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**AMENDED DECLARATION OF RESERVATIONS AND  
RESTRICTIVE COVENANTS AND  
CONDITIONS FOR  
THE PRESERVE AT CANYON SPRINGS**

THIS AMENDED DECLARATION is made on this \_\_\_ day of \_\_\_\_\_, 2011, by Canyon Springs Preserve, LLC, a South Dakota Limited Liability Company, hereinafter referred to as “Declarant” and/or “Developer” for itself as successors and assigns.

WHEREAS, Declarant is the owner of certain property in the County of Pennington and State of South Dakota, which is more particularly described as:

A tract of land located within the S1/2SE1/4 and NE1/4SE1/4 of Section 22; SW1/4 of Section 23; and the NW1/4NW1/4 of Section 26; Township 2 North; Range 6 East; Black Hills Meridian; Pennington County, South Dakota.

Above described property is to be subdivided into Block 1, Lots 1 – 87, Common Areas 1 – 15; and Block 2, Lot 1 of the Canyon Springs Preserve, Pennington County, South Dakota. Said Canyon Springs Preserve Blocks 1 and 2 exclude Doty Lot 1 and Doty Lot 2 f/k/a Lot 1 of Fire House Subdivision and the “Nemo” Road right-of-way lying within said tract. (hereinafter “The Preserve” or “Subdivision”);

**[This legal description may be modified and amended from time to time as platting and re-platting of same occurs. Any such plat or re-plat shall be subject and encumbered by these same covenants (as amended) and is incorporated herein by this reference and shall be binding upon the successors and assigns of Declarant.]**

WHEREAS, the Declarant intends to develop and offer for sale building sites (and ownership in common areas) to be located within The Preserve at Canyon Springs, and is desirous of subjecting all of the land located within this Development to certain covenants, easements, restrictions, conditions, and charges as hereinafter set forth (the “Covenants”);

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions,

which are for the purpose of protecting the value and desirability of and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereafter, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Except as provided in Article XI below, expressly excluded from these Declarations and Covenants is Block Two (2), Lot One (1) of the above said legal description consisting of approximately thirteen (13) acres more or less which is located on the east side of Nemo Road. Also excluded from these Declarations and Covenants is the Old Schmits Residence, including barn and outbuildings consisting of approximately five (5) acres more or less.

## **ARTICLE I** **DEFINITIONS**

**“Architectural Committee”** shall consist of a committee appointed by Declarant which shall act in accordance with the authority provided herein until such time as Declarant completes construction and the Homeowner’s Association assumes responsibility for the committee’s purpose and function.

**“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

**“Properties”** shall mean and refer to that certain real property herein before described, and such additions thereto as may hereafter be brought within the jurisdiction of the Declarant in The Preserve at Canyon Springs.

**“Lot”** shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

**“Association”** shall mean the Preserve at Canyon Springs Homeowners Association.

**“Common Area”** means all property maintained by the Association, both dedicated and undedicated.

**“Dedicated Common Area”** means all real property owned or which may hereafter be acquired by the Association.

**“Undedicated Common Area”** means all real property not owned by the Association, but maintained by the Association.

**“Member”** shall mean every owner holding membership in the Association.

**“Membership”** shall consist of either a Class A, B or C membership with the right to vote in accordance with the number of shares per lot as provided in this Agreement.

**“Declarant”** means Canyon Springs Preserve, LLC, and/or its successors or assigns.

**“Developer”** means Canyon Springs Preserve, LLC, and/or its successors or assigns.

“**Contiguous Lands**” means any land that has any common border with any land currently owned by the Declarant.

“**Building Site**” means a specific envelope of perimeters to build within.

## **ARTICLE II** **ADDITIONAL PLATTING OF THE PRESERVE AT CANYON SPRINGS**

**Section 1: Additional Plats.** The Declarant shall have the right, without obtaining the consent of the Owners, which consent is hereby waived, to bring within the scheme of The Preserve at Canyon Springs, and this declarant, additional real property which will be described in additional plats or re-plats to be recorded and to supplement and revise the declarations. Such supplemental plats or re-plats and additional, supplemental, or revised declarations may contain modifications and additions to reflect the different character, if any, of the additional property which will become a part of The Preserve at Canyon Springs.

**Section 2: Other Rights Reserved to Declarant.** Declarant reserves for itself, its successors and assigns, easements for public utilities, sewer systems, drainage, landscaping as may be required with right of ingress and egress on each lot within the subdivision, including the common area (which shall remain natural), well lots, sewer lots, biking and hiking paths, ponds; as well as such rights of ingress and egress necessary to control and fight fires and any other emergency that might arise. The rights reserved hereunder shall be binding on all lot owner’s, their successors and assigns.

