

Prepared By:
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RESOLUTIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION made on the date hereinafter set forth by SHS DEVELOPMENT, L.L.C., a South Dakota Limited Liability Company hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Custer, County of Custer, State of South Dakota, which is more particularly described as follows:

LOTS 13-41 OF BLOCK 3 OF STONE HILL SUBDIVISION LOCATED IN A PORTION OF TRACT DENVER, SECTION 24, T3S, R4E AND SECTION 19, T3S, R5E, BHM, CUSTER CITY, CUSTER COUNTY, SOUTH DAKOTA. Hereinafter referred to as PHASE I of Stone Hill Subdivision.

LOTS 1-16 OF BLOCK 4 OF STONE HILL SUBDIVISION LOCATED IN A PORTION OF TRACT DENVER, SECTION 24, T3S, R4E AND SECTION 19, T3S, R5E, BHM, CUSTER CITY, CUSTER COUNTY, SOUTH DAKOTA. Hereinafter referred to as PHASE II of Stone Hill Subdivision.

LOT 17 OF BLOCK 4 OF STONE HILL SUBDIVISION LOCATED IN A PORTION OF TRACT DENVER, SECTION 24, T3S, R4E AND SECTION 19, T3S, R4E BHM, CUSTER CITY, CUSTER COUNTY, SOUTH DAKOTA.

THE UNPLATTED PORTION OF TRACT DENVER SECTION 24, T3S, R4E AND SECTION 19, T3S, R5E, BHM, CUSTER CITY, CUSTER COUNTY, SOUTH DAKOTA. Hereinafter referred to as FUTURE PHASES of Stone Hill Subdivision.

AND WHEREAS it is the intent of the Declarant to protect and promote the value and desirability of the entire Stone Hill Subdivision,

AND WHEREAS Declarant intends to subdivide the Unplatted Portion of Tract Denver in phases and hereby specifically intends for and declares said property as may hereinafter be further platted, to be bound by and subject to this Declaration.

NOW, THEREFORE, Declarant hereby declares that the easements, reservations, restrictions, covenants and conditions set forth herein below shall run with the real property and be binding on all parties having any right, title or interest in the Stone Hill Subdivision properties described herein above, or any part thereof, their heirs, successors and assigns, and shall endure to the benefit of each owner thereof.

AND, THEREFORE, The Declarant reserves the right, at Declarant's sole discretion, and in his continued development of said property to specify additional Dwelling Area size requirements, Garage sizes, Height Restrictions, Modular Homes restrictions and Re-subdivision for each subsequently platted portion of the Future Phases. Such requirements shall be filed with the office of the Register of Deeds of Custer County as an Addendum

to these Resolutions of Covenants, Conditions and Restrictions. Such Addendums shall be an addition to this Resolution and shall not replace the easements, reservations, restrictions, covenants and conditions set forth herein below. In addition Declarant reserves the right to release or exempt any portion of the Future Phases of Stone Hill Subdivision at Declarant's sole discretion.

ARTICLE I - ARCHITECTURAL CONTROL

Section 1. An Architectural Control Committee shall be created by the Declarant consisting of three members. A majority of the committee may designate a representative to act for it. In the event of gap or resignation of any member of the committee, the remaining members shall have the full authority to designate a successor.

No dwelling, building, fence, or any other structure may be erected, altered externally or construction commence thereon unless a complete set of plans and specifications, hereinafter referred to as plans, is submitted in advance of such construction or alteration to the committee. The plans submitted to the committee shall be in such complete form and details as to be biddable and shall contain site plan, grading plan, landscaping plan, floor plan, setbacks, exterior finishes and colors, and sketches of all exterior and site elevations. The committee shall approve or disapprove in writing such plans within 30 days after they are submitted. Failure of the committee to act within the set 30 days shall constitute approval of the said plans. In approving or disapproving the plans submitted to it, the committee shall take into consideration the design, style and construction of the proposed building or alterations, its location on the lot, the harmony of its design, architecture and location with the terrain and surrounding neighborhood and shall determine whether such proposed building is consistent with the general terrain, the architecture of the other buildings located upon property subject to this declaration and whether or not the construction or alteration of the said building will adversely affect or decrease the value of other property in the subdivision because of its design, location, height, color or type of materials used on construction.

