

Prepared by:
BH Development LLC
2401 W Trevi Place, Suite 206
PO Box 2524
Sioux Falls, SD 57101

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND RESERVATIONS FOR TRAILSIDE ADDITION OF
POWDER HOUSE PASS COMMUNITY IMPROVEMENT DISTRICT
("DISTRICT")**

ARTICLE I. INTRODUCTION

**THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, AND RESERVATIONS for Trailside Addition of Powder House
Pass Community Improvement District is made and entered into this _____ day
of _____, 2021, by BH Development, LLC, with a mailing address at 2401 W
Trevi Place, Suite 206, PO Box 2524, Sioux Falls, SD 57101, and the record lot
owners of properties located within the District. These Protective Covenants,
Conditions, Restrictions, and Reservations for Powder House Pass Community
Improvement District hereby identify the properties within the District that are
subject to the protective covenants, conditions, restrictions, and reservations
("Covenants), and amend specific covenants relating to construction and
development within the District and exclude certain properties within the District
from the application, enforcement, and compliance of these Covenants as set
forth in the following legal descriptions and shown on Exhibit A:**

**Lots 1-3, Lots 4 & 5 Revised, Lots 6–10, Block 1; Lots 1–9, Block 2; Lots 1-9,
Block 3; Lots 1-17, Block 4; Lots 1-24, Block 5; Lots 1-10, Block 6; Lots 1-9, Block
7; Lots 1-39, Block 8 and Lots 2-7, Block 9, Trailside Addition, being a subdivision**

of portions of Tract 2, Tract 2E and Tract 2F of Tract 2 of Powder House Pass located in portions of Edison M.S. 1169, Wedge, M.S. 1169, Blaine, Specie Payment Frac., Bryan, Cleveland, Dickinson and all of St. Just M.S. 1102, Silver Belt No. 1, M.S. 1136, Old Bill, M.S. 1153, Cook, Colts, Missing Link and Syracuse M.S. 1151, Cleopatra, Brandywine, Brandywine Fraction, Argenta, Georgiana, Daybreak and Midnight M.S 1131, all situated in Sections 17 and 18, T4N, R3E, BHM, Lawrence County, South Dakota, according to Plat Document. 2021-3905.

and makes the following declaration as to limitations, restrictions and uses of the real property. Specifically, these declarations supersede and succeed any prior covenants and constitute covenants to run with the land as provided by law. They shall be binding on all parties, their heirs, successors, and assigns, and all persons claiming ownership of interest in the Development and shall run with the land as long as these declarations remain in effect.

ARTICLE II. DEFINITIONS

For the purposes of this Declaration, the following words or terms shall be defined as follows:

1. "Board" or "Board of Supervisors" shall mean the Board of Supervisors of Powder House Pass Community Improvement District or Board of Directors of the Association to be created.
2. "Covenants" shall mean the Covenants, Conditions, Restrictions and Reservations set forth in this Declaration.
3. "Developer/Declarant" shall mean BH Development, LLC, a South Dakota Limited Liability Company, with its mailing address of 2401 W Trevi Place, Suite 206, PO Box 2524, Sioux Falls, SD 57101, its successors, and assigns.

4. "Development" means all of the real property legally described above and any individual phased future development within the Powder House Pass Community Improvement District or re-plat of any portion thereof.
5. "CID" shall refer to Powder House Pass Community Improvement District empowered and established by Resolution 2010-25 of the Lawrence County Commission on or about November 9, 2010.
6. "Lots" Lot shall mean and refer to any tract or parcel of land designated as a lot shown upon any recorded plat, preliminary plat or phase map of the property.
7. "Owner" shall refer to the record owners of each Lot, whether one or more persons or entities, of the fee simple title of any of the property within the Development. In the case of a contract sale, the contract purchaser shall be deemed for purposes of this Declaration to be the owner. The term shall not include those having such interest solely as security for the performance of an obligation. Any other party or entity may exercise the rights of the owner if such party or entity has the express written consent of the owner.
8. "Member" shall mean and refer to every person or entity who holds ownership in the Association. Multiple members owning a lot shall be entitled to one (1) vote per lot owned regardless of the number of individuals holding an interest in said lot.
9. "Architectural Review Committee ("ARC"): shall mean and refer to those persons appointed by the Board of Supervisors to maintain control and consistent high quality of all buildings, structures, and improvements including all new construction, additions, and alterations within the Development.

NOW THEREFORE, the undersigned Declarant declares the following covenants and restrictions as to the property described above.

ARTICLE III. RESTRICTIVE COVENANTS

1. Animals: No more than a total of three (3) of any combination of dogs and cats for household enjoyment and not for commercial purposes shall be allowed. Dogs must be kept on a leash or in a safe and properly maintained kennel when outdoors.
2. Antenna and Satellite Dishes: Television and radio antennae and satellite dishes are to be located as inconspicuously as possible. They shall be located at the side or rear of the home. No satellite dishes larger than 28" in diameter shall be allowed.
3. Propane Tanks and Natural Gas: No propane tanks are allowed, except standard small tanks for gas grills and fire pits are acceptable.

