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**DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
BRANCH CREEK**

THIS DECLARATION, made on the date hereinafter set forth by BRANCH CREEK, LLC, a South Dakota Limited Liability Company, (hereinafter referred to as "Declarant").

WHEREAS, Declarant is the owner of certain real property in the City of Brookings, Brookings County, South Dakota, which is described below; and

WHEREAS, Declarant seeks to develop the property as a planned unit development of town houses as hereinafter defined;

NOW, THEREFORE, the Declarant hereby declares that all of the real property herein described 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 the right, title or interest in the described properties or in part thereof, their heirs, successors and assigns and which rights shall inure to the benefit of each owner thereof as more specifically allowed by SDCL 43-12.

**ARTICLE I**

DEFINITIONS

- a. "Branch Creek Homeowners Association" (hereinafter "Association") shall mean and refer to the South Dakota not for profit corporation of the same name to be organized and exist under the laws of the State of South Dakota for the purposes set forth in the corporation documents with all the rights, duties and obligations as set forth herein.

- b. "Branch Creek" shall mean the development of townhouses in Brookings, Brookings County, South Dakota within the real property described below, all of which residential dwelling units shall be subject to the rules, regulations, covenants and restrictions set forth herein.
- c. "Living Unit" shall mean that portion of Branch Creek designated and intended for use and occupancy as a residence by a family or household.
- d. "Family and Household" shall mean one or more persons related by blood, marriage or adoption occupying a Living Unit as an individual housekeeping entity; and such may include no more than two other persons not related by blood, marriage or adoption; notwithstanding any other provision herein, the maximum number of persons residing in a Living Unit shall not exceed three (3) per Bedroom.
- e. "Bedroom" shall mean a room within a Living Unit in the original construction designed to be furnished with a bed and intended to be primarily used for sleeping; under no circumstances shall the rooms customarily referred to as kitchen and living room be construed as a Bedroom.
- f. "Lot" or "Living Unit Lot" shall mean that portion of the real property described below which has been deeded to the owners separately, which real property encompasses the land immediately beneath the Living Unit owned by the owner and shown on any recorded subdivision map of the property defined below. (This definition shall not include common areas platted as separate Lots and which are intended to be owned by the Developer or Association). It is anticipated Living Unit Lots will be designated by numbers with common areas also by numbers.
- g. "Common Area" shall mean all real property within the real property described below owned by the Developer or the Association as the case may be for the common use and enjoyment of the Members, which has not been exempted from these Covenants and Restrictions and which has been developed and landscaped for and devoted to the common use of the Members by the Developer, including the limited use common area hereinafter described and all private streets as part of the Branch Creek development.

Developer shall be allowed to designate additional common areas from time to time as development progresses.

- h. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit as part of Branch Creek, but not refer to the mortgagee unless and until a mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- i. "Member" shall mean and refer to all Owners who are members of the Association as provided below.
- j. "Developer" shall mean and refer to BRANCH CREEK, LLC, a South Dakota Limited Liability Company, its successors and assigns, if such successors or assigns should acquire the balance of undeveloped lots from the Developer for the purpose of development.
- k. "Formal Notice of No Further Development" shall occur when the Developer shall record a Supplemental Declaration of Covenants and Restrictions which include a provision indicating that Developer shall develop no more townhouses as part of the development.
- l. "Common Expenses" shall mean any and all expenses related to the care and keep of the common area, including the upkeep of private roads and the maintenance, repair and upkeep of the water and sewer system serving Branch Creek.
- m. "Private Streets" shall refer to that portion of the common area which has been hard surfaced for use by owners and their guests for ingress and egress to the various Living Units, but shall not include any limited use common area as hereinafter described. Private streets shall also not include streets dedicated to the public by any plat filed of record.
- n. "Townhouse" shall mean a single family dwelling unit, the ownership of which shall include the real property directly beneath the unit. For the avoidance of doubt, a Townhouse may be a standalone Living Unit or part of a twinhome, triplex or rowhouse containing 2-4 Living Units.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Brookings, Brookings County, South Dakota more particularly described as follows:

See attached Exhibit "A"

all of which property shall be referred to as "the Premises". It is further understood that as additional land is developed within Branch Creek, that the additional land will become subject to this Declaration of Covenants and Restrictions.