The committee may make reasonable requirements of the lot owners, including the submission of additional plans to insure conformance of such building when erected with these restrictions and covenants and with the plans submitted for approval.

The committee may require such changes as may be necessary to conform to the general purpose as herein expressed. The committee shall have authority to grant variances from the provision of this declaration in cases of irregular shaped lots, unusual terrain, or other conditions wherein the strict enforcement of these covenants would result in unusual hardship. The committee shall be the sole and exclusive judge of whether or not said hardships exist.

Whenever the committee disapproves any proposed plans or specifications, it shall state in writing its reasons for such disapproval in general terms so that the objections can be met by alterations acceptable to the committee.

It is the intent of these declarations that the committee shall exercise discretionary powers hereunder and its discretion shall be final and conclusive.

The committee shall resolve all questions of interpretation. They shall be interpreted in accordance with their general purpose and intent as expressed. Members of the Architectural Control Committee shall not be liable to any party whatsoever for any act or omissions.

Section 2 - Dwelling Area Requirements. The minimum size for all homes shall be as outlined below unless otherwise approved by the committee. The minimum size refers to the finished living area of the main structure, exclusive of basements, walk out basements, porches, patios, covered but unenclosed areas, garages and any attached accessory buildings.

Phase I: Single Story: 1400 square feet for a one-story house.

Two Story: 1000 square feet on the first floor with a minimum total size of 1600.

Phase II: Single Story: 1000 square feet for a one-story house.

Two Story: 800 square feet on the first floor with a minimum total size of 1200.

ARTICLE II - RESTRICTIONS TO RESERVE THE RESIDENTIAL CHARACTER

Section 1 - Property Uses. All lots and building sites in the subdivision shall be erected exclusively for private residential purposes. No dwelling erected or maintained within the subdivision shall be used or occupied for any purpose other than for a single-family dwelling. No business, profession or any other activity conducted for gain shall be carried on or within any lot or building site unless otherwise approved in writing by the committee.

Notwithstanding anything to the contrary in any section of these Resolutions, Lot 17 of Block 4 is hereby set aside and designated as a Commercial or Multi Family Development lot and shall not be subject to the restrictions included in these resolutions as to use. Declarant reserves the right at Declarant's sole discretion to determine what shall be considered an acceptable development and use for Lot 17 of Block 4.

Section 2 - Structures. No structure shall be erected within the subdivision except single family dwellings and those accessory buildings and accessory structures which have been approved by the committee. No manufactured homes, structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used on any portion of said property at any time as a residence either temporarily or permanently. Modular homes will be allowed only in Phase II at the Architectural Control Committee's discretion.

Section 3 Construction Type. Except as approved by the Architectural Control Committee, all buildings or structures erected on said property shall be of new construction. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling or structure may be moved onto a lot or building site except as expressly hereinafter provided for temporary buildings.

Section 4 - Storage. No building materials shall be stored on any lot except temporarily during continuous construction of a building or its alteration or improvements.

Section 5- Substantial Completion. A Structure shall not be occupied in the course of original construction until substantially completed, thus being consummated when a certificate of occupancy is granted by the City. All of the construction shall be prosecuted diligently and continuously from time of commencement until fully completed.

Section 6 – Construction Completion. Exterior of all buildings and attached buildings must be completed within nine months after the commencement of construction except where such completion is not possible or would result in great hardships due to strikes, fires, national emergencies or natural calamities.

Section 7 – Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only with the permission of the committee. Model homes may be used and exhibited only with the permission of the committee. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes, or at such time as required in writing by the committee.

Section 8 – Garages. An attached garage must be built during the construction of the house.

Phase I: The attached garage must be large enough in size to enclose two automobiles parked side by side and shall not be larger than a 3 car garage.

Phase II: The minimum size of the attached garage is 20 feet by 20 feet and must accommodate at least one vehicle and shall not be larger than a 3 car garage.

Section 9 - Roofs. The surface of all roof areas shall be a cedar shingle, cedar shake, concrete tile, colored standing seam metal, or dimensional asphalt shingles or their equivalent as approved in writing by the committee. The roof pitch of all structures and coverings shall be subject to approval by the committee.

