

Prepared By:

Smiths Cove LLC  
45245 SD Hwy 34  
Madison, SD 57042

## DECLARATION OF RESERVATIONS AND RESTRICTIVE COVENANTS AND CONDITIONS

THIS DECLARATION OF RESERVATIONS AND RESTRICTIVE COVENANTS AND CONDITIONS (this "Declaration") is made on this 8<sup>th</sup> day of JUNE 2022, by Smiths Cove, LLC a South Dakota Limited Liability Company, with a principal office address of 45245 SD Hwy 34, Madison, SD 57042 (hereinafter referred to as "Developer").

### RECITALS:

A. Developer is the fee owner of certain undeveloped real property which is legally described as follows:

***Tract 1 of Smith's Cove Development Addition in the NE ¼ of Section 6, Township 105 North, Range 51 West of the 5<sup>th</sup> P.M., Lake County, South Dakota.***

B. Developer intends to develop and improve the Property and to offer individual residential lots for sale to the public; and

C. Developer desires to subject all of said lots to certain covenants, agreements, easements, restrictions, conditions and charges, and to reserve for itself, its successors and assigns, easements for public utilities, drainageways and storm sewers, all in order to insure the harmonious and systematic development of the Property.

NOW, THEREFORE, Developer hereby declares that the Property shall be held, transferred, sold, conveyed and occupied subject to those covenants, conditions, restrictions, easements, charges and liens which are hereinafter set forth, which such covenants, conditions, restrictions and easements shall run with the Property and shall be binding upon all parties having any right, title or interest in the Property or any part

thereof, together with their heirs, legal representatives, successors and assigns, and shall inure to the benefit of each such party.

## ARTICLE 1

### DEFINITIONS

**1.1 Definitions.** The following words, when used in this Declaration, shall have the following meanings:

- (a) **“Developer”** shall mean and refer to Smith's Cove, LLC, a South Dakota company, its successors, and assigns.
- (b) **“Lot”** shall mean and shall refer to any tract, parcel or plot of land designated as a lot shown upon any recorded plat or subdivision map of the Property, whether recorded or not and whether finally approved or not.
- (c) **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot (excluding, however, contract sellers and including in their place their contract purchasers, and further excluding any person having such interest merely as security for the performance of an obligation).
- (d) **“Smith's Cove Development”** shall mean and refer to the Property and to all prior and future parcels, if any, which are or will be a part of Smith's Cove Development, Lake County, South Dakota.
- (e) **“Common Areas”** shall mean and refer to those areas of Smith's Cove Development which are set aside for and dedicated to the common use and enjoyment of all Owners, subject to such terms and conditions as may be established, modified, or amended in the sole discretion of Developer.
- (f) **“County”** shall mean and refer to The County of Lake, South Dakota.

## **ARTICLE 2**

### **PLATTING OF ADDITIONAL PROPERTIES**

**2.1** Developer shall have the right, without obtaining the consent of the Owners, to bring within the scheme of Smith's Cove Development and this Declaration additional real property, and to render such additional real property subject to this Declaration, by executing and recording one or more Supplements to this Declaration (a "Supplemental Declaration") containing the following:

(a) A description of the additional land to be made subject to this Declaration and/or Smith's Cove Development.

(b) A statement that the Developer is a fee simple Owner of the additional land or a statement that all persons joining in any such Supplement constitute the entire fee simple ownership of the additional land.

(c) A statement of any additional Restrictions to which the additional land shall be subjected, if any, and a statement of any Restrictions of this Declaration which shall not be applicable to the additional land or which will be applicable in modified form, if any.

**2.2** Following the execution and recording of any such Supplemental Declaration, the additional land and the owners of the additional land shall in all respects be fully subject to the covenants and restrictions set forth in this Declaration, except as otherwise provided in the Supplemental Declaration.

## **ARTICLE 3**

### **EASEMENTS / ROAD DISTRICT**

**3.1** Easements are hereby reserved by Developer for water, electricity, storm sewers, drainage, telephone/television/Internet, streetlights, cluster mailboxes, and public road right of way, all as more particularly shown on the plat or plats of Smith's Cove Development. Said reserved easements areas may be utilized for the purposes of ingress, egress, and for the installation, replacing, repairing and maintaining of utilities placed within the easement areas. The easement areas reserved by Developer, as shown on the plat of Smith's Cove Development, are hereby dedicated to those utilities and entities that provide the various services referred to herein. The Owner of a Lot shall maintain the easement area located upon such Owner's Lot, except for those improvements for which a public utility or public authority is responsible. No structure or building shall be placed or permitted to remain on or to interfere with the dedicated easement areas. In the event an

Owner plants trees or greenery, landscaping, fencing, or other materials or structures on such dedicated easement areas, such items may be disturbed or removed consistent with the use of the easement, with no liability accruing to any person or entity due to such disturbances or removal.