## **ARTICLE III** **RESIDENTIAL AREA AND LOT USE COVENANTS**

The following Covenants shall apply to the residential areas of The Preserve at Canyon Springs:

**Section 1: Use of Lot.** All residential lots within The Preserve shall be used for domestic, residential purposes only and not for any business, trade, commercial or industrial purpose whatsoever except that individuals may conduct non-nuisance, inoffensive businesses from their homes (i.e. telephone or computer consulting, secretarial or other like enterprise which will not significantly increase traffic or involve the distribution of any inventory from any residence). Any such permissible business shall require the prior approval of a majority of the Homeowner’s Association Board of Directors or Declarant (if applicable) under the terms of these covenants and shall have no visible change to the exterior of the structure. Homeowner’s illegal, noxious, or offensive trade or activity is prohibited. Residents shall comply with all applicable laws, as well as all covenants as provided by this and any subsequent Agreements. Homeowner’s modular homes, mobile homes, tents, shacks, barns, temporary buildings, manufactured houses, structures of a temporary character, free-standing sheds, storage buildings, treehouses, and non-attached garages are prohibited. Any and all mining activities of any kind or character are prohibited. Private water wells, or septic or sanitary sewers or systems not approved by the Architectural Control Committee or Homeowner’s Association (if applicable) are prohibited.

**Section 2: Sales Facilities of Declarant.** Notwithstanding any provision in Section 1, Declarant, its agents, employees and contractors shall be permitted to maintain during the period of construction and sale of the buildings in the project upon such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonable required, convenient, or incidental

to the construction, sale or rental of lots and Dwelling Units including, but without limitation, a; business office, construction and storage area, signs, model Dwelling Units, sales offices, parking areas, and bike and hiking paths.

**Section 3.1: Minimal Square Footage.** Any house or dwelling structure built within The Preserve shall not be less than 1,500 sq. ft. of finished living area, excluding basements, garages, porches, decks, patios or any other attachment or appurtenance to the main residence which does not constitute actual occupied living area for day-to-day domestic use of the residence. All structures shall be approved by the Architectural Control Committee before site grading or construction is commenced.

**Section 3.2: Minimum Cost of Structure.** Unless otherwise approved in writing by the Architectural Control Committee, any residential structure built upon a lot within The Preserve shall have a value based upon actual construction material hard cost of not less than the amount paid for the lot plus 125%, not including labor and landscaping. Owner shall fully cooperate with Declarant or his duly appointed representative, including any successor or assign of Declarant as provided herein, with full disclosure of any materials and the cost of same not provided by the exclusive builder as required by these Covenants and Declarations.

**Section 4: Roofing.** No dwelling house or structure shall be erected on the property without concrete tile shingles, fire retardant shake shingles, dimensional composition shingles, or an approved equal that meets Architectural Control Committee approval.

**Section 5: Exterior Appearance.** The exterior of every building shall be composed of one or a combination of the following: natural wood, or other rustic nature/earth tone material (approved by the Architectural Control Committee), natural stone, man-made stone, brick, stucco or timber accents. All siding materials shall be of an earth tone hue to be approved by the Architectural Control Committee. A minimum of thirty percent (30%) of the front elevation must be in natural stone, man-made stone, brick or stucco. Use of Hardie plank and wood grain type siding (including vinyl and steel) materials shall be used for accent purposes only not to exceed 10% of any finished frontal elevations. Such siding materials may be on elevations not viewable from frontage roads. Windows and sliding doors will be colored, anodized, or colored vinyl or wood, or raw (mil-finished). Aluminum or similar alloy siding or roof shall not be permitted. Roof pitches shall be equal to or greater than 6/12 pitch minimum. All plans to be approved and signed by the Architectural Control Committee. No personal tennis courts or similar, unattached recreational facilities, except underground swimming pools, shall be permitted on the property. Any exterior recreational facilities on the premises must be approved by the Architectural Control Committee. All recreational vehicles and/or trailers on the premises shall be stored in a garage or enclosed structure or in a manner so that they cannot be seen from adjacent streets or living areas of adjacent properties. Recreational vehicles and/or trailer storage is deemed in compliance with these provisions if they are, in the opinion of the Architectural Committee, substantially screened from adjacent streets and properties by terrain, natural features, native or created landscaping or other screening treatments or devices.

**Section 6: Approval by Architectural Committee.** No building shall be erected, placed or altered on any lot until the construction plans and specifications, and the site survey showing the location of the structure have been approved by the Architectural Control Committee as to location on the site, structural design and building elevations, colors and materials, finished grade elevation, exterior lighting

and proposed landscaping features. Any such submittal shall also include the proposed Builder and his references.

**Section 7: Single Family Dwellings.** No buildings shall be allowed except for single family dwellings, all of which shall be constructed as provided herein.

**Section 8: Location of Building.** The location of all building sites in The Preserve shall be approved by the Architectural Committee taking into consideration appropriate set back, as well as distance from neighboring lot for purposes of determining the location of the residents and ancillary appurtenances relative to the neighboring lots and terrain.

