

Prepared By:

Nies Karras & Skjoldal, P.C.
PO Box 759
Spearfish, SD 57783
(605) 642-2757

**FIRST AMENDMENT TO AND RESTATEMENT OF
PINE-OAK SUBDIVISION DECLARATION OF PROTECTIVE COVENANTS**

THIS FIRST AMENDMENT AND RESTATEMENT is made June ____, 2025, by the undersigned Owners of Lots within the real estate described below.

RECITALS

1. On January 14, 1982, Elizabeth Schleuning, Kenneth L. Pascoe, Lola I. Pascoe, and Deer Meadows, Incorporated, as Developer, caused to be recorded the *Pine-Oak Subdivision Declaration of Protective Covenants* (hereinafter referred to as the "Covenants") with the Lawrence County Register of Deeds as Doc# 82-137, along with a second instrument entitled the *Pine-Oak Subdivision Homeowners Association* (hereinafter referred to as the "Association Instrument") with the Lawrence County Register of Deeds as Doc# 82-138.

2. Both the Covenants and the Association Instrument concerned and encumbered the following real estate in Lawrence County, South Dakota:

Lots 1 through 36, a subdivision of SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 6, Gov't Lot 7 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) Sec. 6, Lot A of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 6, Lot A of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 6, Gov't Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) Sec. 7, Lot A of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 7, all in T6N, R2E, Black Hills Meridian, Lawrence County, South Dakota.

3. The real estate subject to the Covenants and the Association Instrument is now legally described as follows:

Lot 1A1 and Lot1A2 of Pine Oak Subdivision, formerly Lot 1A Revised of Pine Oak Subdivision, located in Section 6, T6N, R2E, BHM, Lawrence County, South Dakota, as shown on the plat filed as Document No. 2023-1336.

Lots 5A and 7A of Pine Oak Subdivision, a replat of Lots 5, 6, and 7 of Pine Oak Subdivision, all in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 6 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 7, T6N, R2E, BHM, Lawrence County, South Dakota, as shown on the plat filed as Document No. 92-4349.

Lots 9A and 10A and Tracts A and B, a replat of Lots 1, 2, 3, 4, 8, 9, and 10 of Pine Oak Subdivision and part of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T6N, R2E, BHM, Lawrence County, South Dakota, as shown on the plat filed as Plat Document No. 88-6622.

Lots 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, and 36 of Pine Oak Subdivision, a subdivision of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Government Lot 7 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 6, Lot A of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, Lot A of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, Government Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 7, Lot A of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, all in T6N, R2E, B.H.M., Lawrence County, South Dakota, as shown on the plat filed as Document No. 81-3274.

Lots 22A and 23A of Pine Oak Subdivision, a replat of Lot 22 and Lot 23 of Pine Oak Subdivision, located in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 7, T6N, R2E, BHM, Lawrence County, South Dakota, as shown on the plat filed as Document No. 2003-1197.

Lots 32A and 33A of Pine Oak Subdivision, a replat of Lots 5 and 6 of Higgins Subdivision and Lots 32 and 33 of Pine Oak Subdivision, being situated in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7 and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T6N, R2E, BHM, Lawrence County, South Dakota, as shown on the plat filed as Document No. 90-287.

4. The Declarant no longer owns any real estate subject to the Covenants and Association Instrument and did not reserve any rights in either instrument.

5. Pursuant to Article XXII of the Covenants and to Article VII of the Association, the undersigned Lot Owners hereby restate both the Covenants and Association Instrument in their entirety and consolidate the same into this First Amendment and Restatement. This First Amendment and Restatement is intended to and shall entirely supersede both the Covenants and Association Instrument.

