an environmentally good practice. Well-share agreements must be registered through Lawrence County Register of Deeds.

41. Fire Resistancy: All lots, whether improved or not, shall, in addition to the criteria set forth in Paragraph 9 above, meet the following requirements with regard to fire resistance:

Improvements:

1. Each lot shall have a 1000 gallon holding tank with water at the time a building permit is issued.
2. Each lot shall maintain a Fifty Foot (50') radius around the dwelling, of fireproof material (such as grass, gravel, stone, etc)
 - a. Tree Thinning. Tree thinning shall be completed to establish fire breaks on the Sixty-Six Foot (66') rights-of-way and the property shall have trees harvested to reduce fuels and keep fires from crowning by opening up the tree canopy. Spacing between crowns on all conifers will be as recommended by the South Dakota Department of Agriculture – Wild Fire Suppression.

Each purchaser of a Lot or Tract shall receive from the Owner a copy of the Wild Fire Safety Guidelines booklet.

- b. Maintenance. Lot or Tract owners shall continue to maintain their Lots or Tracts to keep fuels down and the tree canopy open. Fire breaks will be maintained on the 66' access road right-of-ways and around structures built on any Lot or Tract.

Lot or Tract owners shall maintain an area of defensible space by thinning contiguous trees and brush cover to a distance of at least 30' on all sides of structures. Within a 30' radius from the structures, individual tree crowns shall be at least 15' apart from any part of the structure and limbed up so there are no braches within 10' of the ground.

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3. Each home shall be constructed with fire resistance roofing (such as metal or cement). All vertical surfaces shall be of either stone, metal, or fire resistant treated wood.

- a. Building Materials. Lot or Tract owners shall construct roofs and over hanging eave soffets with non-combustible materials. Fire resistant draperies, non-flammable shutters and other ignition resistant construction should be used.

Lot or Tract owners shall follow Building code recommendations to construct exterior walls of building materials with ignition resistant materials with a minimum one hour fire resistant construction on or constructed with approved non-combustible materials. An exception is allowed for heavy timber or log wall construction.

Gutters and down spouts shall be constructed of non-combustible materials.

Exterior doors shall be of an approved, non-combustible construction, solid core wood of not less than 1 3/4" thick or have a fire protection rating of not less than 20 minutes. There shall be an exception for vehicle access doors.

Exterior windows, window, window walls and glazed doors, windows within exterior doors, and sky lights shall be tempered glass or multi-layered glazed panels, glass block or have a fire protection rating of not less than 20 minutes.

Buildings or structures shall have all under floor areas enclosed to the ground. Unenclosed accessory structures attached to buildings with habitable spaces and projections such as decks, shall be a minimum of one hour fire resistive construction, heavy timber construction or constructed with approved non-combustible materials.

4. The homeowners association shall maintain the egress trail in good order and shall designate the same with appropriate signage. This includes, but is not limited to, downed-tree removal, washout repair, vegetation and tree/shrub removal from roadway.

5. At no time shall any fireworks be discharged.

II. COVENANTS FOR ASSESSMENT

1. General Assessments

All Lots are classified as A, B or C lots. Class A lot is any lot that has a building improvement. A Class B lot is any lot without building improvements and retains this status until a building permit is issued. A Class B lot, for assessment purposes, becomes a Class A lot on the 1st day of the month following the issue of a building permit. The additional prorated assessment amount for the calendar year shall be paid within 30 days. A Class C lot is one owned by the Declarant.

- A. The general assessment on Class A lots is set at 150 dollars (\$150) per year. The Class B lot assessment will be fifty (50) percent of Class A lots. Class C lots do not have an assessment.
 - B. The amount of the general assessment may be increased by the Board by not more than an additional ten percent (10% each year without a vote of the owners. A greater than ten percent (10%) yearly increase may occur only by approval of a resolution by the affirmative vote of two-thirds of the property owners present or represented by proxy at an annual meeting or at a special meeting called for that purpose.
 - C. The general assessment on all Lots shall be effective on the first day of January each year and is a lien on the property. Failure to make timely payments, as set by the board of Directors, may result in the filing of a lien on the property, with the Lawrence County Register of Deeds.
2. **Special Assessments:** Special assessments, in addition to the general assessments, may be imposed by the Board for capital improvements or capital replacements. Special assessment shall only be levied by a resolution approved by the affirmative vote of two thirds of the property owners present or represented by proxy at an annual meeting or at a special meeting called for that purpose. Any special assessment

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shall be on a per lot basis only. Class C Lots shall not be subject to special assessments.