**Section 9: Completion of Construction.** Any building commenced on any lot shall be built expeditiously to completion.

**Section 10: Appearance and Improvements of Lot.** All improvements on each lot must be maintained by lot owner in a state of good repair and shall be neat and well kept. It is the responsibility of each lot owner that their lot is mowed and free of noxious weeds. Firewood or other combustible material must be stacked neatly against the rear of the house or garage, or in such other places as are not visible from neighboring residences or from the street. Window or wall heating units, and window or wall air conditioning units are prohibited. Wind turbines or solar panels are prohibited.

**Section 11: Landscaping.** All natural surface areas disturbed by construction shall be returned promptly and as neatly as possible to their natural state. Landscaping shall be completed around each home within one (1) year of owner's occupancy and shall at all times be maintained in good condition and repair. The Architectural Control Committee may adopt additional rules and regulations with regard to preservation of natural resources, grasses, trees and wildlife within the subdivision as it may consider appropriate.

**Section 12: Restrictions on Motor Vehicles.** On street parking is restricted to emergencies, deliveries, and guests. No motor vehicle shall be parked or left on any portion of a lot other than on a paved surface. No vehicle may be stored outside an enclosed garage unless it is in operating condition with current license plates. The outdoor repair of motor vehicles is prohibited upon any portion of the property as well as any other activities which may be or become an annoyance or nuisance to the neighborhood. The use of motorized road and recreational vehicles within The Preserve must be in accordance with applicable laws.

**Section 13: Pets.** No exotic animals, livestock, or poultry of any kind shall be raised, housed, fed or kept on any lot or within any dwelling on the property. Other domestic pets, including dogs and cats may be kept, provided that they are not kept, bred or maintained for any commercial purpose. All pets must be confined upon the owner's property. No barking or vicious dogs shall be kept on the property. Pets shall be inoculated as may from time be required by law. No pet shall be permitted to roam at large. Any pet taken outside of the dwelling must be under the control of the pet owner. All pet droppings shall be collected and properly disposed of by the owner or attendant. No dog kennels or other pet facilities may be built on the property without the approval of the Architectural Control Committee. The total number of dogs and cats shall be limited to three (3) per household, without the prior consent of the Architectural Control Committee or if applicable, the Canyon Springs Homeowner's Association.

**Section 14: Property display signs.** No sign of any kind shall be displayed to the public view on any lot, except one sign of not more than six (6) square feet advertising a residence for sale or rent or signs used by the Declarant or contractor to advertise the property during the construction and sales period. All signs must be removed within six (6) months of construction completion or sale of property. Excluded from this requirement are directional signs, signs for traffic control or safety, permanent identification signs, markers, or monuments that may be constructed by the Declarant at the perimeter of the subdivision, and signs of a temporary nature that may be placed by the developer and contractor to advertise the Development and sale of the Property.

**Section 15: Trees.** No dead trees, either standing or cut, are to be allowed on any lot (unless neatly stacked as firewood and not visible from the street or neighboring residences).

**Section 16: Fences.** No fences, wall, or similar type of barrier of any kind shall be erected around the perimeter of any lot or within the interior boundaries of same, without the prior written approval of the Architectural Control Committee. This restriction includes any confinement for pets, gardens or outdoor play areas for children.

**Section 17: Towers and Antennas.** There shall be no external satellite dishes (small 18” dishes of the DirectTv type are approved), towers or antennas located on any lot unless specifically approved by the Architectural Control Committee.

**Section 18: Refuse and Trash.** No lot shall be used or maintained as dumping ground for garbage, rubbish or refuse, or storage area for any trash, garbage or other waste. Any such trash, garbage or other waste shall be kept within sanitary containers and shall be stored out of sight (except for garbage collection day) or as otherwise required by Declarant or Homeowner’s Association (if applicable). No abandoned, junked, or immobile vehicles or trailers shall be kept or stored on any lot within The Preserve.

**Section 19: Lighting.** No free-standing exterior lighting fixtures, excluding landscape lighting, shall be installed. Attached exterior lighting fixtures shall be reviewed and approved by the Architectural Control Committee at the time of building plan review or prior to the time any new exterior lighting is to be installed.

**Section 20: Prohibition of Nuisances.** Nothing that constitutes a nuisance under South Dakota law or as determined consistent with law to be a nuisance by a majority vote of the Board of Directors shall be permitted within The Preserve. Remediation of any nuisance shall be in accordance with Article XI.