DECLARATION

Wherefore, the undersigned hereby declare that the Lots within the Subject Property, or as such as may be hereinafter modified as set forth herein, shall be sold and conveyed subject to the following easements, restrictions, covenants, and conditions, to protect the value of the Lots, to promote the purpose of the development of the Subject Property, to maintain the aesthetic qualities, and to protect and promote the general welfare of the owners of the Subject Property, which easements, restrictions, covenants, and conditions shall run with the land and be binding on all parties having any right, title, or interest in the Subject Property or any portion thereof, and their heirs, successors, and assigns. However, nothing herein is intended to or shall limit application of all applicable planning and zoning ordinances and rules which impose restrictions more stringent or limited than those set forth herein.

1. **Definitions.** The following words when used in this First Amendment and Restatement or any amendment or supplement hereto (unless the context shall otherwise clearly indicate or prohibit) shall have the following meanings:

1.1 "Association" shall mean and refer to the **Pine-Oaks Subdivision Homeowners Association**, a South Dakota nonprofit corporation which has the power, duty, and responsibility of collecting the assessments and charges hereinafter prescribed, and has the right of administering and enforcing this Declaration.

1.2 “Board” shall mean the Association Board of Directors.

1.3 “Declaration” shall mean this First Amendment and Restatement.

1.4 “Lot” shall mean and refer to any plot or tract of land shown upon any recorded subdivision map(s) or plat(s) of the Subject Property as amended from time to time, which is designated as a lot therein, and which is or will be improved with a residential dwelling in conformity with the building restrictions herein set forth.

1.5 “Member” shall mean and refer to each Owner of a Lot.

1.6 “Owner” shall mean and refer to each and every person or business entity who or which is a record owner of a fee or undivided fee interest in any Lot subject to this Declaration; however, the word “owner” shall not include person(s) or entity(ies) who hold a bona fide lien or interest in a Lot as security for the performance of an obligation.

1.7 “Subject Property” means all of the real estate legally described in Recital 3, above, and any subdivision or replat of any portion thereof, **other than Lot 1A1 of Pine Oak Subdivision, formerly Lot 1A Revised of Pine Oak Subdivision, Section 6, T6N, R2E, B.H.M., Lawrence County, South Dakota. This Declaration shall apply to and encumber all real estate set forth in Recital 3, above, other than Lot 1A1 of Pine Oak Subdivision, formerly Lot 1A Revised of Pine Oak Subdivision, Section 6, T6N, R2E, B.H.M., Lawrence County, South Dakota. This Declaration no longer binds or encumber such Lot 1A1, and the Pine-Oak Subdivision Homeowners Association has no jurisdiction over such Lot 1A1. Such Lot 1A1 shall not be subject to any Pine-Oak Subdivision Homeowners Association assessments and shall not be bound to any provision of the Declaration.**

2. Homeowners Association.

2.1 Membership. Every Owner of a Lot automatically shall be and must remain a Member of the Association in good standing. The Board may temporarily suspend the voting rights of any Member who is not in good standing until past unpaid amounts are paid in full. Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

2.2 Quorum, Notice, and Voting Requirements. The quorum, notice, and voting requirements of and pertaining to the Association are set forth within the Articles of Incorporation and Bylaws of the Association, as the same may be amended from time to time.

2.3 General Powers and Duties of Board of Directors. The affairs of the Association shall be conducted by its Board. The Board shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. Neither any Member, the Board, any Director, nor any officer of the Association shall be personally liable for debts contracted for, or otherwise incurred by the Association. The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses.

2.4 Right to Enter. The Board may, in the interest of the general welfare of all Members and after reasonable notice, enter upon any Lot or the exterior of any dwelling at reasonable daylight hours for the purpose of inspecting, removing, or correcting any violations or breach of any attempted violation of any of this Declaration, or for the purpose of abating anything herein

as a prohibited use or a nuisance or failure to properly maintain a Lot, and no such entry or inspection shall be considered a trespass or otherwise be considered a wrongful action.