Phase I: The minimum allowable roof pitch is 5:12.

Phase II: The minimum allowable roof pitch is 4:12.

Section 10 - Siding. All exterior siding finishes shall be only of stone, stone veneer, cultured stone, brick, brick veneer, synthetic stucco, logs, wood siding, concrete plank siding, hardboard siding or log siding. No steel siding, imitation brick or stone siding, vinyl siding, aluminum siding, tar paper, asbestos shingles or concrete blocks will be allowed as exterior siding finishes. All exterior colors shall be earth tone as approved by the Architectural Control Committee.

Section 11 – Driveways. All driveways and off street parking spaces shall be paved with either asphalt or concrete.

Section 12 – Sidewalks. A 5’ wide curbside sidewalk shall be installed along the street frontage of every lot by individual lot owners and/or their respective builder at their expense at such time as a building permit is issued by the city for construction of real estate improvement on each lot. However no sidewalks will be required along Sidney Park Road.

Section 13 – Commercial uses. Commercial development is prohibited in Stone Hill Subdivision with the exception of Lot 17 of Block 4.

ARTICLE III - DENSITY, SETBACKS AND QUALITY STANDARDS

Section 1 – Setback Areas. Except with approval of the committee and the City Custer, no house, accessory building, projections or other part of a building shall be located within 22 feet of the front lot line adjoining the street and no garage shall be located within 18 feet of the front lot line. Further, a setback of 25 feet is required along rear lot lines and a setback of 8 feet is required on side lot lines. The committee approval for alterations may be given only when the committee determines setback variations to have minor impact, to be minor in nature and to be in the interest of superior design. All construction must also conform to the building codes, zoning code and subdivision regulations of the City of Custer, South Dakota, which regulations may vary from the provisions of this section and other sections.

Section 2 - Resubdivision. No further subdivision or resubdivision of any lot or combination of lots as shown on the plat shall be permitted except upon prior approval of the committee.

Section 3 – Height Restrictions. In order to preserve and protect views from neighboring lots the height of all dwellings and other structures will be limited to one or two stories exclusive of basement. The Architectural Control Committee will allow two story structures at their sole discretion. No dwelling or other structure shall be more than two stories in height except with prior permission of the committee.

Section 4 – Accessory Buildings. Any accessory building or structure shall harmonize in appearance with the dwelling situated on the same lot. The committee may order the removal of any accessory building not meeting this criterion.

Section 5 – Antennas and Aerials. Without prior written approval of the committee, no aerial or antenna, for reception or transmission or other electrical signals shall be placed out or maintained on the roof of any buildings nor shall they be maintained in any other exterior location so as to be visible from neighboring property or adjacent streets with the exception of no more than two small satellite TV dishes.

Section 6 – Solar Systems and Facilities. No solar system and or facility either active or passive shall be allowed without the prior approval of the Declarant and or committee. Adequate data on the said system as to location and style shall be submitted before approval or denial. The committee may order the removal of any such installation not having the written approval by the committee.

Section 7 – Owners Maintenance. Each owner shall maintain exterior finish of any structure, lawns and landscaping, walks and driveways in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be painted or stained periodically and before the surfacing becomes weather beaten or is worn off.

Section 8 – Fences. Fences or walls, as defined as those constructed of wood, metal or masonry products, or such other comparable fence as may be approved by the committee, shall be no more than six feet in height. No other material may be used for fences unless previously approved by the committee. On fences facing streets the side facing outward from the lot shall be covered. Except with approval of the committee, no fence or hedge more than three feet in height shall be installed closer to adjoining street than the dwelling or any other building located on the lot.

ARTICLE IV - LIVING ENVIRONMENT STANDARDS

Section 1 - Building and Ground Conditions. Each owner shall prevent the development of any unclean, unsightly or unkempt conditions of the buildings or grounds on his or her lot which tends to substantially decrease the beauty of the neighborhood as a whole or specific area. No building materials shall be stored on any lot, except temporarily during continuous construction of a building, unless enclosed within a building.