#### **ARTICLE IV** **ARCHITECTURAL CONTROL COMMITTEE**

**Section 1:** The Architectural Control Committee will be composed of not more than five (5) or less than three (3) members appointed by Declarant, one of which must be a resident of the development, and until such time as Declarant has completed development of the subdivision as anticipated hereunder, any decision by the Architectural Control Committee shall be subject to Declarant’s final approval. This authority shall transfer to the Homeowner’s Association at such time as the Declarant shall no longer have any Class B membership in the Association, or relinquishes further involvement in the Architectural Control Committee to the Homeowner’s Association.

**Section 2.:** The terms of the committee members shall be for a period of three (3) years with the initial members terms staggered so that one members term shall expire each calendar year. Eligibility shall be limited to Owners and persons appointed by the Declarant. In the event of death or resignation or ineligibility of any member of the committee, the remaining members shall have full authority to designate a temporary successor until a successor is appointed in accordance with these covenants. The majority of the committee may designate a representative to act for it. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant at any time without prior written approval of the Declarant, or other duly authorized representative of Declarant. The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee or its designated representative fails to approve or disapprove plans submitted to it within thirty (30) days after such submission, approval will not be required and the related covenants shall be deemed to have been fully complied with.

**Section 3.:** The Declarant or Architectural Control Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish such statements of policies, standards, or guidelines, and establish such criteria relative to architectural styles or details or other matters as it may consider necessary and appropriate. No such rules, regulations, statements, criteria, or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The Declarant or Architectural Control Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article. The decision of the Declarant or Architectural Control Committee shall be final, except that any Owner who is aggrieved by an action or forbearance from action by the Declarant or Architectural Control Committee may appeal the decision of the Declarant or Architectural Control Committee to the members of the Board of Directors. Upon request, such Owner shall be entitled to a special meeting of the members of the Board of Directors for that purpose.

## **ARTICLE V** **CANYON SPRINGS PRESERVE HOMEOWNERS ASSOCIATION**

**Section 1: Homeowners Association.** At such time as there are twelve (12) occupied residences within the subdivision, there shall be created Canyon Springs Homeowners Association hereinafter referred to as "Association." Directors shall serve three (3) year terms, initially staggered so that one Director's term expires annually, one of which shall be the Declarant or his duly appointed representative. Directors shall select a President, Vice President and Secretary/Treasurer amongst themselves, and said positions may be changed at any time. Directors shall adopt bylaws for operation of the Association and shall prepare a budget for operations and present said budget to all members at least once a year at an annual meeting on or before September 1. All meetings of the Board shall be open to all members of the Association. Notice of all meetings shall be given to all members of the Association in any one or more of the following manners: in writing; by telephone (including recorded messages), electronically via email or internet site. It shall be the responsibility of each member to keep their contact information up to date with the Association.

**Section 2: Membership.** Membership in the Association shall be appurtenant to and may not be separated from ownership of a lot which is subject to assessment.

**Section 3: Class.** The Association shall have three (3) classes of membership:

Class A: Class A members shall be all owners except Declarant. Each class A member shall be entitled to one (1) vote for each lot owned. If more than one (1) person has ownership in any lot, all such persons shall be members but they shall cast but a single vote for each lot.

Class B: Class B members shall be the Declarant and its assigns. Each class B member shall be entitled to three (3) votes for each lot either owned or planned. Currently, the entire development is planned to have eighty-seven (87) individual lots. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A Membership exceeds the total votes outstanding in the Class B memberships.

Class C: Class C members will be the Owner of those lots which are held for the benefit of the Owners, including but not limited to the Reservoir Lot, Sewer Lot, Well Lots and any other lots held for the benefit of the members of the Association, and it is specifically acknowledged that this may be the Association, the Declarant, or a successor/assign of the Declarant. This shall include any additions to those lots which exist upon the initial platting of the property or subsequently acquired lots for the benefit of the Association which are particularly held by the Association. The Association shall have no vote as it concerns these lots, and these lots shall not be subject to any assessment.

**Section 4: Duties.** Subject to the rights of Declarant and other restrictions herein, the Association shall operate, maintain and supervise the common areas for the benefit of the members and may provide for the improvement of those areas as they deem appropriate, including assessment of fees (except for Class B or C memberships) reasonably required for the maintenance and improvements in the Common Area. Members, their families and guests shall be subject to reasonable rules and regulations for the use of the common area promulgated by the Association. The Association may accept responsibility to operate and maintain roads and/or the water system serving The Preserve and such other duties as are pertinent to the orderly and timely enforcement of these covenants.

**Section 5: Members Rights.** Every owner shall, upon the purchase of his lot, automatically become a member of the Association. Membership shall continue until the member no longer holds property in The Preserve at Canyon Springs, or until the member assigns his membership to a new contract purchaser or owner (i.e. creditor) attaining ownership by process of law.

**Section 6: Penalties.** The Association may provide penalties for violation of its duly adopted rules and regulations and for failure to pay assessments due and payable to the Association, including loss of privileges in the common areas and loss of voting rights in the Association.

