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Deputy

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Register of Deeds

Shane L Green
Deputy

**DECLARATION
OF RESTRICTIONS EASEMENTS AND COVENANTS
TO RUN WITH THE LAND**

Re-recorded to correct
legal. *L+C 4/6/03*

This DECLARATION OF RESTRICTIONS EASEMENTS AND COVENANTS TO RUN WITH THE LAND is made by Apple Creek Development, LLC, (a/k/a Apple Springs Development, LLC) a South Dakota Limited Liability Company (hereinafter, "Declarant").

WITNESSETH:

WHEREAS, the real property affected by this Declaration in Lawrence County, South Dakota is more particularly described as:

TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE BLACK HILLS MERIDIAN:

Apple Springs Tract in Section 11 and 14. to include platted lots in
Apple Springs Subdivision (see attached Exhibit A)

(hereinafter, "property").

WHEREAS Declarant is the owner of the property and desires to provide for a uniform scheme of development for the preservation and enhancement of the property.

WHEREAS, the property is a multi-use area which will be governed by this Declaration with some restrictions particular to certain areas within the property as set forth below in Article 9.

WHEREAS, Declarant makes no representations or warranties of any kind whatsoever by virtue of making this Declaration except as specifically provided in section 10.6.

WHEREAS, Owners waive certain claims and rights as provided in section 10.6, and undertake affirmative covenants to maintain their property and conform to certain leasing requirements and procedures as set forth herein, by virtue of purchasing any Lot.

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WHEREAS, Declarant intends to obtain additional property which may be added to the description of the property at a later date and thereafter be incorporated into the above definition of property as if originally set forth herein.

NOW, THEREFORE, Declarant hereby declares that from and after the recording of this Declaration, the property shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, and which shall run with the property and be binding on all parties having any right, title, interest or claim in, to or relating to the property, their heirs, successors, personal representatives and assigns, and shall inure to the benefit of each owner thereof.

Article 1
Construction

Section 1.1 **Single Family Dwellings.** All Lots on or within the property shall be used exclusively for private residential purposes except as modified for specific zones described in Article 9. No dwelling, residence or structure erected on the property shall be used or occupied for any purpose other than for a single family dwelling except as modified for specific zones described in Article 9.

Section 1.2 **Completion.** All work of construction shall proceed diligently and continuously from the time of commencement until fully completed. The construction of any dwelling or structure on the property shall be substantially completed no later than twenty-four (24) months after construction is commenced and the exterior of all dwellings and structures shall be completed within eighteen (18) months after the commencement of construction, except in the case of impossibility or great hardship. No dwelling shall be occupied until substantially completed.

Section 1.3 **No Mobile Homes.** No tent, tree house, barn, tipi or temporary living or camping structures shall be placed on the property. All construction shall be new. No building or structure previously used at another location nor any building or structure originally constructed as a mobile dwelling or mobile home shall be moved onto the property. Notwithstanding the foregoing, however, construction trailers and "porta-potties" for use in connection with construction on the property shall be permitted but shall be promptly removed when no longer used for their designated purpose.

Section 1.4 **Good Repair.** No dwelling, structure or other improvements which are located upon the property shall be permitted to fall into disrepair and all such residences and other improvements shall be maintained in good condition.

Section 1.5 **Signs.** No signs of any kind shall be displayed to the public view on any Lot, provided, however, that it shall be permissible to display on any Lot:

- a. one (1) professionally painted or printed sign of not more than four (4) square feet advertising the property for sale;
- b. one (1) sign of reasonable size and appearance identifying the occupants of a residence;
- c. temporary signs such as relating to siding, lawn care or improvements performed on a Lot; and

- d. administration and directional signs during development, signs necessary to advise of caution or warn of danger, and such signs as may be required by law.

Section 1.6 No Tanks. All tanks and elevated tanks, including tanks for fuel, propane, gas or water, must be walled sufficiently to conceal them from view of neighboring Lots, roads and streets. The foregoing shall not apply with regards to tanks and elevated tanks situated on common areas, on Lots owned by the Declarant, or any tanks or cisterns placed by any utility provider at the Declarant's consent. Moreover, tanks for the storage of propane or natural gas shall be prohibited for any Lots where operable utilities for gas are provided to the lot line.