### Section 2. Alterations of the Premises.

- a. General Plan of Development. Attached hereto as Exhibit "B" is a General Plan of Development for Branch Creek; it is anticipated by the Owner and Developer that there will be ultimately up to 135 Living Units with attached garages as part of the development. However, Developer is not limited by such general plan as to the exact number or configuration of the Living Units, nor is Developer required to develop all of the property as part of Branch Creek. The Developer may exempt future Lots or subdivisions of the Premises from the effects, burdens and benefits of this Declaration, and all the Covenants and Restrictions contained herein.

Any exemption authorized under this subsection shall be accomplished by the filing for record of a Supplemental Declaration of Covenants and Restrictions with respect to such exempted lands. Such Supplemental Declaration shall contain any and all complimentary additions and modifications to the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character of the Premises as modified and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplemental Declaration revoke, modify or add to the Covenants established by this Declaration with respect to "the Premises" not exempted as allowed by this subsection.

- b. Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its By-Laws, the owner of any property who desires to add it to the scheme of this Declaration and subject it to the jurisdiction of the Association may file of record a Supplemental Declaration of Covenants and Restrictions as in subsection (a) hereof. Furthermore, if at any time while this Declaration remains in effect, if the Developers should develop additional lands adjacent to the area described in Article II, Section 1, such additional lands may be annexed to the property without the assent of the members.
- c. Mergers. Upon merger or consolidation of the Association with another association as provided in its By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively the properties, rights and obligations of another association may by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Premises together with the covenants and restrictions established on any other properties as one scheme. No such merger or consolidation however, shall effect any revocation, change or additions to the covenants established by this Declaration within the Premises as they then exist, except as hereinafter provided.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. The membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A shall be all those Owners as defined in Section 1 with the exception of BRANCH CREEK, LLC Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. BRANCH CREEK, LLC shall be the sole Class B member. The Class B member shall be entitled to 136 votes in the Association. The Class B membership shall cease and terminate upon the happening of any of the following events whichever first occurs:

- a. When the last Living Unit Lot within Branch Creek is sold or,
- b. When the Developer formally announces no further Living Unit Lots will be developed as part of Branch Creek, or
- c. Twenty-five (25) years from the date of this Declaration is recorded for record.

From and after the happening of any of the above described events, which ever first occurs, the Class B member shall be deemed to be a Class A member, entitled to one (1) vote for each Lot in which it holds the interest required for membership under Section 1.

Section 3. Determination of Quorum. A quorum shall be defined as the presence of Members, absentee ballots received or proxies entitled to cast sixty percent (60%) of all the votes of the membership and shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Sections 4 and 5 of Article VI and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than forty-five (45) days following the preceding meeting.

Section 4. Absentee Voting. Absentee Voting is allowed for all matters coming before the entire Association membership. As to any matters that require action by the entire Association, the Board of Directors shall give written notice of the proposed action at least fourteen (14) days prior to the time a vote on the matter is to be taken. The notice to the Members shall tell each Member that they can request an absentee ballot from the Secretary of the Association and that absentee ballot must be returned at least three (3) business days prior to the vote actually being taken. Any ballots received less than three (3) business days before the vote is taken will not be counted. The absentee ballot will state the proposed measure and if necessary, will give an explanation to each voter as to what the effect of the vote will mean as to the Association. The Board of Directors prior to sending out the absentee ballot will agree by majority vote what explanation will be given in the notice to each of the Members. The notice will also state what number of votes by the membership will be necessary in order to pass the proposed action.

#### **ARTICLE IV**

##### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members Easement of Enjoyment. Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the common properties when deeded to the Association, and such easement shall be appurtenant to and shall pass with the title to every Lot. The common area is not for the use of the general public, but is for the common use of the Members and their guests. Nothing contained herein shall reduce or eliminate the responsibility of each Lot owner to keep the common area adjacent to his Living Unit free from any obstructions for the benefit of the postal service and other services.

