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September 12, 2022

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**HAND DELIVERY – RAPID DELIVERY**

Ms. Davida Hansen  
Lawrence County Register of Deeds  
P.O. Box 565  
Deadwood, SD 57732

RE: Kloss Development LLC  
*Our File No. 21MS513*

Dear Ms. Hansen:

Please find enclosed for recording the original Declaration of Covenants, Conditions and Restrictions for Dakota Highland Estates for the above referenced matter. I have also enclosed a check from our firm in the amount of \$30.00 for the recording fee.

If you should have any questions or need anything further, please feel free to contact me directly.

Very truly yours,

*/s/ Marli A. Schippers*

Marli A. Schippers

MAS/jk

Encl.

cc: Client (via email only)

Prepared By:  
Marli A. Schippers  
Nooney & Solay, LLP  
P.O. Box 8030  
Rapid City, SD 57709  
(605) 721-5846

**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR DAKOTA HIGHLAND ESTATES**

This Declaration of Covenants, Conditions, and Restrictions (this "Declaration") is made this 12<sup>th</sup> day of October, 2022, by Kloss Development, LLC, a South Dakota limited liability company (hereinafter referred to as "Declarant"), which is the fee owner of the real property described on the attached Exhibit A (the "Property"):

**WHEREAS**, Declarant desires for a uniform scheme of development for the preservation and enhancement of the Property;

**WHEREAS**, the Declarant has formed (or shall form) a South Dakota non-profit corporation known as "Dakota Highland Estates Homeowners' Association, Inc." (the "HOA") which will have the power of enforcing the covenants, conditions and restrictions herein created; and

**WHEREAS**, until such time as the HOA has been formed and the Declarant has assigned its rights and obligations hereunder to it, the Declarant will have the exclusive power of enforcing the covenants, conditions, and restrictions herein created (collectively, the "Covenants");

**NOW THEREFORE**, the Declarant does hereby declare that from and after the recording of this Declaration, the Property shall be held, sold, administered, maintained, transferred, occupied and conveyed subject to the easements, restrictions, covenants, conditions, and liens herein set forth, which covenants are designed for the purpose of keeping the Property uniform and to ensure the highest and best residential development of the Property. This Declaration and the covenants, conditions, and restrictions contained herein shall constitute covenants to run with the land and shall be binding upon all parties having a right, title, or interest in Property, their heirs, successors, and assigns and shall ensure to the benefit of each owner thereof.

- 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 meanings in this Declaration:

- (a) “Common Areas” shall mean any Lot or other area within the Property that is dedicated for the common use of the Owners, whether such Common Areas are owned by the HOA or publicly dedicated.
  - (b) “Declarant” shall have the meaning ascribed to it in the initial paragraph of this Declaration.
  - (c) “Lot” shall mean and refer to any plat of land shown upon any recorded plat or subdivisions map of the Property. As to any unplatted area, “Lot” shall mean a contiguous parcel of real property on the Property owned by an Owner. It is not anticipated that any of the Lots will be unplatted.
  - (d) “Owner” shall mean the record owner, whether one or more persons, trusts, or entities, of a fee or undivided fee interest to any Lot, including contract sellers.
  - (e) “Property” shall have the meaning ascribed to it in the initial paragraph of this Declaration and shall include any and all other real property that may later be annexed into Dakota Highland Estates and made subject to this Declaration.
2. **USE.** Except as otherwise expressly provided for herein, the Property shall be improved, used and occupied for residential purposes. Except as expressly permitted by this Declaration, any commercial or business activity that is conducted on any portion of the Property is subject to the prior written approval of the HOA.