Section 1.7 No Towers. No towers or antennas are permitted on the lots except for small (20" or less) satellite dishes. Notwithstanding the foregoing, the Declarant may construct and place towers and antennas on Lots owned by the Declarant or common areas.

Section 1.8 No Fire Pits. No outdoor fireplaces, incinerators, open fire pits or related structures or devices shall be constructed or operated, except as to community fireplaces on common areas or placed by the Declarant.

Section 1.9 [Reserved]

Section 1.10 Bark Beetles. The Black Hills Bark Beetle (*Dendroctonus Ponderose-Hopkins*) and other noxious insects and noxious vegetation are declared to be a public nuisance and shall not be allowed to populate or infect any Lot or tree thereon. It shall be the duty of each Lot owner and occupant to remove all infested trees as may be ordered by the Homeowner's Association or as ordered or recommended by the district State Forester or similar authority.

Section 1.11 Easements. No structure, building, or other material which may damage or interfere with an easement for the installation or maintenance of utilities or which may change, obstruct, or retard direction or flow of any drainage channel, other than sidewalks, shall be placed or permitted to remain upon the property. An easement over and under the ground is reserved by the Declarant in an area ten feet (10') in width on the front side and along the back Lot lines of each Lot, to be exercised in such a manner by the owner of any Lot for utility (including water, fuel, sewer and lines of transmission of electric power, impulses or signals) installation, maintenance and drainage; said easement shall pass to and vest in the Homeowner's Association upon the Declarant's transfer of enforcement rights to the Homeowner's Association.

Section 1.12 Advance Approval by Declarant. Up to the time when Declarant transfers enforcement authority to the Homeowner's Association pursuant to section 3.3, all new construction (including elevation specifications and proposed finishes) shall require pre-approval by the Declarant, consistent with this Declaration, maintaining picturesque views for Lots, and the uniform and pleasing appearance of the development of the property. Thereafter, this authority shall reside with the Architectural Committee described in Article 5.

Article 2
Use/Restrictions

Section 2.1 Use.

a. Rubbish No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept, except in clean, dry and sanitary containers. Enclosed community-use dumpsters are permitted. Owners must haul garbage off their Lot within a reasonable time or use a privately owned garbage pickup service.

b. No Wrecked Vehicles No motor vehicles, including cars, buses, tractors, trailers and all parts thereof that are not in normal running condition and in average use shall be kept on a Lot except within an enclosed structure; it being specifically understood that this covenant is to prohibit and forbid the keeping of any wrecked motor vehicles not in use and operation and any other like parts or the debris upon the within described property. Rebuilding or refinishing of autos outdoors shall not be permitted, ordinary and minor necessary repairs excepted.

d. Storage Any unsightly equipment and material including garden and maintenance machinery and equipment, lumber and construction materials, scrap and any other like equipment and materials shall be kept at all times, except when in use, in an enclosed structure which shall be maintained in good condition. Reasonable amounts of firewood may be stored outdoors.

e. No Home Occupations No Home Occupations (as defined in section 10.1) shall be conducted or carried on upon any Lot.

Section 2.2 No Mining. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel, or earth. Declarant reserves the right to extract gravel and sand and to remove topsoil for development or any other purpose on property owned by the Declarant.

Section 2.3 Pets, Animals, Horses. Except as hereinafter specified, no animals (including horses), livestock or poultry of any kind shall be raised, bred or kept on any Lot. Cats, dogs and other household pets (e.g., fish, hamsters, gerbils, birds, etc.) may be kept provided that they are not kept, bred or maintained for any commercial purpose. No swine or goats are allowed. Dogs must be kept on a leash or confined within the Owner's property and there shall be a limit of four (4) pets per Lot (excluding fish, hamsters, gerbils, and birds). Barking dogs must be muzzled. Kennels must not be readily visible from the roads or highways. All pets not on an owner's Lot must be leashed or otherwise confined. Notwithstanding the foregoing, horses, goats, chickens and farm animals may be allowed on common areas, as determined by the Homeowner's Association as to property owned by the Homeowner's Association or the Declarant as to property owned by the Declarant (or an entity with common ownership as the Declarant) from time to time.

Section 2.4 Conformity with Zoning Rules. Each Lot shall conform to applicable zoning regulations and rules.