Section 2. Title to Common Area. The Developer may retain legal title to all or any portion of the common area until such time as it has completed improvements thereon or until such time as in the opinion of the Developer, the Association is able to maintain the same, or when the Developer formally announces that no further development of Branch Creek shall occur. It is anticipated throughout the development of Branch Creek that the Owner may deed portions of common area as individually platted Lots, to the Association. Upon the completion of the development or upon formal announcement of no further development, the Developer shall transfer ownership by good and sufficient warranty deed, of any undeeded common area as they then exist, to the

Association. Notwithstanding Developer's ownership of the common area, the Association shall provide for the maintenance of the developed common area.

Section 3. Extent of Members Easements. The rights and easements of enjoyment created hereby and the title of the Association to the common properties shall be subject to the following:

- a. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the common properties, and in aid thereof to mortgage said properties, and the rights of such mortgagee in such property shall be subordinate to the rights of the members hereunder; and
- b. The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure; and
- c. The right of the Association to enact Rules and Regulations governing the use and enjoyment of the common area; and
- d. The right of the Association as provided in its Articles and By-Laws to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid; and to suspend the said enjoyment rights for any period not to exceed thirty (30) days for any infraction and to assess a fine not to exceed \$50.00 for each infraction of its published rules and regulations; provided however, that nothing contained in this subparagraph shall be deemed to deny an owner access to and from his Lot or Living Unit; and
- e. The rights of the Association to charge reasonable admission and other fees for use of the common properties; and
- f. The right of the Owner of each Lot to an exclusive easement on the limited use common properties occupied by fireplaces, roof overhangs, air conditioning compressors, flower boxes, decks, balconies, a 3' wide strip along the Living Unit foundation, driveways immediately adjacent to a garage, or entry way and other appurtenances all of which are part of the original



- construction of any Living Unit or which are added pursuant to the provisions of Article XI hereof; and
- g. The right of the Association to dedicate or transfer all or any part of the common properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, and no determination as to the purposes or as to the conditions hereof, shall be effective unless an instrument signed by members entitled to cast three-fourths of the vote of each class of membership has been recorded agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every member at least thirty (30) days in advance of any action taken.

#### **ARTICLE V**

##### PARKING RIGHTS

The Association shall maintain the private streets for the benefit of the Owners or their guests. No parking shall be allowed on private streets. Parking on publicly dedicated city streets shall be governed by City Ordinance and as further limited as provided for in the protective covenants contained in Article IX hereof. Furthermore, for the avoidance of doubt, this provision shall not entitle an Owner or guest to park in any limited use common area of another Owner.

#### **ARTICLE VI**

##### COVENANTS FOR ASSESSMENTS AND MAINTENANCE

Section 1. Creation of assessments. The Developer for each platted Living Unit Lot owned by it within Branch Creek hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be and hereby is deemed to covenant and agree to pay to the Association: (a) a one-time assessment of \$1,000.00 at the time of purchase or sale of a Living Unit; (b) annual assessments or charges; (c) special assessments for capital improvements; and (d) special assessments for repairs and maintenance, all such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and the costs of collection thereof, shall be the personal obligation

of the person who was the Owner of each Lot at the time when the assessment fell due and shall be a lien against each Lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in Branch Creek and in particular (i) provide for the improvement, maintenance and rent of the common properties and facilities, and (ii) provide services devoted to the use and enjoyment of the properties and Living Units in Branch Creek.

Section 3. Initial Annual Assessment. The initial annual assessment shall not initially exceed \$1,800.00 per platted Lot payable on a prorata basis monthly as hereinafter provided. From and after the year beginning July 1, 2025, the annual assessment may be amended by vote of the members as provided in Section 5 below. However, at the end of each fiscal year, for the succeeding year, the Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for any year in a lesser amount. The assessment for each platted Living Unit Lot owned by the Developer containing a completed unoccupied Living Unit shall be one-half of the annual assessment.

Section 4. Special Assessments. In addition to the annual assessments authorized by Section 3 above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying in whole or in part the costs of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of three-fifths (3/5) of the vote of the membership who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of such meeting shall be sent by first class mail to all the members at least thirty (30) days in advance, and shall set forth the purpose of the meeting.

Furthermore, the Association shall be entitled to assess any Owner for the cost of any repairs authorized in Section 12 below.