### 3. LOT REQUIREMENTS.

- (a) New Construction. All construction shall be original or stick built, must be new and must be in harmony with the surrounding area. “Barn-Dominiums” (a structured barn – house combination) and “Shomes” (a structured shop – house combination) shall not be permitted. No mobile home or modular home shall be moved on to any Lot from any other Lot or from outside the subdivision.
- (b) One Dwelling per Lot. Only one dwelling shall be erected, altered, placed, or permitted to remain on any Lot.
- (c) Height Limitations. No dwelling shall exceed three stories in height on any elevation.
- (d) Minimum Footprint. Any single-story dwelling shall have a minimum footprint of one thousand four hundred (1,400) square feet on the main level. Any other storied dwelling must have a minimum footprint of one thousand two hundred fifty (1,250) square feet on the main level.
- (e) Garage and Other Improvements. Each dwelling shall include an attached garage with no less than two (2) and no more than three (3) stalls. One or more additional detached structures, such as detached garages, sheds, or shops (“Other

Improvements”) may be permitted with the prior approval of the Review Committee. Such Other Improvements, if approved by the Review Committee, must (i) be made of new construction, (ii) be in a color scheme consistent with the dwelling, and (iii) comply with all other provisions of these Covenants and applicable law. Except as approved by the Review Committee, Other Improvements shall not be permitted upon any Lot until the exterior structure of the dwelling is fully constructed. Notwithstanding the preceding, an Owner of two (2) or more Lots may have a dwelling on one (1) Lot and Other Improvements on additional Lot or Lots bordering the Lot with the dwelling on it.

- (f) Fences. The Owners shall have the responsibility to construct and maintain proper fences and appropriately confine all animals. No ‘cyclone’ fence to be allowed. All fences must be approved by the Review Committee and any privacy fence must be at least fifteen (15) feet from the road.
- (g) Barns and Stables. For Lots that are five (5) acres or greater, it shall be permissible to construct barns or stables upon the Lot for the purposes of sheltering horses, provided that they shall be constructed of new material and in a neat and reasonable fashion commensurate with all of the other construction on the Lot, including color. No barn or stable shall be constructed within seventy-five feet (75’) of any adjoining Lot. All barns and stables shall be subject to approval by the Review Committee.
- (h) Exterior Appearance. The exterior surfaces of all structures shall be neutral or earth tone in color. No pastel colors shall be allowed. All colors schemes must be approved by the Review Committee.
- (i) Completion of Construction. All exterior construction must be completed within one (1) year after commencement of excavation on the Lot, including construction of driveways, walks, and lawns. Upon completion of exterior construction, all remaining building materials, dirt piles, etc. must be removed from the Lot.
- (j) Driveways. All driveways must be a minimum of fifteen (15) feet wide and a minimum of twenty-five (25) feet long. Gates on driveways must be a minimum of fifteen feet (15’) back from the road. Driveway surfaces shall be black top, concrete, or dustless gravel to prevent rutting or mud to be tracked on other improved roads or rights-of-way. Any driveway that blocks a roadway or drainage ditch must have a culvert installed of adequate size to allow passage of water to avoid erosion of the roads.
- (k) No Temporary Structures. No structure of a temporary character, including but not limited to basement, tent, trailer, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently, unless otherwise approved by the Review Committee.
- (l) Declarant/HOA Exception. Notwithstanding anything in this Section 3 or elsewhere in this Declaration to the contrary, the Declarant and/or the HOA shall

be expressly permitted to construct one or more buildings or other structures, whether of a temporary or permanent character, whether on Property owned by Declarant or property owned by the HOA, for the purpose of holding equipment and/or supplies for the development without being considered in violation of this Declaration.

4. **REVIEW COMMITTEE APPROVAL REQUIRED.** Prior to the construction of any Dwelling, Other Improvement, or installation of any fence, the Owner shall submit detailed plans concerning the proposed construction or installation to the Review Committee for approval. The Review Committee shall have fifteen (15) days from plan receipt in which to either approve, reject, or suggest modifications. In the event the Review Committee has not responded to the Owner within fifteen (15) days of receipt of the submission, the plans shall be deemed to be rejected in their entirety. The Review Committee's failure to respond to plans submitted for approval shall in no event be deemed a waiver of any portion of these Covenants and Owner shall at all times be required to comply with the Covenants. Furthermore, approval of plans submitted to the Review Committee for approval which are later determined to violate these Covenants shall not be interpreted as a waiver of the Covenants. It shall be the responsibility of Owner to at all times ensure compliance with these Covenants. Declarant or a party designated by Declarant shall serve as the Review Committee, until such time as Declarant has assigned its rights and obligations hereunder to the HOA.
5. **PETS AND OTHER ANIMALS:** No animals, livestock, or poultry of any kind shall be raised, fed, or kept by any owner on any Lot except each Lot may be entitled to the following:
  - (a) Two (2) dogs;
  - (b) Two (2) cats; and
  - (c) Two (2) horses (only permitted on Lots which are five (5) acres in size or larger).