Section 2.5 No Noxious Activities/Weeds. No noxious or offensive activities may be carried on any Lot. Each Lot shall be maintained in such a condition that it is free of noxious weeds whether or not the Lot is occupied.

Section 2.6 Parking. No overnight parking on a road or common area is permitted. All recreational vehicles (RVs) and boats shall be parked in garages. Temporary visitors or short-term tenants will be able to park Their RV in the driveway of their rental unit.

Section 2.7 Firearms. Guns, rifles, paintguns, shotguns, pistols, muzzle loaders and "bb guns" may not be discharged on the property.

Section 2.8 Dead Trees. No dead trees, either standing or cut, are allowed on any Lot unless neatly stacked as firewood.

Section 2.9 Pools. No above-ground swimming pools shall be allowed on any Lot. The foregoing shall not apply to "kiddie pools" of less than ten feet (10') in circumference. In-ground swimming pools shall not be constructed in front or side yards.

Section 2.10 No Wind Turbines. No wind turbines shall be erected on any Lot.

Section 2.11 [Reserved]

Section 2.12 No Lot Splitting. No Lot shall be subdivided or re-platted into additional lots without the express written consent of the Declarant.

Section 2.13 Rental/Lease Restrictions Applicable to All Lots.

a. Recitals. The property encompasses a residential resort community. Many of the homes will likely be "second homes" and vacation homes for their Owners. In order to provide for the continuity of the resort, Owners agree that Apple Springs Management, LLC will be the exclusive resort property manager for all Lots within the property.

b. Restrictions. And any all rental or lease agreements pertaining to a Lot are subject to approval by Apple Springs Management, LLC.

c. Management. Apple Springs Management, LLC shall be the sole and exclusive property management agent for all rental and lease agreements pertaining to a Lot and shall be entitled to a fee on any rent or lease pertaining to a Lot or Lots. Rental compensation received by a Lot Owner, whether in money, in-kind or other valuable consideration of any kind, shall result in fee in the amount of no more than forty percent (40%) to Apple Springs Management, LLC calculated on the gross amount received by a Lot Owner or any assignee thereof. For said fee, Apple Springs Management, LLC will perform housekeeping, linen service, routine maintenance (as defined by Apple Springs Management, LLC) and reservations for leases pursuant to agreements with Lot Owners. Apple Springs Management, LLC retains the right to charge lesser percentage fees when housekeeping, linen and maintenance services are not requested during a rental period.

d. Remedies for Violations. Violations of this section 2.13 may be remedied by the power of eviction of any tenant, invitee or holdover tenant, vested in and specifically reserved by Apple Springs Management, LLC. The prevailing party in any collection or eviction proceedings arising under this section 2.13 shall also be entitled to an award of reasonable attorney fees, costs and sales tax as part of the party's remedies.

e. Limited Suspension of Restrictions During Bike Week. This section 2.13 shall not apply during the Bike Weeks Period (defined in section 10.8) for any Lot Owner acting as their own agent for renting their own Lot or Lots.

Section 2.14. Exclusive Lawncare and Snow Removal Authority. Apple Springs Management, LLC shall have the sole authority to contract and provide lawncare and snow removal services to any Lot pursuant to agreements with Lot Owners, and shall be the sole and exclusive provider of such services. This section 2.14 shall not apply to any Lot Owner performing such services on their own Lot or Lots.

Article 3 Enforcement

Section 3.1 Enforcement. The provisions of this Declaration may be enforced by any proceeding at law or in equity, including but not limited to injunctive relief, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any person to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or the right to do so thereafter. Any matter relating to this Declaration shall be exclusively venued in the Seventh Judicial Circuit Court of the County of Pennington, South Dakota and South Dakota law shall apply to the interpretation and enforcement of this Declaration. Each owner hereby makes himself, herself or itself available to the jurisdiction of said Court for the purposes of the enforcement of this Declaration and consents to personal jurisdiction in said Court. All parties bound hereby waive any right to a jury trial. A prevailing party proceeding pursuant to this section 3.1 shall also be entitled to an award of reasonable attorney fees, costs and sales tax as part of the party's remedies.