**3.2** The Developer, along with the Lake County board of Commissioners, will establish a Road District for the purpose of maintaining any public streets and infrastructure included in Smith's Cove Development. The establishment of the Road District shall define the boundaries for the district and define the need for work and maintenance of public infrastructure within the territory of the district. Each Owner of each Lot in the Development shall be burdened with the responsibilities and costs associated with the Road District according to the governing documents thereof.

## **ARTICLE 4**

### **ARCHITECTURAL REVIEW AND ARCHITECTURAL GUIDELINES**

**4.1** In order to maintain the criteria for standards, to prevent the impairment of the attractiveness of the individual Lots, to maintain the desired tone of Smith's Cove Development, and to thereby secure to each Owner the full benefit and enjoyment of such Owner's Lot with no greater restriction on the free and undisturbed use of a Lot than is necessary to ensure the same advantages for the other Owners, an Architectural Guidelines document shall be established and shall accompany each agreement to purchase and convey any parcel sold within Smith's Cove Development. The Architectural Guidelines shall serve to compliment and further detail the materials and requirements for construction within Smith's Cove Development as described in this Declaration.

**4.2** The approval of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Developer, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent. Further, such approval shall not be deemed as a waiver of strict compliance with the terms and conditions of this Declaration, and any ambiguity, inconsistency or conflict arising in connection with an approval shall be resolved solely by reference to this Declaration.

**4.3** The review and approval of any application submitted pursuant to this Article IV shall be made on the basis of aesthetic considerations only, and the Developer shall not bear any responsibility of insuring the structural integrity or soundness of approved construction or modifications, nor for insuring compliance with building codes, land use regulations, or any other government regulations or requirements. Neither Developer nor any principal or member thereof, shall be held liable for any injury, damage or loss arising out of the manner or quality of

approved construction on, or modifications to, any improvement or structure, and Owners hereby release and agree to indemnify the foregoing, their respective heirs, legal representatives, successors, and assigns, and to hold them harmless with respect thereto.

## **ARTICLE 5**

### **RESTRICTIONS**

**5.1** The minimum yard and set-back requirements, the maximum height restrictions, and the permitted uses of the Property shall all be governed by applicable ordinances and regulations promulgated by the County or any other applicable governing body.

**5.2** No Lot shall be used for any purpose except for a permitted use under applicable zoning laws, rules and regulations. No Lot may be subdivided, reduced in size or replatted to any tract or parcel smaller than the whole of the Lot as presently platted, except by Developer; provided, however, that an Owner may acquire an adjacent Lot or Lots for the purpose of increasing the size of such Owner's original Lot, but any Lot so increased in size may never contain more than one detached single family residential dwelling; provided further, however, that any combination of Lots, whether by replatting or otherwise, shall not affect the rights, duties and obligations set forth herein, as concerns the voting rights and financial obligations of the Lots as presently platted (e.g., if two Lots are replatted into one Lot, the Owner retains the rights, duties and obligations associated with two Lots, not one Lot). Lots combined via replatting may again be replatted and returned to their original state.

**5.3** No building shall be constructed, altered, or permitted to remain on any Lot that does not comply with the zoning ordinance of the County as it relates to the Property. All building construction must comply with the restrictions and requirements of these covenants, as well as any applicable ordinances and building code requirements.

**5.4** The Developer may choose to enforce square footage requirements through the use of additional deed restrictions or Architectural Guidelines incorporated contractually as part of a sales transaction to an Owner. For purposes of these restrictions, "square footage above grade" is any portion of the structure which is entirely above or upon the surface of the earth. Any floor level that is in whole or in part below the surface of and/or surrounded by earth shall not be considered as being above or upon the surface of the earth. Garages and open porches are excluded in calculating the above areas.

**5.5 Prohibited Activities:**

(a) The following activities and structures are hereby prohibited on the Property or on any Lot:

(1) Mobile homes, tents, shacks, and temporary buildings used as residential dwellings.

(2) No noxious or offensive trade or activity and no commercial or retail activity, as defined by law, shall be carried on upon a Lot, nor shall anything be done which may become an annoyance or nuisance, as defined by law;

(3) Vehicles, trailers, materials, or other items that are not personal property of the Owner;

(b) In addition to the foregoing said prohibited activities, Owners shall do and perform the following:

(1) Each Owner of a vacant Lot must keep and maintain such Lot in a neat and clean condition. Each such Lot shall be regularly mowed to keep the length of grass and weeds as mandated by any local governing authority. Upon failure to comply with this covenant, and after three days' written notice is given, Developer may perform (but shall not be required to perform) such maintenance as is necessary and bill the Owner for all expense incurred.