3. **Reserves:** The Board may establish a reserve fund for replacements and for general operating expenses by the allocation and payment monthly or other term of an amount to be designated. Such fund or funds shall be deemed a common expense of the Association and shall be deposited in F.D.I.C. insured accounts, as the Board deems appropriate. The reserve for placements may be used only for improvements on the property or replacement of improvements or for operating contingencies of 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 to which it appertains and shall be deemed to be transferred with the Lot.
4. **Notice of Payment Status:** The Board shall, upon request at any reasonable time, furnish to any Lot owner liable for assessment a certificate signed by an officer or other authorized agent of the Board stating whether such assessment is paid or unpaid. This certificate shall be conclusive evidence that payment has been received. A charge may be levied for each certificate issued.
5. **Breach of Payment:** Any general or special assessment not paid on the date due shall be deemed delinquent and shall accrue interest at the rate of judgment and cost of collection, become 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.).

III. GENERAL

1. **Administration:** The Old Toboggan Hill Restrictive Covenants shall be administered by the Old Toboggan Hill Homeowners

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Association, Board of Directors. The Board is empowered and has the right to implement, provide, perform and to enforce any or all of the following within "the Development."

- a. All of the provisions in this Declaration of Restrictive Covenants, the Articles of Incorporation, and the By-Laws of Old Toboggan Hill Homeowners Association, Inc.
- b. Regulation, maintenance and improvement of all roads and common areas within "the Development".
- c. Reasonable rules and regulations, which owners, their families, guests and visitors shall comply with.
- d. Penalties for violations of rules, regulations and failure to pay assessments.
- e. Construction, improvement, and maintenance of any Association property necessary.
- f. Contract with third parties for necessary services.
- g. Purchase or lease of any equipment necessary for construction, maintenance, or improvement of Association property.
- h. The amount, payment period, payment schedule and levy of assessments pursuant to these covenants.

2. **Duration and Amendments:** The covenants and restrictions of this Declaration shall run with and bind the land, and shall insure the benefit of and be enforceable by the Old Toboggan Hill Homeowners Association, its legal representatives, successors and assigns. However, 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 Property, (One vote per lot owned) and placed on record where this Declaration is recorded. No such amendment shall be effective unless written notice of the proposed amendment is sent to every Owner thirty (30) days prior to action being taken

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on the proposed amendment. No change of circumstances or conditions shall amend any of the provisions of this Declaration, which may be amended only in the manner described.

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 these covenants, conditions and restrictions. Failure to do so shall not be deemed to defeat, alter or terminate any of these covenants, conditions and restrictions.
4. **Notices:** Any notice required to be sent to any Owner of a Lot(s) or any first mortgagee, shall be deemed to have been given when mailed by first class mail to the Owner or mortgagee at the address appearing on the records of the Association at the time of the mailing. It shall be the duty of each Owner to provide written notice of addresses or change of address to the Association.

5. Enforcement:

- A. If any person violates any of the provisions of these covenants it shall be lawful for the Association or any Lot owner in "the Development" to initiate proceedings to enforce the provisions of these covenants, to restrain the person violating them and recover damages, actual and punitive.
- B. These covenants and restrictions shall be enforced by the Association. Enforcement of these covenants and restrictions shall be by legal proceedings against any person violating any covenant or restriction either to restrain or enjoin violation or to recover damages, and against the property or any lot to enforce any lien created by these covenants. The failure of the Association to enforce any covenant or restriction shall in no event be deemed a waiver or work as estoppels 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 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 Owners or out of the proceeds of a foreclosure, accrued interest and costs of collection, including but not limited to, reasonable attorney's fees. No Owner may wave or otherwise escape liability for assessments provided for in this Declaration by non-use or abandonment of his or her Lot.
 - D. In a voluntary conveyance of a Lot, the grantee of the Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the Lot.
6. **Invalidity and Severability:** All of these covenants, conditions and restrictions are deemed severable. In the event any one or more of these covenants, conditions and restrictions are declared invalid, all remaining covenants, conditions and restrictions shall remain in effect.
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 these declarations, by the By-Laws and Articles of Incorporation of Old Toboggan Hill Homeowners Association Inc., decisions and resolutions of the Board of Directors or their authorized agent, Old Toboggan Hill Homeowners, Inc. and any amendments adopted to these covenants or By-Laws or Articles of Incorporation. Failure to comply with these provisions, decisions or resolutions shall be grounds for an action to recover sums due or for damages, or action for injunctive relief or such other remedy as is available at the time, pursuant to South Dakota law.