Section 3.2 Enforcement by Declarant. Declarant shall have the power to enforce this Declaration until such time as it transfers its authority to enforce this Declaration to the Homeowner's Association. Said transfer shall not diminish the Declarant's rights, power and authority as an owner of a Lot or Lots as set forth herein.

Section 3.3 Form of Transfer of Authority. At such time as Declarant transfers its authority to enforce this Declaration and to collect and disburse membership fees and late fees, Declarant will file a written recordable instrument with the Register of Deeds evidencing such transfer and the recording of the same shall be sufficient notice in all respects as to its legal effect and notice to third parties.

Section 3.4 Enforcement by Homeowner's Association. Following the Declarant's transfer of authority regarding this Declaration, the Homeowner's Association shall be from that date vested with the full power and authority to enforce and carry out the provisions of this Declaration.

Section 3.5 Time Limitations. The conditions, covenants and restrictions of this Declaration shall run with and bind the property and shall inure to the benefit of and be enforceable by the owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The Homeowner's Association shall have the power to renew or restate this Declaration prior to or subsequent to this Declaration's expiration.

Article 4
Homeowner's Association

Section 4.1 Membership. Each owner of a Lot shall be a member in a Homeowner's Association to be formed at a later date. Except as otherwise provided herein, membership voting rights shall be determined by the Articles and By-Laws of the Homeowner's Association.

Section 4.2 Declarant's Membership. So long as the Declarant is the owner of any Lot, it shall be considered a Preferred Member (as defined in section 10.1).

Section 4.3 Fees. An annual membership fee of three hundred sixty dollars (\$360) shall be assessed to all members on the first (1st) day of January of each calendar year. The fee shall be due on the fifteenth (15th) day of January. A late fee of thirty-five dollars (\$35) shall be assessed in the event a fee is received after the thirty-first (31st) day of January. The late fee shall be assessed again the following January thirty-first (31st) and in subsequent years if said fee is still delinquent and an additional late fee assessed pursuant to this section for any other annual fee not timely received. Any unpaid annual fees, plus late fees and collection costs including reasonable attorneys' fees incurred in collecting delinquent fees shall be a continuing lien on the owner's Lot and the personal obligation of the Lot's owner at the time the fee became delinquent. The Declarant shall at all times be exempt from the obligation or duty to pay or be liable for any membership fees or late fees.

Section 4.4 Authority for Special Assessments and Membership Fee Increases. The Homeowner's Association shall have sole authority to make special assessments and increases in membership fees from time to time.

Section 4.5 Use of Fees. The membership fees and late fees shall be used to enforce and carry out this Declaration, to maintain and improve roads on the property, for road snow removal and grading, to maintain and improve any common areas, and to do such things as authorized by the Articles and Bylaws of the Homeowner's Association.

Section 4.6 Collection. Declarant may collect and disburse membership fees and late fees until such time as the Declarant transfers its authority to enforce this Declaration to the Homeowner's Association at which time Declarant will pay all such funds to the Homeowner's Association and the Homeowner's Association shall then be vested with full authority regarding the collection and disbursement of fees and late fees. In the event of any such collection actions which result in litigation, the prevailing party shall also be entitled to an award of reasonable attorney fees, costs and sales tax as part of the party's remedies.

Article 5
Architectural Committee

Section 5.1 Committee Composition. The Homeowner's Association will form and oversee an Architectural Committee. The powers, composition of and membership in the Architectural Committee shall be set forth in the By-laws and/or Articles of the Homeowner's Association.

Section 5.2 Authority. The Architectural Committee shall have those powers given to it by the Homeowner's Association as may be modified, enlarged or restricted from time to time. The Architectural Committee may be vested with the authority regarding:

- a. Acceptability of proposed structure and residence colors and exterior surfaces;
- b. Acceptability of construction plans and specifications as to workmanship, materials, harmony with existing structures, location of buildings on Lots, size, height of walls and fences;
- c. Acceptability of trees and hedges as to location, size, height and variety of species including fire protection issues; and
- d. Acceptability of signs.

In all other respects, however, the Architectural Committee shall lack the authority or power to independently modify, enlarge, or amend this Declaration. Approval from the Architectural Committee as to any matter within the authority of said committee shall not be unreasonably withheld. The Architectural Committee shall not have any power to disapprove of landscape, design or other elements within their authority once it has granted an approval with regard to any particular Lot or owner regarding the same.