**Section 7: Improvements.** The Association shall have the right to permit construction of such buildings as may be necessary for proper protection and maintenance or equipment and utilities, subject to the control, direction and supervision of the Architectural Control Committee with respect to its authority as herein set out.

**Section 8: Dedication.** The Association shall have the right to dedicate such property as it sees fit to any public agency subject to conditions agreed upon by the members by two-thirds votes of each class of members, who are voting in person or by proxy, at a meeting duly called for this purpose.

**Section 9: Rules.** The Association will have the right to permit use of common areas to guests or members or others upon terms established by the Homeowners Association Board.

**Section 10: Borrowing Money.** Upon a two-thirds vote of the members, the Association may borrow money to improve the Common Areas and mortgage the Common Areas, or portions thereof, as security. The rights of Owners and the Association in the Common Areas shall be subordinated to the line of any such mortgage.

**Section 11: Architectural Control.** No building, fence, wall or other structure shall be commenced, erected or maintained upon the property nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by any architectural committee composed of (3) three or more representatives appointed by the Board. In the event said Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this provision shall be deemed to have been fully complied with.

**Section 12: Exterior Maintenance.** In the event an owner of any lot subject to these declaration shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds vote of the Board of Directors, shall have the rights, through its agents and employees, to enter upon said parcel and to repair and maintain the Lot and the exterior of the buildings and any other improvement erected thereon. The cost of such exterior maintenance shall be added to, and become a part of, the assessment to which such Lot is subject.

**Section 13: Formation of Road, Sanitary and Water Districts.** The Declarant covenants that provision will be made for the proper construction, maintenance and subsequent reconstruction of the roadway, sanitary systems and water systems serving the Preserve. These provisions for maintenance and possible reconstruction should it become necessary may take any of the following forms; 1) continued management by the Declarant, their successors or assigns; 2) transfer of the system or systems to the Association as provided herein, or; 3) formation of appropriate taxing districts according to the laws of South Dakota as they may be amended from time to time. Provided such entity or organization is in compliance with law, upon sixty (60) days written notice from Declarant and/or such group that may have organized any such district or association, the Homeowner's Association shall be required hereby to assume management and all related responsibilities for the maintenance repair and construction of facilities as needed to operate and maintain such district or association, including the rights pertinent thereto for assessment of fees, special assessments, and such other mechanisms that may be available within the scope of applicable law to assume such duties. It is anticipated in this regard that any outstanding indebtedness or other obligations pertinent to the establishment of such district or association will be fully disclosed prior to any obligation by the Homeowner's Association to assume control of any such infrastructure improvement and that appropriate measures will be taken to pay and retire such indebtedness or other obligation in a reasonable commercial manner over time and in accordance with applicable law. Prior to transfer of any infrastructure asset to the Association, the Association may require the review of a qualified independent professional for purposes of inspection and certification that any such infrastructure being transferred to the Association meets all applicable

codes and is in proper working condition free and clear of material defects. Upon acceptance of any such infrastructure by Association, Association shall accept it "as is," without representation or warranty, unless otherwise agreed in writing. Nothing herein shall preclude Declarant or its successors and assigns from establishing a road, sanitary or water district or similar entity separate and independent, and outside control of the Homeowner's Association, provided same complies with all laws and appropriate safeguards and mechanisms are in place to assure management, maintenance and ongoing operation of such infrastructure in a manner that protects the lot owners of The Preserve.

**Section 14: Common Area.** At a time to be determined solely by Declarant or his successors and assigns, ownership of the Common Area, except for any part thereof excluded by these covenants and declarations, shall be transferred to and accepted by the Homeowner's Association, unless it is otherwise determined in the sole discretion of Declarant, his successors and assigns that such transfer is not commercially or legally prudent. Said Common Area primarily consists of unbuildable rough terrain including any drain fields outside individually owned lots, flood plain, or other area (which will be kept natural) needed to accommodate fire prevention, including ponds, and other accommodations to be enjoyed in common by the lot owners of The Preserve, and their families. Upon transfer of the Common Area to the Homeowner's Association, the Association shall then assume all management, liability and responsibility for the ongoing maintenance of same including assessment and collection of any fees, as well as the payment of any and all taxes assessed against the property. In accordance with the Homeowner's Associations rights granted hereunder, the Homeowner's Association shall assess appropriate fees and assessments as required for such management and maintenance of said Common Area. Until such time as the Common Area or any part thereof is transferred to the Homeowner's Association, Declarant and its successors and assigns may impose such fees and assessments as may be reasonably required to maintain same. Such fees will be determined on lot owners pro rata share of Class A votes, as set forth in Article VI hereof. Except as otherwise provided herein, Declarant hereby declares that the Common Area as defined in the plat or any re-plat shall be preserved and maintained as a Common Area in perpetuity, for the use and benefit of the residents of The Preserve. This covenant shall run with the land and shall be binding upon all lot owners, Homeowner's Association and their successors and assigns.