(2) No Lot shall be used or maintained as a dumping ground for rubbish or as a storage area for any trash, garbage or other waste. Any such trash, garbage or other waste shall be kept within sanitary containers and shall be stored either in an enclosure, within outbuildings or garages, or within a screened device for that purpose. No abandoned, junked or non-used vehicles or trailers shall be kept or store on any Lot.

(3) There shall be no substantial change in grade levels as they exist without approval of the Developer. Runoff and erosion shall be controlled on site during construction with erosion control barriers. All disturbed ground areas of a construction site shall be sodded or seeded, and covered with plants or mulched with approved landscape materials.

## **ARTICLE 6**

### **MISCELLANEOUS CONDITIONS.**

**6.1** Swimming pools are permitted; provided however, that swimming pools shall not be constructed in the side yards or front yards of any Lot without prior written approval from the Developer

**6.2** The front yard of any Lot shall not be fenced. The rear yard and side yard of any Lot may be fenced. All fencing must comply in all respects with all applicable regulations, codes and ordinances.

**6.3** All driveways shall be cast-in-place concrete or asphalt surfaced. Public sidewalks (if required) in the public right-of-way shall be cast-in-place concrete. All sidewalks will be subject to construction guidelines and ordinances set forth by the County including, but not limited to, applicable building codes or ordinances regarding accessibility.

**6.4** All utilities shall be installed beneath the surface of the earth; provided, however, that wireless telephone/television/internet service and its associated equipment shall be allowed.

**6.5** An owner may keep pets and or livestock on the Property for personal enjoyment. Allowable pets include domestic animals such as, but not limited to, cats, dogs, or other small animal varieties commonly considered as household pets. In no circumstance shall an Owner have pets or livestock on the Property for the purpose of breeding or for commercial purposes.

**6.6** The construction of any improvements on a Lot must be engineered in a manner ensuring that there will be proper drainage which is not detrimental to adjoining Lots or properties. Elevations at all property lines shall not be altered from engineered construction plans or the Developer may, at any time during or after the process of construction of a residence on a Lot, request changes to grading of such Lot that is found to be a nuisance or in contravention of any engineering and/or construction plans to any adjacent Lot, street, easement, or Common Area. In the event the Owner of a Lot creating such a nuisance fails or refuses to commence the work required to remedy the nuisance within the timeframe requested by Developer, Developer may, in its sole discretion, enter the Lot and perform such reasonable work as to remedy the nuisance, and in such an event shall charge the Owner of the Lot for all fees and reasonable expense incurred in remedying such nuisance.

## **ARTICLE 7**

### **HOMEOWNER'S ASSOCIATION**

**7.1** Developer shall have the right, in its sole discretion, and without obtaining the consent of the Owners, to bring within the scheme of Smith's Cove Development and this Declaration, a non-profit Home Owners Association (the "HOA") to be formed and organized under South Dakota law. The HOA would have as its primary purpose the preservation of the values and amenities of Smith's Cove Development, the maintenance or care of a portion of Smith's Cove Development (public or private) as established by the Developer, and the promotion of the health, safety, recreation, welfare, and enjoyment of the Owners by executing and recording a Supplement to this Declaration (the "Supplemental Declaration") containing the following:

- (a) A description of the land to be made subject to this Declaration;
- (b) A statement that the Developer is a fee simple Owner of the land or a statement that all persons joining in the Supplement to this Declaration constitute the entire fee simple ownership of the additional land;
- (c) A statement of any additional Restrictions to which the land shall be subjected, if any, and a statement of any Restrictions of this Declaration which shall not be applicable to the land or which will be applicable in modified form, if any.

**7.2** Following the execution and recording of the Supplemental Declaration, the land and the Owners of the land subject to the Supplemental Declaration shall in all respects continue to be fully subject to the covenants and restrictions set forth in this Declaration, except as otherwise provided in the Supplemental Declaration, and each Owner shall be a Member of the HOA and shall be entitled to and burdened by all of the rights, duties and obligations thereof, as set forth in the governing documents and/or Bylaws of the HOA.

## **ARTICLE 8**

### **GENERAL PROVISIONS**

**8.1** The covenants, conditions and restrictions set forth in this Declaration, are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of Lots has been recorded with the Lake County South Dakota