Section 5.3 Declarant. Declarant shall be the sole member of the Architectural Committee until such time as it relinquishes that role in a signed writing. Declarant shall have all the powers of the Architectural Committee whether or not the Homeowner's Association is yet formed pursuant to section 1.12. A relinquishment of Declarant's powers in this regard shall be revocable unless otherwise designated in the signed writing.

Article 6
Variances

Section 6.1 Listing of Permissible Variances. [Reserved]

Section 6.2 Procedure. [Reserved]

Articles 7
Maintenance, Landscaping, Snow Removal and Lawncare

Section 7.1 Pleasing Appearance. It is the intent of the Declarant that the Lots shall retain a pleasing and well maintained appearance.

Section 7.2 Maintenance. Accordingly, the Declarant reserves the right to personally undertake or contract for necessary maintenance, landscaping, lawn watering, tree, bush or shrub trimming, snow removal and lawncare which is not adequately provided by a Lot Owner upon notice to the Lot Owner. The Declarant or its agents are vested with the right to enter upon any Lot (with the exception of entering into any structure or dwelling without consent) without liability for trespass to correct any such deficiencies. The cost of such corrected deficiencies will be paid by a Lot Owner within thirty (30) days. Unpaid amounts may be filed as a mechanic's lien against any Lot. This section 7.2 in no way obligates the Declarant to do or perform any maintenance whatsoever.

Article 8
Water, Septic and Roads

Section 8.1 Private Wells. No private wells shall be allowed on any Lot. No well will be allowed on any Lot except that the Declarant may construct and drill wells on Lots owned by the Declarant.

Section 8.2 Septic. No outdoor toilets shall be erected or maintained on any Lot except as otherwise permitted by section 1.3. Any septic tanks and disposal fields must be approved by the appropriate state or county Department of Health and by the Homeowner's Association. No cesspools shall be permitted.

Section 8.3 Water Use Restrictions. The Homeowner's Association may from time to time implement and enforce water use restrictions for Lots. By way of illustration, the Homeowner's Association may restrict water use for lawn care purposes to certain days. Such restrictions shall not apply to property owned by the Declarant, common areas, or any property owned by the Boulder Canyon Country Club or otherwise used as a community golf course.

Article 9
Zone-Specific Provisions

Apple Springs Resort has many different uses in various areas. Article 9 includes covenants that apply to specific zones within the resort.

Section 9.1 Townhome Zone. The provisions of this section 9.1 shall, in addition to the other provisions herein, apply to the Townhome Zone. The provisions of this section shall apply only to Lots in the Townhome Zone and not to any other property otherwise affected by this Declaration. The Townhome Zone is:

[Reserved]

- a. Appearance. Homes in this zone must have design elements that are harmonious with a mountain resort setting. Some of the design considerations will include: steep pitch and elaborate rooflines, covered porches, exterior finishes of log, timber, stone, brick, cedar siding.
- b. Setback. Lots will have standard setbacks.
- c. Minimum Square Footage. No more than one (1) dwelling shall be erected or maintained on any single Lot. No dwelling shall be erected which has a gross livable floor area of less than one thousand two hundred (1,200) square feet if a single story dwelling or less than one thousand nine hundred fifty (1,950) square feet if a multi-level dwelling.
- d. Fences. No fences will be allowed in the Townhome Zone.
- e. Property Management. The Townhome Zone has a lawn care and snow removal maintenance program that is required with a monthly service fee.

Section 9.2 Golf Mountain Home Zone. The provisions of this Section 9.2 shall, in addition to the other provisions herein, apply to the Golf Mountain Home Zone. The provisions of this section shall apply only to Lots in the Golf Mountain Home Zone and not to any other property otherwise affected by this Declaration. The Golf Mountain Home Zone:

- a. Appearance. Homes in this zone must have design elements that are harmonious with a mountain resort setting. Some of the design considerations will include: steep pitch and elaborate rooflines, covered porches, exterior finishes of log, timber, stone, brick, & earhtone siding.
- b. Setback. Some or all Lots will in this zone will have standard setbacks, and/or a building envelope as restrictions on particular Lots.
- c. Minimum Square Footage. No more than one (1) dwelling shall be erected or maintained on any single Lot. No dwelling shall be erected which has a gross livable floor area of less than one thousand five hundred (1,500) square feet if a single story dwelling or less than one thousand nine hundred fifty (1,950) square feet if a multi-level dwelling.
- d. Fences. Generally fences will be discouraged in this zone in order to maintain a more natural look to the lot. All requests for fencing must be pre-approved by the Architectural Control Committee and will be considered for pools, pets, visual screening, etc. Design elements, scope, and use of materials will all be considered in evaluating a fence request.