Section 5. Change in Annual Assessments. Subject to the limitations of Section 3 hereof, the Association may change the assessments fixed by Section 3 hereof prospectively, provided that any such change shall have the assent of three-fifths (3/5) of the vote of the Members who are voting in person or by proxy at a

meeting called for such purpose, written notice of which shall be sent by first class mail at least thirty (30) days in advance.

Section 6. Quorum for any action authorized under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as set forth in Article III, Section 3.

Section 7. Date of Commencement of Annual Assessments. The annual assessment provided for herein shall commence on the date, which shall be the first day of a month, fixed by the Board of Directors of the Association to be the date of commencement; however, the annual assessment for each Lot owned by the Developer upon which there is no completed Living Unit, shall commence on the first day of the calendar month subsequent to the date such Lot contains a completed unoccupied Living Unit.

The first annual assessment for any Lot with a completed Living Unit shall be made for the balance of the calendar year and shall become due and payable rateably on the first day of each month commencing on the date fixed for commencement as above described. The assessments for any year after the first year shall become due and payable rateably on the first day of each month of said year.

The amount of annual assessments which may be levied for the balance remaining in the first year assessment shall be calculated on a monthly basis. The same reduction in the amount of the annual assessment shall apply to the first assessment levied against any property which is hereinafter added to the properties now subject to assessment at such time other than at the beginning of any annual assessment period.

The due date of any special assessments allowed within this Article shall be fixed in the resolution authorizing such assessments.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment at least thirty (30) days in advance of such date and shall maintain a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Notice of the assessment shall be delivered to every Owner subject thereto as provided in Article XII, Section 3. The Association shall, upon demand, furnish to any Owner liable for

assessment, a certificate in writing signed by an officer of the Association setting forth whether the assessment has been paid. Such certificate shall be conclusive evidence of the payment of assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment. If the assessments are not paid on the date when due as specified herein, then such assessment shall become delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, become a continuing lien on the property which shall bind such properties in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and the Association may bring an action at law against the Owner personally obligated to pay the same, or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event judgment is obtained, such judgment shall include interest, costs, reasonable attorney's fees as allowed by law, and any other expenses allowed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the common properties or abandonment of his Lot.

Section 10. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money mortgage placed upon a Lot subject to assessments; provided however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of a Lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure; such sale or transfer shall not release a Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein;

- a. All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- b. All properties exempted from taxation by the laws of the State of South Dakota.
- c. All common properties as defined herein.

Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from assessments, charges or liens.

Section 12. Exterior and Interior Maintenance. In addition to maintaining the common area, the Association may perform repairs and maintenance, and engage any subcontractors or contractors necessary to perform such maintenance on any or all of the buildings, including Living Units, in Branch Creek. The Association may provide for all exterior maintenance, including repair and replacement of roofs, siding, masonry, gutters, downspouts, painting and staining, and other periodic maintenance to be performed on the buildings. Furthermore, the Association may assume the responsibility for certain interior repairs and maintenance, to the sewers, plumbing, heating, air conditioning and electrical systems to any and all buildings constructed as a part of Branch Creek. Prior to performing any maintenance on a Living Unit, the Association shall give thirty (30) days' Notice thereof to the Owner of such Lot.

Section 13. Cost of Exterior and Interior Maintenance. The cost of any maintenance performed by the Association as allowed for and/or required by Section 12 above, shall be assessed to each Lot Owner and added to the annual assessment assessed to such Lot. Where any such maintenance expense extends to more than one (1) Lot, the cost of such shall be rateably apportioned among the Lots benefitting from such repair or improvements.

Section 14. Maintenance by Owners. Nothing in Section 12 or 13 above shall preclude or relieve an Owner from maintaining a Living Unit. In addition, Owners shall be responsible for the repair and maintenance of the limited use Common Area adjacent to their Living Unit. For the avoidance of doubt, this obligation shall not include snow removal, which shall be performed by the Association. Any repairs, improvements, and/or maintenance performed by an Owner must be accomplished in a workmanlike manner to the satisfaction of the Association and conform to the party wall agreement set forth herein. No repairs, improvements or maintenance may alter the exterior aesthetics of the property,

unless approved in advance as provided for in Article IX below. In the case of any dispute between an Owner and the Association concerning any such maintenance or repairs, the opinion of the Association shall prevail.