Old Toboggan Hill Subdivision
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Charles A. Dodds
CHARLES A. DODDS

James A. Riggs
JAMES A. RIGGS

Terry Nagel
by Dyan Nagel P.O.E.
TERRY NAGEL

Geraldine Riggs
GERALDINE RIGGS

Dyan Nagel
DYAN NAGEL

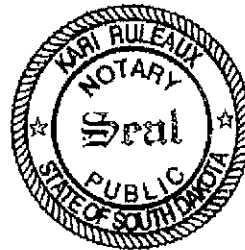
STATE OF SOUTH DAKOTA

COUNTY OF FALL RIVER

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)SS
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ON THIS, the 8th day of Feb, 2007, before me, the undersigned officer, personally appeared CHARLES A. DODDS, known to me or satisfactorily proven to me to be the person whose name is attached to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained.

[Signature]
NOTARY PUBLIC - South Dakota
My Commission Expires: April 18, 2012



STATE OF SOUTH DAKOTA

COUNTY OF Meade

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)SS
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ON THIS, the 8th day of February, 2007, before me, the undersigned officer, personally appeared JAMES A. RIGGS and GERALDINE RIGGS, known to me or satisfactorily proven to me to be the persons whose names

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are attached to the foregoing instrument, and acknowledged that they executed the same for the purposes therein contained.

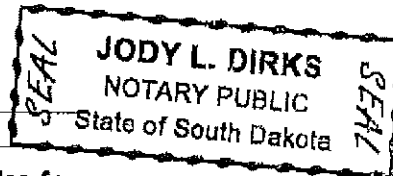
Mary Collins
NOTARY PUBLIC – South Dakota
My Commission Expires: 4-6-2010



STATE OF _____)
)SS
COUNTY OF _____)

ON THIS, the 8th day of February, 2007, before me, the undersigned officer, personally appeared TERRY NAGEL and DYAN NAGEL, known to me or satisfactorily proven to me to be the persons whose names are attached to the foregoing instrument, and acknowledged that they executed the same for the purposes therein contained.

Jody L. Dirks
NOTARY PUBLIC –
My Commission Expires: _____



This document was prepared by:
Seward & Odenbach, P.C.
Attorneys and Counselors at Law
1230 North Avenue, Suite 8
Spearfish, South Dakota 57783
605-642-2622

Judy R. Mendenhall



**FIRST AMENDMENT TO
OLD TOBOGGAN HILL SUBDIVISION
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This First Amendment to Declaration of Covenants, Conditions and Restrictions, is made by Charles A. Dodds, a married man, of 20593 Maitland Road, Lead, South Dakota 57754, hereinafter "Declarant" and hereby makes the following amendments to that certain Declaration of Covenants, Conditions and Restrictions dated February 8, 2007, and filed in the office of the Lawrence County Register of Deeds on February 14, 2007 at 10:39 a.m. as Document No. 2007-00844, filed on the real property described as:

Tract A of Old Toboggan Hill Subdivision, a Subdivision of Grey Eagle, Volunteer, Commercial No. 2, M.S. 1652, Florence, M.S. 1812 and Lot 5 of Hansen Subdivision of M.S. 1652 and M.S. 1812; portions of Maid of Erin Fraction and Commercial, M.S. 1652 and Rowenna No. 1 M.S. 1812, and a 40' Public Access and Utility Easement through Lot 6 of Hansen Subdivision of M.S. 1652 and M.S. 1812, all located in the S½ of Section 12 and the N½ of Section 13, T5N, R2E, B.H.M., Lawrence County, South Dakota.

I.