3. Covenants for Assessments.

3.1 Assessments. The Board will determine the amount of the general assessment for each Lot subject to assessment. General and special assessments are due and payable on dates specified by the Board. The Board shall make reasonable efforts to determine the amount of the general or special assessment and to give written notice of the assessment for each Lot to the owner with due dates of periodic installments to be paid. The Board shall maintain a roster of the Lots and the general or special assessments due and shall make the roster available for inspection of a Member on request. Assessments may be collected on a monthly, quarterly, semi-annual or annual basis at the discretion of the Board.

3.2 Personal Obligation of Assessments and Lien Created. Each owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed, as a part of the purchase money consideration for such deed and conveyance, to covenant and agree to pay to the Association regular assessments or charges. The general or special assessments, together with interest thereon, at the statutory rate for money due and owing from time to time from, and after the date the same becomes due and payable, together with costs of collection, shall be a charge on each Lot subject to assessment and shall be continuing lien against which such assessment is made. Each assessment, together with interest thereon, and costs of collection, in addition to becoming a lien against each Lot, shall also be a joint and several personal obligation of the person, group of persons or entity who was the owner of such Lot at the time when the assessment became due and payable, or who acquired ownership thereafter. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage now or hereafter placed upon any Lot subject to assessments; provided, however, that sale or transfer pursuant to a decree of foreclosure, or any other proceedings in lieu of foreclosure shall not relieve such Lot from liability for any assessments becoming due after such sale or transfer nor from any lien of any such subsequent assessments.

3.3 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, recreation, safety and welfare of the residents of the Subject Property and enforcing the provisions of this Declaration and any rules made hereunder and to enjoin and/or seeking damages from any Owner for violation of such provisions of rules.

3.4 General Assessments. The Board may set the general assessment on a Lot at a base rate not to exceed **\$AMOUNT** per year. After January 1, 2026, the Board may increase the amount of the general assessment by no more than an additional ten percent (10%) each year without approval by two-thirds of the Owners present or represented by proxy at an annual meeting or at a special meeting called for that purpose. The general assessment on all Lots shall be effective on the first day of January each year and is a lien on the Subject Property. Failure to make timely payments, as set by the Board, results in a lien attaching to the Lot which may be enforced by the Board as provided herein.

3.5 Special Assessments. The Board may impose special assessments, in addition to the general assessments, for capital improvements or capital replacements. Special assessment shall only be levied by a resolution approved by two thirds of the votes of the Owners present or represented by proxy at an annual meeting or at a special meeting called for that purpose. Any special assessment shall be on a per Lot basis only.

4. Lot Use and Occupancy Control.

4.1 Subdivision. No Lot shall be further subdivided.

4.2 Single Family Use. Each Lot shall only be used for single family residential purposes. This provision shall not exclude any persons from residence with the principal occupant when such person shares as members of the principal occupant's family in the common living arrangement and otherwise maintains a home in common with the principal occupant.

4.3 Lot Size and Use. All Lots shall be known and utilized for the purpose or purposes as allowed according to the zoning classification given the Subject Property by Lawrence County, South Dakota. On all Lots, all structures shall be single family dwellings, not to exceed two (2) stories in height and shall have an attached or detached private garage for not more than three (3) cars. **Only one (1) permanent single family residence shall be built upon each Lot, although each lot with a permanent residence may construct a guest cottage, but such cottage shall not under any circumstances be used as rental unit but shall be solely used for guests of the owners of the Lot.** No trailer, basement, moved in house, tent, shack, garage, or any other building shall be used as a residence, temporarily or permanently, nor shall any structure or a temporary character be used as a residence at any time.

4.4 Construction Requirements. Each one (1) story residence must have at least one thousand (1,000) square feet on the ground floor. Each one and one-half (1½) story residence must have at least one thousand (1,000) square feet on all floor levels on or above grade. Each two (2) story dwelling must have at least one thousand (1,000) square feet on the ground level and second level, exclusive of open porches and garages. All residence construction shall be stick built, be of new materials, and shall be of new construction. No residence shall be moved onto any Lot from any other Lot or real estate.