Section 15. Authorization of Owner for Creation of Mechanic's Lien, Materialman's Lien and/or Personal Property Lien. If the Owner fails to comply with the maintenance standards set forth in this document as to his or her own real property or if the Owner or his/her guests damage any common area property, then after Notice as provided in Section 12, such Owner specifically authorizes the Association to make such improvements and/or repairs as the Association deems necessary and furthermore, the Owner hereby authorizes the cost of the improvements become a lien on the Owner's Lot pursuant to South Dakota Law.

## ARTICLE VII

### INSURANCE

Section 1. Association Responsibility to Insure. Insurance policies upon the property covering the items described in Section 2 of this Article shall be purchased by the Association as trustee for the benefit of the Association and the Owners and their mortgagees as their interest may appear. Provisions shall be made for the issuance of certificates of mortgage endorsements to any mortgagees.

Section 2. Insurance Coverage. Insurance shall cover the following:

- a. All common properties and betterments, including improvements owned or operated and maintained for the benefit of the Association, and all personal fixtures and property included in the common properties in an amount equal to the insurable replacement value, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against "all risks" of direct physical loss or damage. (For the avoidance of doubt, Owners shall be required to maintain insurance on their Living Unit);
- b. Public liability of at least \$1,000,000 for each occurrence, and bodily injury and property damage liability and with such additional coverage as shall be required by the Board of Directors of the Association, including but not limited to hired automobile and non-

owned automobile coverages, and with cross liability endorsement to cover liabilities of the Owners as a group to a townhouse Owner individually;

- c. Workmen's compensation as required by law; and
- d. Such other insurance, including a Fidelity Bond on the Association's agent handling its monies, as the Board of Directors of the Association shall determine from time to time is desirable.

Section 3. Premium Payment and Assessment. Premiums on insurance policies purchased by the Association shall be paid by the Association as a common expense of the Association.

Section 4. Owner Responsibility to Insure. The insurance of personal liability, personal property and improvements and betterments of individual Living Units, excluding any interest in the common properties, shall be the individual responsibility and cost of the Owners.

Section 5. Proceeds Payable to Association. All insurance policies purchased by the Association shall provide that proceeds covering property losses shall be paid to the Association for the purposes herein provided. The Association shall receive such proceeds as are paid and hold them in trust for the benefit of the Owners and their mortgagees. Such proceeds on account of damage to common properties shall be paid to the Association for the common properties repair.

Section 6. Disbursements of Proceeds. Proceeds of insurance policies received by the Association shall be distributed as follows:

- a. All expenses of the Association incurred in connection with the insurance shall be first paid;
- b. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be expended for such repair or reconstruction. Any proceeds remaining after such repair shall be retained by the Association for the common benefit of the Owners.

## **ARTICLE VIII**

### WHEN DAMAGED PROPERTY IS TO BE RECONSTRUCTED OR REPAIRED

Section 1. Property Owned by the Association. If common properties or townhouses owned or operated and maintained for the benefit of the Association are damaged, they shall be reconstructed or repaired. The Association shall obtain reliable and detailed estimates of the cost to rebuild or repair so as to place the damaged property in condition as good as that before the casualty.

Section 2. Approval. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original buildings or according to the plans and specifications approved by the Board of Directors of the Association or the architectural committee as provided in Article XI.

## **ARTICLE IX**

### PROTECTIVE COVENANTS

Section 1. Residential Use. No Living Unit shall be used except for owner occupied residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than a single family Living Unit. The Developer and/or the Association may elect to construct such maintenance buildings or community building as are necessary for the benefit of the Members. For the avoidance of doubt, no Living Unit shall be used for rental purposes of any kind, including without limitation, vacation rentals, short-term leases or long-term leases; each unit must be occupied by at least one individual identified as an Owner of the Living Unit.

Section 2. Prohibited Activities. No noxious or offensive activities shall be carried on upon any Lot nor shall anything be done thereon which shall become an annoyance or nuisance. No automotive repair may be conducted on any Lot except within a garage, however, no commercial automotive repair shall be conducted under any circumstances. No commercial business, home-based business with regular traffic, including without limitation, daycare, piano studio, counseling office, craft shop, or service oriented trade, shall be conducted in any Living Unit.