Section 9.3 Country Home Zone. [Reserved]

Section 9.4 [Reserved]

Section 9.5 Executive] Home Zone. [Reserved]

Section 9.6 Multi-Use Zone. [Reserved]

Section 9.7 Commercial Zone. [Reserved]

Section 9.8 Golf Course Zone. [Reserved]

Section 9.9 Lodge Zone. [Reserved]

Article 10
Miscellaneous

Section 10.1 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 following meanings in this Declaration:

- a. Common Area. "Common Area" means all real property and improvements owned by the Homeowner's Association or Declarant which is designated for the common use and enjoyment of the owners. Common Areas do not include roads.

b. Golf Course Hazards. "Golf Course Hazards" include all hazards associated with a golf course or other landscaping and related or similar activities including (without limitation) the following, recognizing that there are other hazards known or which should be known relating to living in proximity to a golf course or other recreational areas:

(1) Errant Golf Balls. There is an inherent risk of errant golf balls and golfers retrieving such balls from Lots. There is a risk of injury or death from errant golf balls.

(2) View Impairment. There is no guarantee of a view over and across any golf course will be preserved without impairment, nor is there any obligation of any operator of any golf course to prune (or not prune) any trees or other landscaping or to reconfigure (or not reconfigure) the trees, landscaping, layout, tees, bunkers, holes, fairways or greens.

(3) Treated Wastewater. Treated or reclaimed wastewater may be used to irrigate any golf course which wastewater may pose certain health risks to humans or animals.

(4) Fertilizers. Pesticides, fertilizers and other chemicals may be utilized which pose certain health risks to humans and animals. Children, the elderly, and those with existing health problems may be particularly at risk.

(5) Over-Spray. Over-spray from irrigation or sprinkler systems may occur.

(6) Noise. Golf course and other activities including tournaments, weddings, receptions, and corporate events may result in significantly increased light, noise, inconvenience, traffic, activity and other impacts.

(7) Limitation in Access. Access to any golf course may be prohibited directly from any Lot. Each owner agrees not to access any golf course, clubhouse or related facilities except at designated entry points and agrees to instruct all guests and invitees accordingly.

(8) Maintenance. Mowing, earthmoving, irrigation, grooming, and landscaping may be conducted during early morning and evening hours and include the use of tractors, pumps, blowers, compressors and utility vehicles in close proximity to Lots.

c. Golf Course Parties. "Golf Course Parties" means the Declarant, the Homeowner's Association, the Boulder Canyon Country Club or any other owner of any golf course on or adjacent to the property, the sponsor, developer, architect, designer, and contractor of any golf course, the members and authorized users and guests of any golf course, and any officer, director, shareholder, trustee, affiliate, partner, successor or assign of the foregoing.

d. Home Occupations. "Home Occupations" means a business, professional or other activity conducted for financial gain excepting such activities which will not result in any increased noise or activity visible from a neighboring Lot or road, nor result in any increased traffic on the property. By way of illustration, Home Occupations include private daycare centers and hair salons if such activities result in discernable increased noise, activity or traffic.

e. Homeowner's Association. "Homeowner's Association" means the APPLE SPRINGS HOMEOWNER'S ASSOCIATION, a South Dakota nonprofit corporation, at such time as such an entity is formed.

f. Livable Floor Area. "Livable Floor Area" means covered areas within a dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, attics and basements.

g. Lots. A "Lot" shall mean and refer to any plat of land shown upon any recorded plat or subdivision map of the property. As to any unplatted area, "Lot" means a contiguous parcel of real property on the property owned by an owner.