## **ARTICLE VI** **INSURANCE**

**Section 1. Casualty Insurance.** The owner(s) shall keep all insurable improvements and fixtures on owners lot insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the owner may deem desirable. In the event of destruction of all or any improvements upon owners lot, owner shall replace and/or repair same to its previous condition within one (1) year from the event causing such damage or destruction.

## **ARTICLE VII** **WATER SYSTEM**

**Section 1: Water Facilities.** The Declarant shall install the initial water well(s), water storage facilities, water mains necessary to transport water from the water storage facilities through the water mains within the Subdivision and fire hydrants, collectively "Water System". The Owners shall be responsible for construction of the Water System from the water main to their respective Residences inclusive of the water meters for each metered Residence or any structures located on such lots. Upon the substantial

completion of the construction of the initial water facilities and related infra-structure, the Declarant may transfer ownership of the same to the Association by way of a Bill of Sale, free and clear of any liens and/or encumbrances (except for capital improvements and infrastructure loans) subject to acceptance and approval by the Board of Directors of the Homeowner's Association; however, nothing herein obligates the Declarant to transfer ownership of the Water System to the Association, as the Declarant may retain ownership of the Water System or may affect a transfer of the same to its successor and/or assignee. Such successor or assignee shall be entitled to affect a transfer to the Association, at such later date. Upon the transfer, the Association shall be responsible for all maintenance, repair, and replacement, except as otherwise identified herein.

**Section 2: Monthly Billings:** The Owner of the Water System shall bill the Owners for their respective use and consumption of water on a monthly basis, which sum shall include a minimum monthly fee to each Owner without regard to actual consumption. Water use fees may include costs of producing, treating and distributing water, establishment of reserve funds for maintenance and reconstruction of the production and distribution systems and a reasonable profit margin, however in no case shall the monthly bill to the Owners exceed 150% of the cost to a similar user within the City of Rapid City.

**Section 3: Water Tap or Hook-up Fee:** The Owner of each lot (Class A Member) shall be assessed a water tap fee upon the transfer of a lot to such Owner. The water tap fee shall be established by the Owner of the Water System, but shall not be more than 150% of the cost to a similar user within the City of Rapid City.

**Section 4: Compliance With Laws:** The owner of the Water System shall be responsible to make certain that the Water System is in compliance with all applicable laws, including, but not limited to, all testing and quality requirements imposed by the South Dakota Department of Environment and Natural Resources and any and all other governmental entities. The operator of the water system may impose reasonable rules regarding water preservation and may limit the days and times of day in which outdoor watering may take place.

**Section 5: Declarant's Right of Future Access:** Declarant shall be entitled to utilize the Water System for future development of Real Property generally contiguous to the subdivision and for such other purposes as Declarant deems necessary and appropriate. To effect its rights, Declarant shall give notice to the Association or such other entity who may then own the Water System of Declarant's intent to utilize the Water System for the development of other Real Property. Declarant shall be entitled to utilize the water storage facilities and such other parts of the then existing Water System for purposes of providing water to other Real Property owned directly or indirectly or developed directly or indirectly by the Declarant and which is generally contiguous to the Subdivision. To the extent it is necessary to make any incremental additions to the Water System, Declarant shall be responsible for those incremental costs as it concerns the construction of additional facilities for the water system to accommodate Declarant's rights as more fully set forth herein, and to the extent there are any ongoing repair, maintenance or costs associated with operating the system which are directly related to Declarant exercising its rights herein, Declarant shall be responsible for such costs.

## **ARTICLE VIII** **SEWER/ SEPTIC FACILITIES**

**Section 1: Sewer System.** Each owner shall be responsible to construct and maintain a septic system which complies with all applicable laws and the requirements of the subdivision. In the event it is

determined by an individual with the requisite experience and/or skill that conventional septic system cannot be constructed on any lot to the extent that a drain field cannot be constructed so as to properly process sewage from any particular lot, such lots shall utilize the common Sewer/Septic Facilities as constructed by the Declarant shall include within the subdivision, an underground transmission system consisting of underground pipes located within the subdivision which shall transport the waste water from any septic tank located on such lots to the drain field(s) located on the Sewer Lot. The owner shall be responsible for the costs of legally transporting their sewage to the approved common sewer/septic facilities via underground pipes within the subdivision. The Declarant shall not be responsible for constructing any sewer facilities except those which are constructed during the initial construction within the subdivision and in the event that any lot whose sewage is originally processed by a conventional septic system needs to connect to the sewer facilities at some later date, the Owner of such lot shall be responsible for constructing those underground facilities necessary to connect to that system originally constructed by the Declarant. Any lot which cannot construct a septic system to comply with applicable laws shall construct a septic system on the Sewer Lot which shall include drain fields and related underground facilities necessary to transport their sewage to a common facility which shall be constructed by the Declarant as part of the initial construction which sewage shall then be transported to the Sewer Lot. All Owners of the lots who utilize the Sewer Lot shall be assessed an assessment necessary to cover all costs associated with such facilities and Sewer Lot, inclusive of any and all costs necessary for repair, maintenance, or replacement of such facilities or for the construction of additional facilities as the same may be required at a later date. The Declarant and/or its successors or assigns shall own the Sewer System unless or in the event the Declarant and/or its successors or assigns determine at a later date to assign the same to the Association in accordance with Article V, Section 13. To the extent that the Sewer System is assigned to the Association, it shall be assigned to the Association free and clear of any liens and/or encumbrances, or in accordance with such agreements as the parties may determine are fair and equitable (except for capital improvements and infrastructure loans) subject to acceptance and approval by the Board of Directors of the Homeowner's Association.