Section 3. Prohibited Residences. No trailer, basement, tent, shack, garage, barn, outbuilding or structure of a temporary



character shall be used on any Lot at any time as a residence either temporarily or permanently.

Section 4. Automobile and recreational vehicle storage. No vehicle, recreational vehicle, boat, snowmobile, trailer, or unlicensed motor vehicle may be kept on any Lot or limited use common area, except within a garage for a period of time in excess of five (5) days. Private streets within Branch Creek shall be reserved for travel only; no parking shall be allowed; no Owner shall allow a vehicle or other obstruction to block a private street. Any Owner who violates this Section 4 is subject to having the offending vehicle towed and the costs of such towing and any other expenses incurred by the Association shall be assessed against the Owner. In accordance with Article V, parking shall be allowed on public streets pursuant to City Ordinance, but shall further be limited to parking of trailers, boats, and recreational vehicles for a limited period of time not to exceed 48 hours.

Section 5. Trash Containers. No trash or debris shall be left on or in any Lot except in approved containers. No trash receptacles or incinerators or garbage cans shall be located outside of a building unless placed on a temporary basis only, awaiting pickup. Garbage cans shall be removed within 24 hours following pickup.

Section 6. Residency Restrictions. The number of residents in any Living Unit shall be limited to a family or household as defined in Article I of this Declaration.

Section 7. Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot except that two dogs or two cats or other small household pet may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. No exterior dog kennels will be allowed. Permitted household pets shall not be allowed to run at large, defecate, dig, or scratch any common area. When outside a Living Unit, household pets shall at all times be controlled and restrained on a leash.

Section 8. Mailboxes. Mailboxes shall be a component of original construction of the Living Units. No mailboxes shall be erected by individual homeowners.

Section 9. Signs. No billboards and/or commercial advertising signs of any kind shall be permitted on a Lot or displayed from a Living Unit, except those acceptable and commonly allowed by Ordinance related to the sale of the Lot/Living Unit.

However, the Developer may elect and does hereby reserve the right to be exempt from such limitations during the full time essential and necessary for the complete development, marketing and sale of all Lots in the development. This provision shall not apply to political signs as allowed by City Ordinance and signs supporting school activities.

Section 10. Outdoor Lighting. Any outdoor lighting must not intrude on or interfere with the quiet enjoyment of neighboring property. Exterior lighting shall not be unreasonably bright. Owners shall take care when installing exterior lighting to minimize light pollution onto neighboring property or the street. Light pollution shall be considered a nuisance.

Section 11. Miscellaneous Restrictions. Notwithstanding any omission in this Article IX, the use of any property included in this Declaration shall be restricted by any other limits expressed elsewhere in this Declaration, and by the laws of the State of South Dakota or the Ordinances of the City of Brookings.

## **ARTICLE X**

### ARCHITECTURAL COMMITTEE

Section 1. There shall be created an Architectural Committee which shall be responsible for reviewing the plans of all proposed repairs, additions, or modifications. Such Committee shall be responsible to ascertain that the plans meet the minimum building requirement set forth in this Declaration. The primary purpose of such Committee shall be to assist the Owners in achieving compliance with such building restrictions. Notwithstanding anything contained in this Article to the contrary, the Committee may not approve plans which do not meet the applicable building codes.

Section 2. The Architectural Committee shall consist of not less than three (3) nor more than seven (7) members to be selected annually by the Board of Directors of the Association, with the members to be chosen for varying terms so as to achieve staggered terms and continuity of membership of such Committee. However, the Developer shall have the power to veto any action taken by the Committee until the termination of the Class B membership as specified in Article III, Section 2.

Section 3. No construction, change, modification or alteration for which plans are to be submitted to the Committee shall commence until the plans and specifications showing the

nature, kind, shape, height, materials and location of the same shall be submitted to and approved in writing by the Architectural Committee as to the harmony of external design and location in relation to the surrounding structures and other such factors as the Architectural Committee considers necessary and relevant to maintain the aesthetics in Branch Creek (including external colors and color combinations). In the event the Architectural Committee fails to approve or disapprove such design plan within thirty (30) days after such plans and specifications have been submitted to it, approval will not be required and full compliance with this Section will be deemed to have occurred.