h. Owner. "Owner" shall mean the record owner, whether one or more persons, trusts or entities, of a fee or undivided fee interest to any Lot, excluding roads or common areas, which is part of the property, including contract sellers, but excluding those having such interest merely as a security for the performance of an obligation. Where a Lot is owned jointly or as tenants in common by more than one individual, trust or entity, the Lot shall be considered to have one Owner for purposes of voting and membership and all such joint owners may only submit one vote jointly; neither the Homeowner's Association nor the Declarant shall have any obligation to mediate or resolve internal disputes with regards to voting rights between joint owners of a Lot. Each Lot shall be counted as a separate Lot for purposes of Owner rights. Accordingly, by way of example, if an individual owns two (2) Lots, that individual shall have two (2) votes and two (2) memberships in the Homeowner's Association.

i. Preferred Member. "Preferred Member" means a member of the Homeowner's Association entitled to the voting rights of one hundred fifty (150) members and an Owner entitled to the voting rights of one hundred fifty (150) owners regardless of the number of Lots owned. No membership fees or late fees shall be assessed against a Preferred Member. No meeting quorum shall be deemed to be a quorum unless the Preferred Member is present in person or by valid proxy. A Preferred Member may relinquish Preferred Member status in a signed writing which relinquishment shall be revocable unless otherwise designated in the signed writing.

j. Road. A "Road" means a road designated as such by the Declarant or dedicated as such on any plat upon or across the property.

k. Structure. "Structure" means any residence, garage, shed, or related thing other than trees, landscaping, and movable things, the placement of which is upon or within a Lot.

Section 10.2 Cumulative. Each of the covenants, restrictions, conditions and provisions of this Declaration are cumulative and independent of each other and if any are held to be or become waived, invalid or otherwise unenforceable, the remaining provisions shall be in no way affected or impaired but shall remain in full force and effect.

Section 10.3 Limitation of Liability. The Declarant, its members, shareholders, officers, directors, trustees, agents or employees, shall not be liable to any party whatsoever for any act, decision, or omission unless the act, decision or omission was in bad faith, fraud or malice.

Section 10.4 Amendments. This Declaration may be amended by an instrument signed by a majority of the Owners of any Lot subject to this Declaration. Any amendment must be properly

recorded in the office of the Register of Deeds. As to each amendment of this Declaration, each owner of a Lot shall be entitled to one (1) vote. If more than one owner of a Lot, the owners must decide among themselves how to cast their one vote. Fractional voting will not be allowed. Owners of more than one Lot shall be entitled to one vote for each Lot owned.

Section 10.5 Future Use. The property is being developed by the Declarant. The Declarant reserves the right to amend this Declaration consistent with its development plan in accordance with this Declaration's provisions regarding amendments. The Declarant also reserves the right to alter and amend this Declaration so as to permit different developmental uses within different areas and on different sets of Lots and to specify the application of different covenants, restrictions, conditions and easements in different areas of the property. The Declarant reserves the right to re-plat any of the property.

Section 10.6 Disclaimer of Liability. A golf course or expanded golf course shall be developed on or adjacent to the property. Each Owner for the Owner and the Owner's invitees, personal representatives, assigns and heirs (collectively, Owner's Related Parties) hereby acknowledges and *knowingly assumes the risk of* the Golf Course Hazards (defined in section 10.1), and each Owner and Owner's Related Parties assumes the risk of property damage, property value reduction, personal injury (including death), potential for nuisance and trespass created by, related to, or arising in connection with the Golf Course Hazards and releases, waives, discharges, covenants not to sue, indemnifies and agrees to hold harmless the Golf Course Parties (defined in section 10.1) from any and all liability to the Owner or Owner's Related Parties for any losses, costs, attorney fees, claims, demands, suits, judgments, or other obligations arising out of any Golf Course Hazard or related hazard or risk. The foregoing shall not relieve any golfer from claims or liability under South Dakota law for any injury or damage caused by any the golfer.

Section 10.7 Nonapplication to Declarant. Except as expressly otherwise provided, this Declaration shall not apply to the Declarant or any Lots owned by the Declarant and none of the provisions herein may be enforced against the Declarant in the interests of allowing the Declarant to develop the property.