All animals must be kept within the boundaries of their Owner's Lot and not allowed to run free outside of the boundaries of the Owner's Lot. All larger animals must be confined within a fence. Any fence used to confine animals must have a minimum height of 60 inches. All manure must be removed from the lot by commercial dumpster picked up a minimum of once per week. In no event and under no circumstances shall an Owner keep any animals on their Lot which results in the Lot being overgrazed per NRCS and USDA grazing standards. For purposes of this provision, a Lot will be considered overgrazed if there is not grass upon the entire lot resulting in visible areas of dirt and or mud. Horse arena and round pens are allowed, but dust control is required. Boarding facilities shall be subject to the approval of the Review Committee; provided, however, in no event shall any horse boarding facility be designed to accommodate more than six (6) horses.

6. **EASEMENTS:** An easement both over and under ground is reserved over a reasonable part of the Property to be exercised in a manner not to interfere with the reasonable utilization of the Property, for residential purposes for utility installation, maintenance,

and fire fighting measures. A twelve foot (12') wide utility easement is reserved along each side of all property lines. All dwellings and Other Improvements shall be situated and placed upon the Property so that there shall be setback of at least thirty-five feet (35') from the front of the Lot and twelve feet (12') from the back sides of each Lot. The "front" of a Lot shall be that side of the Lot that access is afforded to such Lot. All Lots that have a power line running over the Lot are subject to an easement in favor of the power company of fifty feet (50') on both sides of the power lines. No dwellings or Other Improvements shall be permitted on the easements.

7. **NOXIOUS WEEDS AND GRASS.** No noxious weeds, as defined by South Dakota statutes, shall be allowed to grow on any of the Lots. Grass within a fifty-foot (50') radius of the principal residence must be kept mowed to a height of less than five inches (5") at all times in order to avoid a fire hazard.
8. **NUISANCES.** No noxious or offensive trade or activity shall be carried on upon any lot within the development, nor shall anything be done which may be or become an annoyance or nuisance to the development or individuals residing or owning property therein, such as keeping salvage automobiles, unlicensed vehicles, excessive noise, offensive odors, or activities that create excessive amounts of dust.
9. **VEHICLES:** No vehicles, including cars and trucks, shall be allowed to be kept at any Lot unless said vehicle is in running condition. No more than three (3) vehicles, in running condition, may be parked outside overnight. All other vehicles must be housed within a completely enclosed garage. Provided, however, a motor home, travel trailer or similar recreational vehicle, that is in current operating condition and currently licensed and/or an operational, boat on a trailer, or operational snowmobiles on a trailer, will be allowed on the basis of camping or vacation type situations, but will not be allowed on a permanent basis. A permanent basis would be defined as two (2) months or more. Only recreational vehicles belonging to an Owner may be kept on the Lot.
10. **COMMERCIAL ACTIVITIES:** Except as hereinafter specified, no commercial activity of any kind shall be permitted on any Lot without the consent of the HOA. Notwithstanding the preceding, commercial training, such as horse operating will be allowed subject to approval of county or state regulatory rulings and laws. Horse boarding shall be permitted. Consent for other home-based businesses which do not increase vehicular traffic to the development shall not be unreasonably withheld. Nothing in this provision shall be construed to prohibit any work-from-home or remote work by an Owner.
11. **GARBAGE AND REFUSE DISPOSAL.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall be kept in sanitary containers. No trash, garbage, rubbish, or other waste shall be burned upon any Lot. The Lot Owner shall provide their contractors, and subcontractors appropriate containers for trash and debris during their construction period. Piles of dirt shall not be maintained on the Lot except on a temporary basis during construction.