Section 4. Landscaping. Nothing contained in this Article shall entitle any Owner, individually, to landscape any of the common properties, with the exception of the limited use common area adjacent to patios and entry ways and within the 3' wide strip adjacent to the Living Unit foundation. All landscaping and maintenance of lawns and shrubs shall be the responsibility of the Association, with the exception of limited use common area mentioned above, which shall be the Owner's responsibility.

## **ARTICLE XI**

### **EASEMENTS**

Section 1. Owners Easements. Owners shall have an easement and right of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every Lot. However, the right of enjoyment and title of the Owner of each Lot shall include the right of the Owner to an exclusive easement to the limited use common area including areas occupied by roof overhangs, air conditioning compressors, decks, patios, balconies, flower boxes, common utility installments and other appurtenances, which are part of the original construction of any Living Unit or which are added pursuant to the provisions of Article X hereof.

Section 2. Extent of Association Easements. The rights and easements of enjoyment by the Owner of each Lot and the title of such Lot shall be subject to the rights of the Association to an easement on and over said Lot for the purpose of installation and maintenance of necessary utilities.

Section 3. Access and Utility Easements. There is hereby reserved and created a blanket easement upon, across, over, and under Branch Creek for each Living Unit thereon for ingress and egress therefrom, and to allow installation, replacement, repairing and maintaining all utilities. By virtue of this

easement it shall be expressly permissible for any governmental body or public utility to install, erect, repair, replace and maintain any and all equipment necessary or appropriate for providing utility services within the development. In the event it should be necessary to enter an individual townhouse for these purposes, notice shall be given to the Owner thereof and where possible permission obtained if it cannot be accomplished without unreasonable delay. These easements shall in no way affect any other recorded easements on the Premises and shall be appurtenant to each Lot and shall pass with title to each Lot whether specifically recited on such deed or not.

## **ARTICLE XII**

### **PARTY WALLS**

Section 1. General Rules to Apply. Each wall which is built as part of the original construction of the Living Units in Branch Creek and placed on the dividing line between sublots shall be a party wall, and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

## **ARTICLE XIII**

### **GENERAL PROVISIONS**

Section 1. Duration. The covenants, restrictions and easements of this Declaration shall run with the land and bind and inure to the benefit of and be enforceable by the Association or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, for the longest period allowed by South Dakota law from the date this Declaration is recorded,

including any automatic extension allowed by law, and continuing for successive periods thereafter.

Section 2. Amendment. Amendments to this Declaration may be affected by a two-thirds (2/3) vote of the members of the Association. Any amendments to this Declaration must be recorded.

Section 3. Severability. Invalidation of any one of these covenants and restrictions by judgment or Court order shall in no way affect the remaining provisions.

Section 4. Notice. Any notice to be given pursuant to this Declaration shall be given to the Owner of any Lot at the legal address in writing by certified or first class mail. Notice to any Owner may also be sent by electronic mail; receipt of an Owner's email address shall be considered consent to receipt of emails. Notice to the Association shall be by certified mail to the registered agent of the Association as set forth in the Articles of Incorporation for the Association or as later amended.

Section 5. Waiver. Failure of the Association or any Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

\*\*\*Remainder of this page left intentionally blank.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants and Restrictions to be executed this 20 day of January, 2025.

BRANCH CREEK, LLC, a South  
Dakota Limited Liability Company

BY: TL M. Fish  
THOMAS M. FISHBACK  
ITS: MANAGING MEMBER

STATE OF SOUTH DAKOTA )  
  :SS  
COUNTY OF BROOKINGS )

On this the 20<sup>th</sup> day of January, 2025, before me, Joshua M. Reisetter, the undersigned officer, personally appeared THOMAS M. FISHBACK, who acknowledged himself to be the Managing Member of BRANCH CREEK, LLC and acknowledged that he executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself in the capacity therein stated.

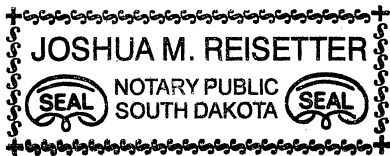
Subscribed and sworn to before me this 20<sup>th</sup> day of January, 2025.