Section 2 - Maintenance Equipment. All maintenance equipment shall be stored in an enclosed structure so as not to be visible for the neighboring property or adjoining streets.

Section 3 – Tanks, Clotheslines, and Playgrounds. No elevated tanks of any kind shall be permitted upon any lot. All tanks for storage of gas, fuel oil, propane, or gasoline shall be buried or hidden from view by means of a solid type fence or wall of design and finish similar to the exterior of the dwelling. All outdoor clothes poles, clotheslines and other facilities for drying and airing of clothing or household goods shall be placed or screened by a fence or shrubbery so as not to be visible from neighboring property or adjacent streets. Swing sets, gyms, playhouses, trampolines, and all other playground equipment and toys must be screened from view and be located in the back yard of the residence. All such improvements are subject to review by the Architectural Control Committee.

Section 4 - General Excavation. No surplus dirt, rock, or debris shall be left on any portion of a lot. It is the responsibility of individual lot owners and builders to temporarily stabilize all disturbed areas to the best of their abilities in order to prevent dirt or sediment from leaving the site. Each lot shall have adequate ground cover to prevent erosion and provide a pleasant environment.

Section 5 - Garbage and Refuse Disposal. No lot or easement shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be disposed in a sanitary manner. All containers or other equipment for the storage or disposal of garbage or trash shall be kept in a clean, sanitary condition. The burning of trash in outside incinerators, barbecue pits or the like is prohibited, it being intended that all refuse, trash, garbage and the like shall be hauled from the subdivision. Garbage cans are to be kept out of the public view at all times except during refuse collection.

Section 6 - Nuisances. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on on any lot or in any residence.

Section 7 - Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of the said lots, except for a reasonable number of domestic household pets, such as dogs or cats, may be kept, provided they are not maintained for commercial purposes, and do not make objectionable noises or become an annoyance or nuisance of any sort to the neighborhood.

Section 8 - Landscaping. Time not to exceed twelve months after completion of a dwelling, all yards and reasonable open spaces shall be landscaped and maintained in lawns or other material. Any revisions of the landscaping plan are subject to approval from the Architectural Control Committee prior to the start of work.

Section 9 - Signs. The only signs permitted on any lot or Structure shall be:

- A. One sign offering of the signed property for sale or for rent.
- B. One for identification of occupant and address of any dwelling.
- C. Multiple signs for sales, administration and directional purposes installed by, or with the permission of the Declarant or committee.
- D. Signs as may be necessary to advertise of rules and regulations or to caution or warn of danger.
- E. Signs as may be required by law.
- F. Entrance and identification signs for the development may be placed in the proper areas.
- G. Signs used by builder or developer to advertise the property during the construction, development and sales period.

Section 10 – Trailers, Campers, Etc. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, motorcycle, or boat trailer may be stored on any street or within any

lot or building site unless screened in a manner approved by the committee so as not to be readily visible from any neighboring property or streets.

Section 11 - Junk Cars. No stripped down, partially wrecked or junked motor vehicle or part thereof, shall be permitted to be parked on any street or upon any lot in such manner as to be visible from any neighboring property or street.

Section 12 – Oil and Mining Operations. No oil, gas, or mineral drilling operations or mineral operations of any kind shall be permitted upon any lot.

ARTICLE V - DEFINITIONS

Section 1 - Accessory Building. Detached garages, patios, swimming pools, covers, enclosures, dressing rooms or other similar structures, recreation facilities, separate guest houses without kitchens, separate servants quarters without kitchens and other buildings customarily used in connection with a single family residence.

Section 2 - Building Sites. A lot as established by the recorded plat or the combination of two or more lots or portions thereof as approved by the Declarant.

Section 3 - City. The City of Custer, South Dakota.

Section 4 - These Covenants. This declaration and the provisions contained in it.

Section 5 - Lot. Each area designated as a lot in any recorded plat of the subdivision.

Section 6 - Lot Lines. Front, side and rear lot lines shall be the same as defined in the zoning regulations of the City of Custer, South Dakota. In the absence of such a definition, a front lot line is each boundary (whether one or more) between the lot and any public street. A side lot line is any boundary line which meets and forms an angle with a public street except that for a corner lot with two front lot lines, the side lot line is the boundary which forms an angle with the street which affords the principal access to the lot.