- 12. SEPTIC SYSTEMS.** Unless and until a Lot is included within an approved sewer system, the Owners shall maintain septic tanks for the sanitary disposal of sewage once the dwelling is completed. Septic systems shall be in conformity with the Health Department requirements of the County of Lawrence and shall be perc tested and designed by a State Registered Engineer of the State of South Dakota.
- 13. COMMON AREAS.** The HOA shall be responsible for the upkeep and maintenance of all Common Areas, including the roads within the subdivision and any dedicated green space within the Property, including, but not limited to any hiking trails within the Property. In the event the Declarant establishes a Common Area trail system, it shall be for the exclusive enjoyment of non-motorized vehicles (i.e. bicycles), foot traffic, and horses. Dogs shall be permitted. ATVs, motorcycles, mopeds, and snowmobiles shall be expressly prohibited. It is anticipated that these trails, if established, will be deeded Common Area owed by the HOA. The HOA shall have the right to establish rules as it relates to the use and enjoyment of the trail system by the Owners.
- 14. SIGNS:** Except as hereinafter specified, no signs of any kind shall be allowed to be erected upon any of the Lots. One "For Sale" sign advertising the Lot (or home) or Lots (or homes) for sale, a driveway entrance sign approved by the Review Committee, and address signage approved by the Review Committee may be allowed on individual Lots. Smaller, professional signs for "no hunting" or "no trespassing" will be allowed around a Lot. Declarant shall be permitted to place any signs on the Property desired by Declarant, whether they are of a temporary or permanent nature (i.e. temporary signs advertising the subdivision or permanent signs at the entrance areas to the subdivision).
- 15. SUBDIVISION OF LOT.** Subdivision of any Lot is expressly prohibited.
- 16. UNIMPROVED LOTS:** Owners of unimproved Lots must keep them neat and clean in appearance.
- 17. SHARED WELLS.** It is anticipated that some of the Lots will be provided water through one (1) or more shared wells, which will be privately owned. Each of the Owners agrees to work with Declarant and the other Owners as reasonably necessary to record Shared Well Agreements in connection with the sharing of water from the wells, which agreement shall include provisions related to the sharing of expenses and granting of reasonable easements for maintenance of the well.
- 18. MEMBERSHIP IN HOMEOWNERS' ASSOCIATION.** The HOA may be formed any time by the Declarant. If Declarant has not formed the HOA at such time as seventy-five percent (75%) of the Lots have been transferred by Declarant to third parties, the Owners shall form the HOA. Each Owner, by accepting title to a Lot, agrees to become a member of the HOA. Each Lot shall have one vote concerning all matters voted on by the HOA. The HOA shall have the right to assess fees for maintenance of the Common Areas (including the roads and any other recreational space), snow removal, and collect monies for the enforcement of this Declaration and the Covenants. The HOA shall be authorized to established committees to carry out HOA obligations, including, but not limited to the Review Committee. The Bylaws of the HOA will provide that in the event an Owner fails

to pay the fees assessed by the HOA, the HOA shall have the right to place a lien upon the defaulting Owner's Lot. Provided, however, this lien shall be subordinate to any first mortgage lien upon the defaulting Owner's Lot. Prior to the establishment of the HOA, all Lots that have been transferred to a third party by Declarant may be assessed a monthly or annual fee per Lot for road maintenance and snow removal, to be paid directly to Declarant or its assignee. Upon establishment of the HOA, Declarant shall turn over any monies collected but not expenses for road maintenance and snow removal.

**19. SPRUCE MOUNTAIN CONTRIBUTION.** The Property is subject to certain contribution obligations as it relates to access to the Property via Frontier Loop through the Spruce Mountain Development. Those obligations are set forth in that certain Access and Contribution Agreement dated April 8, 2021 and recorded on May 15, 2021 as Document # 2021-03916 with the Lawrence County Register of Deeds, as amended by that certain Amendment to Access and Contribution Agreement dated September 8, 2022 and recorded on September 13, 2022 as Document # 2022-05818, as it may from time to time be further amended (the "Contribution Agreement"). By taking title to a Lot, the Owner acknowledges and agrees that in addition to the assessments from the HOA, her or she is also liable for his or her pro-rata share of the maintenance expenses set forth in the Contribution Agreement.