(SEAL)



Notary Public - South Dakota

My Commission Expires: 8/29/2029



**EXHIBIT "A"**

The South Half of the Northwest Quarter ( $S\frac{1}{2}NW\frac{1}{4}$ ) and Lots Three (3) and Four (4), all in Section One (1), Township One Hundred Nine (109) North, Range Fifty (50) West of the 5<sup>th</sup> P.M., also described as the Northwest Fractional Quarter ( $NW\frac{1}{4}$ ) of Section One (1), Township One Hundred Nine (109) North, Range Fifty (50) West of the 5<sup>th</sup> P.M., specifically including Lots One (1) and Two (2) in Block One (1); Block Two (2) and Block Three (3); all of Branch Creek Addition to the City of Brookings, Brookings County, South Dakota.

EXCEPT the North Five Hundred Forty Feet (N 540') of the East Six Hundred Fifty (E 650') of Lot Three (3) in the Northwest Quarter ( $NW\frac{1}{4}$ ) of Section One (1), Township One Hundred Nine (109) North, Range Fifty (50) West of the 5<sup>th</sup> P.M., Brookings County, South Dakota; and

EXCEPT Substation Addition to the City of Brookings, Brookings County, South Dakota; and

EXCEPT the West One Hundred Fifty (W 150') of the Northwest Quarter ( $NW\frac{1}{4}$ ) of Section One (1), Township One Hundred Nine (109) North, Range Fifty (50) West of the 5<sup>th</sup> P.M., City of Brookings, Brookings County, South Dakota (now known as Trail Addition); and

EXCEPT the North Forty Feet (N 40') of Government Lots Three (3) and Four (4) except the East Six Hundred Fifty Feet (E 650') of Government Lot Three (3) AND except the West One Hundred Fifty Feet (W 150') of Government Lot Four (4) in the Northwest Quarter ( $NW\frac{1}{4}$ ) of Section One (1), Township One Hundred Nine (109) North, Range Fifty (50) West of the 5<sup>th</sup> P.M., in the City of Brookings, Brookings County, South Dakota; and

EXCEPT the West One Thousand Six Hundred Feet (W 1,600') of Government Lots Three (3) and Four (4), also described as the North Half of the Northwest Quarter ( $N\frac{1}{2}NW\frac{1}{4}$ ), except Block One (1) and Block Two (2) of Trail Addition, Substation Addition and previous acquired right-of-way, all in Section One (1), Township One Hundred Nine (109) North, Range Fifty (50) West of the 5<sup>th</sup> P.M., now in the City of Brookings, Brookings County, South Dakota; AND the West One Thousand Six Hundred Feet (W 1,600') of the South Half of the Northwest Quarter ( $S\frac{1}{2}NW\frac{1}{4}$ ), except Block Two (2) of Trail Addition, all in Section One (1), Township One Hundred Nine (109) North, Range Fifty (50) West of the 5<sup>th</sup> P.M., Brookings County, South Dakota; and

EXCEPT the East Six Hundred Fifty Feet (E 650') of Government Lot Three (3), except the North Five Hundred Forty Feet (N 540') thereof, in Section One (1), Township One Hundred Nine (109) North, Range Fifty (50) West of the 5<sup>th</sup> P.M., in the City of Brookings, Brookings County, South Dakota; AND the East Six Hundred Fifty Feet (E 650') of the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$ ) of Section One (1), Township One Hundred Nine (109) North, Range Fifty (50) West of the 5<sup>th</sup> P.M., Brookings County, South Dakota; and

EXCEPT the North Three Hundred Seventy-seven Feet (N 377') of the West Four Hundred Twelve Feet (W 412') of the East One Thousand Sixty-two Feet (E 1,062') of Government Lot Three (3).

EXCEPT all platted areas

But including:

Lots 1-12 and Lots 33-36 in Block 2; and Lots 1-8 in Block 3; and all of the remaining Block 2 and Block 3; all of Branch Creek Addition, an Addition to the City of Brookings, Brookings County, South Dakota.



10TH ST SOUTH



- Additional Points of Interest**
- C-Calculation Area
  - Community Walkway
  - Perimeter Walkway
  - Play Building
  - C-Calculation Area
  - Park
  - Future Considered LPA
  - Additional Off-Site Parking

