

Prepared by:  
Stacy R. Hegge  
Gunderson, Palmer,  
Nelson, & Ashmore LLP  
111 W Capitol Ave, Ste 230  
Pierre SD 57501  
(605) 494-0105

## **DECLARATION OF RESTRICTIVE COVENANTS FOR CODGER'S CASTAWAY SUBDIVISION**

WHEREAS, Codger's Castaway Development, LLC (hereinafter Developer), of 28170 Spring Creek Place, Pierre, SD 57501, is the fee simple owner of real property legally described as:

Cow Creek Tract 2 in the SW¼ of Section 34, Township 113 North, Range 80 West of the 5<sup>th</sup> P.M., Sully County, South Dakota, and Cow Creek Recreation Tract 4 in the E½ of Section 34, Township 113 North, Range 80 West of the 5<sup>th</sup> P.M., Sully County, South Dakota, and any replat or any other variation of Lots or territories renamed, replatted, or located therein (hereinafter Development).

THEREFORE, the Developer makes the following declarations as to limitations, restrictions, and uses of the land for the benefit of the present owner and all future owners of the parcels of land constituted in the above-described real property:

1.

The declarations herein shall be covenants running with the land, as provided by law, and shall be binding on all parties and all persons claiming under them. These declarations of restrictions are designed for the purpose of keeping the development in desirable, uniform, and suitable in architectural design and use as specified herein. The purpose of the declaration is to ensure the use of the property for proper purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the property, and to maintain the desired tone of the community, with no greater restriction on the free undisturbed use of this site than is necessary to ensure the same to other owners.

2.

If the owner of the above-described real property or their heirs, assigns, or successors in interest, shall violate any of the covenants, the Developer or any adjacent land owner may pursue any proceeding against the person or persons violating any of such covenants and to prevent future or continuing violations of the covenants and to recover damages, including attorney's fees, to the extent allowed by South Dakota law for such violations. The failure of any landowner or group of landowners to pursue proceedings to prohibit the violation or continue to allow the violation to occur shall not inhibit the ability of any aggrieved owner or group of owners to later proceed with appropriate court action.

### **RESTRICTIVE COVENANTS**

1. All zoning ordinances and building restrictions shall apply unless these covenants create a deviation from the zoning ordinances or building restrictions.
2. **PERMITTED DWELLINGS & CONSTRUCTION PROVISIONS:** Structures built or transferred within the Development are limited as follows:
  - a. A single-family residence, a single manufactured home, a single modular home, a single shouse, a single barndominium, private garage, pole building, camper port, or, if approved by the Developer, a fixed permanent taxable structure not otherwise listed shall be permitted on any lot.
  - b. The following items are permitted on a lot only if the lot also contains a structure listed in 2.a.: A single recreational vehicle with the option of a single hookup, utility sheds, storage sheds, decks, fences, gazebos, portable storage such as an enclosed trailer, or, if approved by the Developer, outbuildings not otherwise listed. Shipping containers are not permitted unless the container is incorporated into a permanent structure.
3. In addition to any approval required by the Developer within 2.a and 2.b, all structures to be transported into the Development listed directly above in 2.a–b, shall be submitted to the Developer for approval prior to placement within the Development area if said structures are more than two (2) years old with respect to its model year, make or year of construction.
4. Setback requirements for permitted structures shall be twenty-five feet (25') from the front and rear of the lot and eight feet (8') from the sides of the lot, except that the rear setback for lots 5 through 9 in Block F shall be thirty-five-feet (35').
5. All buildings including accessory buildings shall not cover more than thirty (30) percent of the area of the lot unless the lot coverage allowed by the Sully County Zoning Ordinance is greater than thirty (30) percent. If the lot coverage allowed

by the Sully County Zoning Ordinance is greater than thirty (30) percent, then all buildings including accessory buildings shall not cover more than the percentage of the area of the lot allowed by the Sully County Zoning Ordinance.