**20. BYLAWS FOR HOA.** The Declarant, or the Owners, as the case may be, shall adopt a set of Bylaws applicable to the HOA which shall, at a minimum, grant the HOA the following authority:

- (a) To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions which may be set forth in the articles of incorporation, the bylaws or this declaration.
- (b) To establish, amend, and enforce compliance with reasonable rules and regulations necessary for the operation, use and occupancy of the development.
- (c) To keep in good order, condition, improve and repair the common roadways serving the development.
- (d) To fix, determine, levy and collect the prorated annual assessments to be paid by each of the owners towards the administration, road maintenance, and enforcements requirements of the association.
- (e) To collect special assessments whenever necessary to do so, to meet increased operating or maintenance expenses or additional capital expenses.
- (f) To collect delinquent assessments by suit or otherwise and to seek damages from an Owner as provided in this Declaration and the Bylaws of the HOA and exercise other remedies for delinquent assessments as allowed and set forth in the Articles of Incorporation, Bylaws, Covenants, and any applicable state laws.



- (g) To carry on the administration of the association necessary to carry out the purposes and intent in the Articles of Incorporation, the Bylaws, these Covenants, and the requirements of the laws of the state of South Dakota.
- (h) To elect officers as is necessary and required.
- (i) To appoint committees including appointment of the Review Committee to approve specifications of improvements and construction on the Property and all other approvals as required by this Declaration.
- (j) To enforce the Covenants set forth in this Declaration and all rules and regulations as set forth by the HOA including collection of dues. Said power and authority shall include the authority to provide in the Bylaws that any annual or special assessment and any applicable interest and late fees shall be a lien against the lot of any member of the HOA. Such provision may provide that any lien may follow the Property.

**21. ANNEXATION OF ADDITIONAL PROPERTY TO THESE COVENANTS.** The Declarant reserves the right to annex additional property within this Declaration. The Declarant may, but is not obligated to, file a document with the Register of Deeds Office in Lawrence County entitled "Notice of Annexation of Declaration of Covenants, Conditions and Restrictions" which document shall provide that certain described additional real property shall also be subject to this Declaration the same as if said real property had been included the initial Property subject to this Declaration. Provided, however, nothing herein shall prevent the Declarant from modifying in total or in part any of the Declaration of Covenants, Conditions and Restrictions pertaining to such additional property so annexed.

**22. AMENDMENTS OR CHANGES TO COVENANTS.** The conditions, restrictions, stipulations, and covenants contained herein shall be in full force and effect and binding as aforesaid and shall not be waived, changed, abandoned, terminated, or amended, except by an instrument duly acknowledged and recorded in the Register of Deeds Office of Lawrence County, South Dakota, and executed by seventy-five percent (75%) of the then Owners of the Lots within the Property. Notwithstanding the preceding, until such time as Declarant has transferred all of the Lots to Owners, any amendment, change, termination, or modification of these Covenants shall be subject to the express written approval of Declarant, which may be withheld in the Declarant's sole discretion. This particular approval right is not subject to assignment and is personal to Declarant. In addition, until such time as Declarant has assigned its rights and obligations hereunder as Declarant to the HOA, Declarant reserves the right to amend this Declaration unilaterally by an instrument duly acknowledged and recorded in the Register of Deeds Office of Lawrence County, South Dakota, provided that such amendment does not result in a Lot which was previously in compliance with the covenants and restrictions to no longer be in compliance.

**23. ENFORCEMENT.** If any Owner shall violate or threaten to violate any of the provisions of this Declaration and the covenants and restrictions contained herein, any Owner, the



## **EXHIBIT A**

The Northeast Quarter (NE1/4) and the Southeast Quarter (SE1/4) of Section 23, Township 6 North, Range 4 East, BHM, Lawrence County, South Dakota (the "Property");

NOONEY & SOLAY, LLP  
P. O. BOX 8030  
RAPID CITY, SD 57709-8030

93640

PAY  
TO THE  
ORDER OF

Lawrence County Register of Deeds

DATE 10/12/22

78-850/914

Thirty & 00/100

\$ 30.00

**usbank.**

DOLLARS

FOR 21MS513



Details on back



Security Features

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