**ARTICLE IX**  
**ENFORCEMENT/SEVERABILITY AMENDMENT**

**Section 1: Enforcement:** In the event of any violation of any Covenant herein contained, then the same shall be considered to have been undertaken in violation of these Covenants and without the approval of the Declarant or Board of Directors required herein. Upon written notice from the Declarant or Board of Directors, such violation shall be promptly removed or corrected. In the event the same is not removed or corrected or violation is not otherwise terminated within fifteen (15) days after notice that such violation exists, then the Association shall have the right through its agents and employees to enter upon such Lot and to take such steps as maybe necessary to remove or otherwise terminate such violation and the cost thereof shall be assessed against the Lot upon which such violation occurred. Such costs shall include reasonable attorney fees and expenses of litigation. A statement for the amount thereof shall be rendered to the Owner of such Lot at which time the assessment shall become due and payable and a continuing lien upon said Lot and an obligation of the Owner and may be enforced as provided in Article IV Section 10 of this Declaration and the Owner of such Lot or Unit shall be responsible and liable for the payment of same, including reasonable attorney fees incurred by Declarant or the Association. The Association shall have the further right through its agents, employees, or committees to enter upon and inspect any Lot at any reasonable daylight hour for the purpose of ascertaining whether any violation of the provisions of these covenants exist on any such Lot; provided, however, no such entry and inspection shall be taken without resolution of the Declarant or the Board of Directors and after reasonable notice to the Owner of such Lot or Unit. Neither the Association nor

any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2: Severability:** In validation of any one of these covenants or restrictions by judgement of court order shall in no way affect any other provisions which shall remain in full force and effect.

## **ARTICLE X** **COVENANT FOR ASSESSMENTS**

**Section 1: Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each lot owned within The Preserve, hereby covenants, and each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to Declarant or if applicable hereunder, the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be equal in an amount for each lot and to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien upon the land against which each such assessment is made in the same manner and to the same extent as a mortgage lien filed against the property. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation of the delinquent assessments shall not pass to a member's successors in title unless expressly assumed by them.

**Section 2: Purpose of Assessments.** Any assessments levied shall be used to promote the recreation, health, safety and welfare of the residents in The Preserve and for the improvement and maintenance of the Common Areas or other facilities under the control of the Association.

**Section 3: Assessments.** The Association shall have the right to levy annual assessments upon its members pursuant to the covenants for assessment hereinafter set forth. The Board of Directors of the Association shall fix monthly assessments for Common Area fees and shall commence to be paid by each lot owner on the first day of the first month following the occupancy of the residence built on said lot or, if a dwelling is not immediately constructed, the payment shall commence on the first day of the first month following the one year anniversary of the conveyance of the real property to the owner thereof as determined by the date of the deed or the date of the recording. Any special assessment on any lot shall be paid in accordance with terms and conditions determined by Declarant, its successors and assigns, or if applicable, the Homeowner's Association in accordance with its resolutions and policies. In addition to the monthly assessments, a special assessment for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or other facilities under the control of the Association, including fixtures and personal property related thereto, provided that any such assessments shall have the assent of two-thirds of the votes of each class of members who are voting persons or by proxy at a meeting duly called for this purpose. The Developer/Declarant shall not be responsible for collection of any assessment or fees assessed by the Homeowner's Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at twelve percent (12%) simple interest per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the same manner as foreclosure of a mortgage lien under the laws of South Dakota. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his lot.