4.5 Setbacks. All building setbacks shall comply with the applicable requirements and regulations.

4.6 Residential Use and Nuisances. No commercial use, feed lot, or any other trade which, in the discretion of the Board, is noxious or offensive, shall be carried on upon any Lot. No Owner shall allow anything to be done on a Lot which may become an annoyance or a nuisance to any other Owner. No commercial or industrial trucks, equipment, or materials shall be stored upon any Lot excepts as is strictly necessary for permitted construction activities. Each Owner shall maintain and keep his or her Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners or other Persons of their respective Lots. Each Owner shall keep his or her Lot mowed, shall control noxious weeds, and shall not permit overgrowth of grass or weeds, regardless of whether the Lot is or is not occupied.

4.7 Completion of Construction. Once construction or any residence on any Lot described tract is commenced, all exterior construction plus landscaping shall be completed within two hundred forty (240) days. Such restriction does not apply to minor items relative to construction of the interior of the structure if the exterior of the structure and the landscaping have been completed.

4.8 Drainage. No structure, planting, or other materials shall be permitted which may obstruct and retard the flow of water through natural drainage channels.

4.9 Easements and Roads. Easements for installation and maintenance of utilities facilities, including but not limited to private water systems, are reserved in all road rights-of-way as shown on the original plat of the Subject Property and within a ten (10) foot strip adjacent to and on each side of each Lot line or each Lot. **The public roads are maintained by the Pine-Oak Road District. Any private roads and driveway shall be constructed and maintained, with proper drainage and culverts, by the respective Owner.**

4.10 Signage. Other than signs approved in advance by the Board, no sign or any kind shall be displayed to the public view on any Lot except one professional directive or information sign of not more than one (1) square foot, and one sign or not more than five (5) square feet advertising the Lot for sale, or signs used by the builder to advertise the property during the construction and sale period, which sign shall be not more than five (5) square feet.

4.11 Animals. **Up to two (2) standard residential pets are allowed on each Lot. The offspring of allowed pets shall not be counted toward the (2) pet limit under six (6) months of age. In no event shall any domestic pet be allowed to run free away from its owner's Lot without a leash, or so as to create a nuisance. Pets shall not be permitted to make objectionable noise or constitute a nuisance or inconvenience to the Owner of any Lot within the Subject Property and shall be removed upon request of the Board. No other animals, livestock, or poultry are allowed on a Lot.**

4.12 Vehicles. No motor vehicles, cars, buses, tractors, and trailers that are not in normal running condition and in average daily use shall be kept on any Lot, it being specifically intended that the provision prohibits the keeping of any wrecked motor vehicle not in normal use and operation or any other like debris on any Lot.

4.13 Rubbish. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or other waste and all trash, garbage, and refuse shall be placed in tight garbage cans of the type and kind in normal use in this locality, and such cans shall be emptied and disposed of at least once every fourteen (14) days.

4.14 Sewage Disposal System. Only engineered sewage disposal systems shall be permitted in the Subject Property. Sewage disposal for each Lot shall be accomplished by individual septic tanks or as otherwise required and approved by an appropriate governmental agency. All wastewater systems must be designed by a Professional Engineer licensed in South Dakota, who will prepare and stamp the permit application that must be submitted to the appropriate governmental agency for review before a system is constructed. No cesspools or outside toilets are permitted.

4.15 Occupancy and Rental. All leases or non-owner occupancy arrangements must be in writing and shall each have a minimum term of one hundred eighty (180) days, unless a shorter period is permitted specifically by the Board. Unless specifically permitted by the Board, no short-term leases such as "Rally Rentals", "VRBO", or "AirBnB" are permitted. Each lease shall contain a designation of the parties who are entitled to occupy the Lot and shall state that no other parties are permitted to occupy such Lot. The lease shall further provide that continued violation of any provisions of this Declaration shall constitute cause for termination of the lease and eviction of the tenant. In the event of a violation of this Section, the Board shall have the right to give notice to the Owner directing the Owner to institute proceedings to evict the tenants. If Owner has not initiated and completed eviction proceedings within thirty (30) days, the Board shall have the right, but not the duty, to institute eviction proceedings on behalf of the Owner. The costs and fees thereof shall become a special assessment against the Owner and against the Owner's Lot and, if not paid, shall be subject to the lien and foreclosure procedure contained herein.