6. Each lot must clearly display the address for the property as issued by addressing officials.
7. **NUISANCE CONTROL:** No owner shall permit any of the following within the development:
  - a. Accumulation of waste;
  - b. Accumulation of used building materials;
  - c. Accumulation of household appliances or fixtures;
  - d. Accumulation of dismantled motor vehicles, motor vehicle bodies, and disassembled parts thereof or disassembled or other mechanical machines or motors;
  - e. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood, such as old salvage automobiles, large trucks or trailers, school buses, road construction equipment, motor parts, salvage metals, pipes, old machinery, cement blocks and bricks, building materials, home appliances and so forth. Also, no activity that creates excessive noises, offensive odors, or activities or machines that create excessive amount of dust. All trash should be removed at least weekly;
  - f. All vehicles, with the exception of recreational vehicles that are parked on a single recreational hook-up on a particular lot, shall be parked within driveways and garages, and shall all be properly licensed and in operating condition;
  - g. Said premises shall not be used or maintained as a dumping ground for old cars, rubbish, or trash, and all garbage or similar waste shall be kept in sanitary containers and all incinerators and other equipment for disposal of garbage shall be kept in a clean, sanitary, and fire safe condition.
8. **SEPTIC TANK, CESSPOOL, AND LATERAL SPECIFICATIONS:** Regarding sanitation systems on each lot, all owners must comply with the laws and regulations of the State of South Dakota, Sully County, and the Spring Creek Cow Creek Sanitary District, to the extent they are applicable to that lot.
9. **DRIVEWAYS:** No private driveways shall be connected directly to Spring Creek Place (196th Street) or Cow Creek Road. All private driveways which cross a ditch or burrow pit of a private or public roadway, and which would obstruct the flow of water through said ditch or burrow pit, must have a minimum of a 15-inch culvert installed in the ditch prior to the construction of the driveway. The cost thereof shall be borne by the lot owner. All culverts must be approved by

the Developer, or if the Developer no longer owns any property within the Development, then by Codger's Castaway Road District.

10. **LIVESTOCK AND PETS:** Except as hereinafter specified, no animals or poultry of any kind shall be raised, bred, or kept on any lot. Cats, dogs, or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.
11. **WATER VIEW:** Lots 14 through 22 of Block B, and Lots 4 through 16 of Block F, shall be considered 'Water View' lots. No obstruction whatsoever shall be placed within the applicable rear setback areas for those Water View lots, including gates, fences, vegetation, trees, plants, aesthetic improvements, or any other natural or manmade structure of whatever kind.
12. **US ARMY CORPS OF ENGINEERS' APPROVAL:** No permanent structures may be constructed on Lots 5 through 23 of Block F without prior approval by the United States Army Corps of Engineers.
13. **TREES:** No trees shall be destroyed unless they are dead, diseased, or a safety concern.
14. **TERM:** These covenants are to run with the parcels of land designated herein and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for a period of ten (10) years unless an instrument signed by a majority of the then owners of the land parcels has been recorded, agreeing to change said covenants in whole or part.
15. **ENFORCEMENT:** These declarations may be enforced by: (1) Any landowner that owns land in the Development; (2) The Developer as long as it owns any property described herein; or (3) Any governmental entity that has jurisdiction over the above-described land. Enforcement shall be by proceeding at law in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. Any existing easements and restrictions of record continue on the land and all building activities shall comply with all state, local or federal regulations.
16. **ROAD MAINTENANCE COVENANT:** Developer shall facilitate the preparation of roadbed for private roads within real property described above, as set forth in the final plans approved by Sully County or variation plat thereof approved by the County. After initial construction of the road bed, the adjoining land owners shall be responsible for his/her/their pro-rata share of the cost of maintaining, grading, surfacing, dust control measures, grading and snow removal of all roads through the subdivision by lot ownership until such time as the road shall fall within the adopted road maintenance jurisdiction and authority of another entity, including, but not limited to, Sully County and/or any

road district established for the purposes of maintenance. All landowners of the above-described real property, or subdivision thereof, shall be required to become a member of Codger's Castaway Road District, whether existing at purchase or subsequently created.

17. **PLATTED LOTS:** Owners shall not subdivide individual lots as proposed in the subdivision for purposes of resale or development. Any owner of multiple lots may consolidate lots, but road district fees, or other assessments, shall remain consistent with the original number of lots purchased. (For example, owner purchases lots 1, 2 and 3 and subsequently replats into "Jones Lot 1." The road district fee will remain as set against 3 lots, even after consolidation and renaming of said lot.)
18. **SOIL CONDITION:** Owners shall be solely responsible for any testing of the soil condition on their lots that they deem necessary. Developer and Sully County make no representations or warranties, express or implied, regarding the soil stability and soil condition of the Development.
19. **SEVERABILITY:** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
20. **HOLD HARMLESS:** The Developer is hereby held harmless for any non-compliance with any of the provisions provided in this Declaration of Restrictive Covenants and also is hereby held harmless for any claims resulting from the compliance and enforcement of the provisions herein upon transfer of the property described.

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DATE: 08-01-2023

By: Andrew Utech  
Andrew Utech, Member  
Codger's Castaway Development, LLC

STATE OF SOUTH DAKOTA)

COUNTY OF Sully )  
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On this the 1<sup>st</sup> day of August, 2023, before me, the undersigned officer, personally appeared Andrew Utech, as a Member of Codger's Castaway Development, LLC, who acknowledged himself to be a Member of Codger's Castaway Development, LLC, and that he, as such Member being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as a Member.

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

D. J. [Signature]  
Notary Public – South Dakota  
My commission expires: 11/16/2024