Section 7 - Structure. Any thing or device other than trees and landscaping, the placement of which upon any building site might affect its architectural appearance, including by way of illustration and not limitation, any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall, tent, covering or outdoor lighting. Structures shall also mean an excavation or fill of volume of which exceeds 5 cubic yards or any excavations, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any lot or which affects or alters the natural flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any lot.

Section 8 - Subdivision. LOTS 13-41 OF BLOCK 3; LOTS 1-17 OF BLOCK 4; AND THE UNPLATTED PORTION OF TRACT DENVER ALL LOCATED IN A PORTION OF TRACT DENVER, SECTION 24, T3S, R4E AND SECTION 19, T3S, R5E, BHM, CUSTER CITY, CUSTER COUNTY, SOUTH DAKOTA.

Section 9 - Declarant. Declarant shall mean and refer to SHS Development, L.L.C., its successors and assigns if such successors or assigns should acquire one or more undeveloped lots from the Declarant for the purpose of Development.

Section 10 - Committee. Refers to the Architectural Control Committee created by the Declarant.

Section 11 - Gender and Number. Whenever the context permits, owner or owners shall be deemed to refer equally to persons of both sexes and to corporations, singular to include plural and plural to include singular.

ARTICLE VI - GENERAL PROVISIONS

Section I - Enforcement. The Declarant or any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by

the provisions of this Declaration. Failure by the Declarant or by any Owner to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Violation of any restrictions contained or provided for in this Declaration shall give the undersigned and, in the event the undersigned fails to act within reasonable time, any owner of property subject to this Declaration, in addition to all other remedies provided for by law, the right to enter upon the land or structure as to which such violation exists and abate or remove an erection, thing or conditions that may be or exists thereon contrary to the intent and meaning of the provisions hereto, using such force as may be reasonable or necessary, at the expense of the owner thereof, and neither the undersigned nor its agents or employees or any other lot owner shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. The owner of said premises agrees to pay the undersigned upon demand the cost and expenses, including court costs and attorney's fees, of such abatement and such costs and expenses shall be a lien upon the premises.

Every violation or breach of this Declaration is hereby declared to be and constitute a nuisance in every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable thereto and not exclusive.

The undersigned shall not be liable in any way whatsoever for failure or omission to take action of any kind for the enforcement of any restriction or violation hereof. The failure of the undersigned or any other property owner to take action in the event of any one singular breach of any of these covenants shall not be construed to be a consent to future breaches or waiver of any of the terms and provisions of this Declaration.

Section 2 - Severability. If any of these Covenants shall be held invalid or become unenforceable, the other Covenants shall not be affected or impaired but shall remain in full force and effect.

Section 3 – Action in Writing. Notices, approval, consents, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consents, applications or other actions.

Section 4 - Notices. Any writing described in Section 3 of Article 6, including but not limited to any communication from the Architectural Control Committee or to an Owner, shall be sufficiently served if delivered by mail or otherwise, (A) to the dwelling situated on the lot owned by that owner, or (B) if there is no dwelling, then to the address furnished by the owner to the Architectural Control Committee and if the owner has not furnished an address, then to the most recent address of which the Architectural Control Committee has a record.

Section 5 – Architectural Control Committee Resolves Questions of Construction. If any doubt or question shall arise concerning the true intent and meaning of any of these Covenants, the Architectural Control Committee shall determine the proper construction of the provision in question and set forth in written instrument duly acknowledged by the committee and filed for the record with the clerk and recorder of Custer County, South Dakota, the meaning, effect and application of the provision. This definition will thereafter be binding on all parties as long as it is not arbitrary or capricious. Matters of interpretation involving Declarant shall be subject to this section.

Section 6 - Change in Covenants. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date these covenants are recorded, after which time these covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of Seventy Five percent (75%) of all of the lots in Stone Hill Subdivision has been recorded agreeing to change or eliminate these covenants in whole or in part.

Section 7 – Covenants are Cumulative. Each of these Covenants is cumulative and independent and is to be construed without reference to other provisions dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

