

Prepared by:
Emily J. Sovell
Attorney at Law
PO Box 505
Onida SD 57564
(605) 255-2546

DECLARATION OF RESTRICTIVE COVENANTS

FOR:

Plat of Cow Creek Tract 2, a subdivision of the SW $\frac{1}{4}$ and a replat of Lot B of Ogan's Outlot 1, SW $\frac{1}{4}$ of Section 34, Township 113 North, Range 80 West of the 5th P.M., Sully County, South Dakota and Plat of Cow Creek Recreation Tract 4, a replat of Oahe Hills Subdivision Tracts A, B, C, D & E in the E $\frac{1}{2}$ of Section 34, Township 113 North, Range 80 West of the 5th P.M., Sully County, South Dakota; and any replat or any other variation of Lots or territories renamed, replatted, or located therein as provided in Sully County Planned Unit Development No _____, or otherwise;

WHEREAS: Codger's Castaway Development, LLC (herein after Developer), of 28170 Spring Creek Place, Pierre, SD 57501, is the fee simple owner of:

Plat of Cow Creek Tract 2, a Subdivision of the SW $\frac{1}{4}$ and a replat of Lot B of Ogan's Outlot 1, SW $\frac{1}{4}$ of Section 34, Township 113 North, Range 80 West of the 5th P.M., Sully County, South Dakota and Plat of Cow Creek Recreation Tract 4, a replat of Oahe Hills Subdivision Tracts A, B, C, D & E in the E $\frac{1}{2}$ of Section 34, Township 113 North, Range 80 West of the 5th P.M., Sully County, South Dakota; (herein after 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 parcel 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 insure 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 insure the same to other site 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, it shall be lawful for the developer, or any adjacent land owner to 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 land owner or group of land owners 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. The invalidation of any of these covenants by judgment or court order shall not affect any of the other provisions of these covenants, in that any covenants that are deemed to be valid shall remain in full force and effect and the invalid provisions are hereby deemed stricken.

RESTRICTIVE COVENANTS

1. All zoning ordinances and restrictions shall apply unless these covenants create a greater restriction.
2. PERMITTED DWELLINGS & CONSTRUCTION PROVISIONS:
 - a. Permitted Structure: Structures built or transferred within the development are limited as follows:
 - i. Only a single-family residence, a single mobile home, a single recreational vehicle hook-up, or the accompanying permitted structures described herein shall be permitted on all Lots;
 - ii. Permitted Structures Also Include: Private garages or other out-buildings are permitted so long as they have an exterior appearance similar in color and style as the dwelling house.
3. All structures authorized for construction or transfer into the development listed directly above in 2 a i-ii, shall be submitted to 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 constructions;
4. Setbacks for permitted structures shall be Twenty-Five Feet (25') from the front and rear of lot and Six Feet (6') from the sides of lot;

5. So long as Developer herein owns any lots enumerated or subsequently platted, all structures and improvements must be approved by Developer;
6. No lot may be subdivided to create a smaller parcel than the original PUD lot layout approved by the County; however, two (2) or more adjoining lots may be replatted to create a larger lot;
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. Accumulation of vegetation. All weeds and grass shall be controlled and shall be mowed. Weeds or grass shall not exceed six (6) inches in height; or shall otherwise be in conformity with the laws of the City of Onida, County of Sully, and State of South Dakota relating to accumulation of vegetation;
 - f. 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;
 - g. All vehicles, with the exception of recreational vehicles that are parked on a single recreational hook up in a particular lot, shall be parked within driveways and garages, and shall all be properly licensed and in operating condition;
 - h. 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: All owners of a premises shall attach sanitation systems to the public sanitary district in conformity with the minimum requirements of the County of Sully and the State of South Dakota;
9. DRIVEWAYS: 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 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 Codger's Castaway Development, LLC , or if no longer in ownership of any development area, 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 56 – 68b AND 37-44, inclusive of the Development, shall be considered 'Water View' lots. No obstruction whatsoever shall be placed within the twenty-five foot (25') setback area upon these Water View lots, including gates, fences, vegetation, trees, plants, aesthetic improvements, or any other natural or manmade structure of whatever kind;
12. TREES: No trees shall be destroyed unless they are dead, diseased, or a safety concern;
13. GENERAL PROVISIONS:
 - a. 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 homeowners of the land parcels has been recorded, agreeing to change said covenants in whole or part.
14. ENFORCEMENT: These declarations may be enforced by: (1) Any landowner that owns land in the Development; (2) Developer as long as it owns any property described herein; or (3) Any governmental entity that has jurisdiction over the above described land;
 - a. 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;

15. ROAD MAINTENANCE COVENANT: Developer, shall facilitate the preparation of roadbed for private roads within real property described above, as set forth in the preliminary plat plans approved by Sully County in Planned Unit Development file No. _____ 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.
16. PLATTED LOTS: Owners shall not subdivide individual lots as proposed in the subdivision for purposes of resale or development. Any owner of multiple lots within the PUD 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.)
17. 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.
18. HOLD HARMLESS: The Owner 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 proper described.

Signature Page to Follow

DECLARATION OF RESTRICTIVE COVENANTS

DATE: _____

By: _____

Victor Utech, President
Codger's Castaway Development, LLC

STATE OF SOUTH DAKOTA)
)ss
COUNTY OF SULLY)

On this the _____ day of _____, 2021, before me, the undersigned officer, personally appeared Victor Utech, as a Member of Codgers Castaway Development, LLC, who acknowledged himself to be the President of Codgers Castaway Development, LLC, and that he, as such President 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 individually and as a President.

(SEAL)

Notary Public – South Dakota
My Commission Expires:_____