Section 10.8 Suspension of Certain Restrictions During Sturgis Motorcycle Rally. The following provisions of this Declaration shall be suspended for a period of twenty-one (21) days commencing seven (7) days prior to and ending fourteen (14) days following the official commencement of the annual Sturgis Motorcycle Rally (a/k/a Bike Week) held in August (herein, "Bike Week Period"): sections 1.3, 1.8, 2.3, 2.6 and 2.9, it being recognized and further acknowledged that traffic, light, noise and activity levels may and in likelihood will increase during said period.

Section 10.9 Miscellaneous. The recitals of this Declaration are incorporated by this reference. The Article and section headings are for convenience only and will not be used in the interpretation of this Declaration. Any Exhibit attached hereto showing a map of the zones of the property is for convenience only and shall not supersede the legal descriptions for each zone set forth in Article 9. Any reference to the Declarant shall also include any affiliates or subdivision of the Declarant. This Declaration shall run with the land and is binding on successors, heirs, personal representatives and assigns.

READ AND APPROVED:

OWNER OF LOT 1A AND LOT 1B IN BLOCK 1 OF APPLE SPRINGS SUBDIVISION:

BECK CONSTRUCTION, INC.

BY: Roger Beck President

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF PENNINGTON)

On this 16~~th~~ day of August, 2006, before me, the undersigned officer, personally appeared ROGER K. Beck, who acknowledged himself to be the PRESIDENT of Beck Construction, Inc., a corporation, 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 corporation by himself as

In Witness Whereof, I hereunto set my hand and official seal.



[Signature]

NOTARY PUBLIC

My Commission Expires: 1-4-2010

EXHIBIT "A"

LOTS 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 7B, 8A, 8B, 9A, 9B, 10A, 10B, 11A, 11B, 12A, 12B, 13A, 13B, 14A, 14B, 15A, 15B, 16A, 16B, 17A, 17B, 18A, AND 18B IN BLOCK 1; LOTS 2A, 2B, 3A, 3B, 4A, 4B, 5A, AND 5B IN BLOCK 2; LOTS 3, 4, 5, 6, AND 7 IN BLOCK 3; LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, AND 12 IN BLOCK 4; LOTS 1A, 1B, 2, 3, 4, 5, 6, 7A, AND 7B IN BLOCK 5; AND LOTS 1A, 1B, 2, 3, 4, 5, 6, 7, 8A, AND 8B IN BLOCK 6 OF APPLE SPRINGS SUBDIVISION, LOCATED IN APPLE SPRINGS TRACT IN THE NE1/4 NW1/4, UNPLATTED BALANCE OF THE W1/2 NE1/4, AND THE UNPLATTED BALANCE OF THE SE1/4 NW1/4 OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE BLACK HILLS MERIDIAN, LAWRENCE COUNTY, SOUTH DAKOTA, ACCORDING TO PLAT DOCUMENT NO. 2006-3136; AND

LOTS 1A AND 1B IN BLOCK 1; LOTS 1A AND 1B IN BLOCK 2; LOTS 1 AND 2 IN BLOCK 3 OF APPLE SPRINGS SUBDIVISION, LOCATED IN APPLE SPRINGS TRACT IN THE NE1/4 NW1/4, UNPLATTED BALANCE OF THE W1/2 NE1/4, AND THE UNPLATTED BALANCE OF THE SE1/4 NW1/4 OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE BLACK HILLS MERIDIAN, LAWRENCE COUNTY, SOUTH DAKOTA, ACCORDING TO PLAT DOCUMENT NO. 2005-7364

APPLE SPRINGS TRACT LOCATED IN NE1/4NW1/4 LESS ROW; unplatted balance of W1/2NE1/4 LYING NORTH OF US HWY 14-A ROW; UNPLATTED BALANCE SE1/4NW1/4 LYING NORTH OF HWY 14-A ROW; OF SECTION 14, T5N, R4E, BHM AND SE1/4SW1/4, N1/2SW1/4; E1/2NW1/4; SW1/4NW1/4; UNPLATTED BALANCE OF THE SW1/4SW1/4 OF SECTION 11 T5N, R4E, BH, LAWRENCE COUNTY, SOUTH DAKOTA

Lot 1R of Block 3, formerly Lot 1 of Block 3, of Apple Springs Subdivision located in Apple Springs Tract NW1/4NE1/4 Section 14, T5N, R4E, BHM, Lawrence County, South Dakota, according to Plat Doc #2006-3135.