**ARTICLE XI**  
**FIRE DEPARTMENT COVENANTS**

**Section 1: Agreement.** At the inception of the development of the Canyon Springs Subdivision, the Developer entered into an agreement with the Doty Volunteer Fire Department, Inc., a South Dakota non-profit corporation, (“Doty”) under which the Developer/Declarant obtained a right-of-way and access through Doty’s real property to Nemo Road which divided Doty’s real property into two lots which are now known as Doty Lot 1 and Doty Lot 2 in Block 1 of the Canyon Springs Preserve Subdivision. In consideration for said right-of-way and access, Developer agreed to do certain things for Doty which include, but are not limited to, the provisions contained in this Article XI which shall be perpetual and fully binding upon all Owners, Developer, Declarant, the Association, and the successors and assigns of any of them including, but not limited to, any road districts, water districts, sewer districts, or similar entities which are formed or activated by any of them in relation to the Canyon Springs Subdivision, all of which are collectively referred to in this Article XI as “Canyon Springs.”

**Section 2: Water.** Doty shall be entitled to connect and consume an unlimited supply of water from the Canyon Springs water distribution system without charge of any kind for purposes within the scope of its services and fulfillment of its authority under applicable law. In that regard, Doty shall not be obligated to install a water meter and shall not be obligated to participate in the cost of any past, present or future repairs, maintenance, or improvement to the Canyon Springs water distribution system. Doty shall be responsible for the construction, maintenance and/or repair of its own water system from and after the point of connection to the Canyon Springs system.

**Section 3: Septic Monitoring.** Doty shall be entitled to connect and maintain the connection to the septic monitoring service supplying monitoring services to Canyon Springs at no cost to Doty.

**Section 4: Snow Removal.** Canyon Springs shall provide reasonable snow removal services for Doty’s paved parking areas without charge to Doty when snow accumulations exceed three inches (3") in depth, provided, however, that Canyon Springs shall not be required to work around parked cars and shall not be required to return to the lot to remove accumulations remaining in the lot due to vehicles and/or obstructions which hampered the initial snow removal effort. However, Canyon Springs shall not be responsible or liable for any damages, costs or expenses associated with, or arising out of, Doty’s inability or untimely response to an emergency call due to excessive snow fall, drifting or related winter conditions.

**Section 5: Heavy Mowing.** Canyon Springs shall provide mowing of the heavy grasses and underbrush along Doty’s drives, parking areas and in the unpaved portion of Doty Lot 1 at least Three (3) times per year and/or as reasonably needed to keep these areas free from uncontrolled and/or unsightly weeds and brush.

**Section 6: Common Area 8.** Subject to compliance with applicable laws and regulations, Doty shall be entitled to the use of Common Area 8 within the Canyon Springs Subdivision for purposes of fire and emergency service exercises and related fire service activities as Doty shall determine and schedule from time to time. Doty shall indemnify and save and hold Canyon Springs harmless from any liability

whatsoever arising out of Doty's use of said common area and shall conduct such exercises in a safe and cautious manner so as not to cause damage to the common area or hazard to surrounding property in the subdivision.

**Section 7: Charges and Assessments.** Doty shall be entitled to all of the foregoing rights, services, entitlements, and uses without charge and shall be forever exempt from the imposition of any fee, tax, assessment, and/or charge of any kind whatsoever by Canyon Springs.

**Section 8: Application.** The rights and obligations contained in this Article XI shall perpetually run with the land and be enforceable by specific performance notwithstanding any subsequent termination or modification of these Covenants.

## **ARTICLE XII** **GENERAL PROVISIONS**

**Section 1: Term and Amendment.** These covenants shall run with the land and except as otherwise provided herein, shall be binding upon Declarant and all owners, purchasers and any other parties claiming under them, including their successors, grantees, heirs, devisees, legal representatives, or any other persons or entities whomsoever shall now or in the future own or control any property in the subdivision; and any deed or conveyance of same shall be deemed given and subject to the restrictions set forth in these covenants. These covenants shall remain in full force and effect for a period of twenty-five (25) years from the filing of the original covenants pertaining to The Preserve at Canyon Springs dated June 29, 2006, amended hereby, and automatically extended for successive periods of ten (10) year intervals unless otherwise amended in accordance herewith. Amendment of these covenants shall be evidenced by an instrument identified as an amendment to these covenants and restrictions, detailing any modification signed (including by authority of proxy) by three-fourths (3/4) of the owners of the residential lots in the subdivision

**Section 2: Enforcement.** These covenants, conditions, and restrictions are for the mutual benefits of all owners within the subdivision. Consequently, the Declarant or any Owner may bring an action at law or in equity to enforce these covenants, conditions and restrictions, against any person or persons violating or attempting to violate any of the terms or conditions of this document, or any amendment hereto, whether to prohibit violation or to recover money damages.

**Section 3: Notices.** Any notice required to be sent to any owner under the provisions of this document shall be deemed to have been properly given when mailed postage prepaid to the last known mailing address of the owner or hand delivered to an individual residing on said lot providing said individual is over the age of fourteen (14) years.

**Section 4: Severability.** The invalidity in whole or in part of any covenant, restriction, section, subdivision, or any other provision of this declaration, shall not affect the validity of the remaining portions thereof.