4.16 Solar Panels. Panels for the purpose of solar power generation are allowed on a Lot provided they are placed on the roof of a structure or otherwise placed to as to avoid glare to other Lots or roads.

4.17 Water Storage Systems. All water storage systems or central water systems shall be located and constructed to facilitate access thereto by the fire department with jurisdiction over the Subject Property.

5. Plan Approval. No building, fence, wall, or other structure or improvement of whatever type shall be commenced, erected, or maintained upon the Subject Property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading, or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers, and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Board in accordance with this Declaration as to harmony of external design and location in relation to surrounding structures and topography. Plans and specifications shall be approved by the Board as to style, exterior design, appearance, and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Board nor the Members assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. All changes or additions to the approved plans before, during, or subsequent to their initial construction must be approved by the Board before the alteration may be implemented.

6. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or any Owner, their respective legal representatives, successors and assigns for a term of ten (10) years from the date of recordation of the Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each. However, this Declaration may be amended at any time, except where permanent easements or other permanent rights or interests are herein created, or rights or interests are created in third persons, by an instrument signed by Owners of a majority of the Lots described within the Subject Property, and placed of record wherein this Declaration is recorded. No change of circumstances or conditions shall operate to amend any of the provisions of this Declaration, which may be amended only in the manner hereinabove provided. None of the provisions of this Declaration shall be construed as a condition subsequent or as creating a possibility of reverter.

7. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers his Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants and restrictions set forth in this Declaration, although the failure to do so shall not be deemed to defeat, alter, or terminate these covenants and restrictions as set forth in this Declaration as to said Subject Property transferred.

8. Notices. Any notice required to be sent to any Member or Owner of a Lot under the provisions of this Declaration shall be deemed to have been given when mailed by first class mail, postage prepaid, to such Member, Owner or mortgagee at the address as it appears on the records of the Association at the time of such mailing. It shall be the duty of each Member, Owner, or Mortgagee to provide written notice of address or change of address to the Association.

9. Enforcement. This Declaration may be enforced by the Association or any Member or Owner. Enforcement of this Declaration shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restriction, either to restrain or enjoin violation or to recover damages, and against the Subject Property or any Lot to enforce any lien created by these covenants, except for monetary penalties, which may only be imposed and enforced by the Board. **The Board is specifically empowered to impose such fines the Board deems appropriate on Owners for violations of this Declaration. All such penalties or any cost for removal or correction of such violations (including but not limited to attorney's fees and costs) shall be added to and become a part of the general or special assessment to which such Lot is subject.** The failure or forbearance by the Board to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or work as an estoppel of the right to do so thereafter.

10. Binding Effect and Compliance. Each Owner, the Owner's heirs and assigns or any person acquiring any rights or privileges therefrom shall be fully bound by and shall comply with the provisions of these declarations, by the decisions of the Association, by the Bylaws and Articles of Incorporation of the Association, rules, regulations, decisions and resolutions of the Board or their authorized agent of the Association and any amendments hereinafter duly adopted to these covenants or said Bylaws or Articles of Incorporation, and failure to comply with such provisions, decisions or resolutions shall be grounds for action as so authorized, action to recover sums due or for damages, or action for injunctive relief.

11. Invalidity and Severability of Provisions. Each and every covenant, restriction, provision, section and paragraph of this Declaration is deemed severable and in the event that any one or more of the same are declared to be invalid or unenforceable, all remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Owners have hereunto set their hands the day and year first above written.

[SIGNATURES ON FOLLOWING PAGES]