Declarant hereby amends Article I, Section 18, in its entirety to read as follows:

18. Homeowners Association: Declarant will act for the Old Toboggan Hill Homeowners Association until such time as the Association has been established. The Association must be formed once 85% of the lots have been sold, and shall then elect a minimum of three officers. All lot owners of the Old Toboggan Hill Subdivision shall, by virtue of such ownership, become members of the Old Toboggan Hill Homeowners Association, filed with the

South Dakota Secretary of State March 6, 2007, and subject to the rights and responsibilities of such membership, to include assuming a pro-rata 1/14 share in the ownership of the common areas owned by the homeowner's association. This includes any assessments levied for the upkeep and maintenance of the common areas as voted by the HOA and payment of any taxes due and owing on such areas.

II.

Declarant hereby amends Article II in its entirety to read as follows:

II. COVENANTS FOR ASSESSMENT

I. General Assessments

All Lots are classified as A, B or C lots. Class A lot is any lot that has a building improvement. A Class B lot is any lot without building improvements and retains this status until a building permit is issued. A Class B lot, for assessment purposes, becomes a Class A lot on the 1st day of the month following the issue of a building permit. The additional prorated assessment amount for the calendar year shall be paid within 30 days. A Class C lot is one owned by the Declarant.

- A. The general assessment on Class A lots is set at 150 dollars (\$150) per year. The Class B lot assessment will be fifty (50 percent of Class A lots. Class C lots do not have an assessment.
- B. The amount of the general assessment may be increased by the Board by not more than an additional ten percent (10% each year without a vote of the owners. A greater than ten percent (10%) yearly increase may occur only by approval of a resolution by the affirmative vote of two-thirds of the property owners present or represented by proxy at an annual meeting or at a special meeting called for that purpose.
- C. The general assessment on all Lots shall be effective on the first day of January each year and is a lien on the property. Failure to

make timely payments, as set by the board of Directors, may result in the filing of a lien on the property, with the Lawrence County Register of Deeds.

2. **Assessments for Real Estate Taxes and Maintenance Costs Due and Payable on Common Areas:** All lots, regardless of their classification, will be subject to an assessment for a 1/14 pro-rata share of any real estate taxes assessed on the common areas and for any costs assessed by the HOA for maintenance and upkeep of the common areas as determined by a vote of the HOA membership. Any unpaid amounts shall become a lien filed against the lot.
3. **Annual Assessments:** On or before the 1st day of December of each year, the board of directors shall determine the annual assessments required to operate the association during the twelve (12) months beginning on the 1st day of January. After approval, the treasurer shall notify, by mail or by hand delivered notice, each member, before March 1st, of the assessments, which shall be paid in semi-annual installments on April 1st and October 1st. Supplemental annual assessments may be levied under the same procedure with membership approval required only if the total annual assessment shall be a charge upon the land as well as a personal obligation of the person who was an owner at the time the assessment fell due.
4. **Special Assessments:** Special assessments, in addition to the general and annual assessments, may from time to time be imposed by the association for capital improvements or capital improvements or equipment, provided that the special assessment shall be first approved by two-thirds (2/3) vote at a meeting of the members. Special assessment shall only be levied by a resolution approved by the affirmative vote of two thirds of the property owners 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. Class C Lots shall not be subject to special assessments.

5. **Reserves:** The Board may establish a reserve fund for replacements and for general operating expenses by the allocation and payment monthly or other term of an amount to be designated. Such fund or funds shall be deemed a common expense of the Association and shall be deposited in F.D.I.C. insured accounts, as the Board deems appropriate. The reserve for placements may be used only for improvements on the property or replacement of improvements or for operating contingencies of 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 to which it appertains and shall be deemed to be transferred with the Lot.
6. **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.
7. **Breach of Payment:** Any general or special assessment not paid on the date due shall be deemed delinquent and shall accrue interest at the rate of judgment and cost of collection, become 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.).

III.

The declarant hereby ratifies and affirms all other terms and conditions of the Declaration of Covenants, Conditions and Restrictions above mentioned.

Dated this 4th day of MAY, 2007.

CHARLES A. DODDS

By: Robert Bates POA Charles Dodds

Robert Bates, his attorney-in-fact

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF LAWRENCE)

On this, the 4th day of MAY, 2007, before me, the undersigned officer, personally appeared Robert Bates, known to me or satisfactorily proven to be the person whose name is subscribed as attorney-in-fact for Charles A. Dodds, and acknowledged that he executed the same as the act of his principal for the purposes therein contained.

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

[Signature]

Notary Public

My commission expires: 11-9-2012

(Seal)