4. Building Setbacks: The minimum building setbacks for all structures on any Lot shall be according to and in compliance with the existing ordinances and requirements of Lawrence County or as otherwise set forth in the plat or established ordinance by the Developer, whichever is greater.

5. Dwelling: No dwelling shall be constructed, erected, or maintained without a minimum of the following finished square footage (excluding garages and porches). Each dwelling must have at least one (1) double garage with the option of having one stall, only, capable of parking a recreational vehicle with the maximum height of 16' for the RV stall. One outbuilding of not more than 1,200 sq. feet; of more than 1,500 sq. ft. if built on a lot at least one acre in size (16' maximum high sidewalls) will be allowed, with the exterior to match the exterior of the house, including siding, logs, stain color and roofing:

Ranch Style home	1,200 sq. ft.	(Main floor)
One story with loft	1,400 sq. ft.	(Total both floors)
One and One-half story home	1,600 sq. ft.	(Total both floors)
Two Story Home	1,800 sq. ft.	(Total both floors)
Bi/Tri-level or More	1,200 sq. ft.	(Main floor)

All plans and specifications for new construction or exterior remodeling/additions must be submitted in writing for written approval to the Developer or the ARC. Prior to obtaining any building permits, blueprints and designs, along with color selection, must be submitted to the Developer, BH Development, LLC or the ARC and receive written approval prior to an owner commencing construction. The Developer, BH Development, LLC, or the ARC, has the right to limit the number of bedrooms/occupancy of any home. Any plans presented after July 1, 2021, will have the number of bathrooms limited to 5 ½, and number of bedrooms, or rooms used as bedrooms, limited to 6.

Home numbers must be identified by 911 numbering and conspicuously placed on home/property within ten (10) days of completion of construction.

All buildings shall be new construction, which shall be completed within one (1) year from the date of initial start of construction, unless a longer construction time is approved by the Developer and set on a permanent foundation or concrete slab. No houses shall be moved onto any Lot from any other location. Mobile, single, or doublewide homes are not permitted. Pre-built or manufactured homes are allowed within the Development with subject prior written approval by the Developer.

6. Exterior Colors: All exterior color combinations must be approved by the Developer or the ARC prior to construction.

7. Fences: The construction of any type of fence must have written approval of the Developer or the ARC. Recommended fence locations are areas out of sight of roadways.
8. Firearms, Hunting, and Fireworks: No firearms or fireworks shall be discharged within the development. Hunting within the Development is prohibited.
9. Garbage and Trash: No garbage or trash shall be maintained or kept on any Lot so as to be visible from another Lot or the roadway, except for day of pick up. All garbage and trash will be placed in tight and secure garbage containers with closed lid, the type normally used in the locality and shall be disposed of at least once every seven (7) days. No refuse pile, garbage or unsightly objects are allowed on any Lot. The CID shall have the option to select the garbage service provider for the CID. At that time, all residences within the CID shall contract with the garbage/trash service collector that provides such service to the CID.
10. Fireplaces (outdoors) and Fires: No outdoor fires, incinerators, open fire pits, or related structures or devices shall be operated unless the fuel source is natural gas or propane.
11. Gardens: All vegetable gardens shall be set back at least ten (10) feet from any Lot line and no larger than three hundred (300 sq. ft.) square feet, unless otherwise approved by the ARC.
12. Towers: No free-standing towers (e.g. radio, cell phone, wind generator towers) are allowed within the Development.
13. Landscaping and Post-Construction Cleanup: All post-construction cleanup, landscaping and/or reclamation of ground disturbed by construction must be completed within thirty (30) days following the completion of construction of the dwelling, weather permitting. The Lot owner shall determine the extent of landscaping.
14. Tree Thinning, Logging and Maintenance: Lot owners shall continue to maintain their lots to keep fuels and fire danger down and the tree canopy open. Firebreaks will be maintained on the access road right-of-way and around structures built on the lots. Lot owners shall maintain an area of defensible space by thinning trees and brush cover to meet county specification on all sides of structures and in accordance to the Firewise recommendations/requirements. Lot owners shall be responsible for control and timely removal of any diseased, dead or insect-infested trees.
15. Lot Size: No lot within the subdivision shall be further subdivided, except by the developer or with the approval of the developer, and subject to county zoning regulations and approval. Two or more adjacent lots may be combined into one lot conveyed as one lot except separate utility hook-ups and assessments may still apply. A one-year assessment will need to be paid in advance for the 2nd lot. Then, going

forward, the yearly assessment will apply to the one (combined) lot vs 2 lot assessments. As an example: if a lot owner combines two (2) or more lots into one (1) lot, the owner shall still be obligated to pay the one-time tap fees for both lots, along with 1 full year's general/special assessment charges on the 2nd lot.

16. Lot Restrictions: No more than one (1) single-family dwelling may be constructed on any lot or combination thereof.

17. Mining: No portion of the Development shall be used to explore for or remove oil, gas, or minerals of any kind.

18. Nuisances: No owner shall permit anything to be done or kept on or within a Lot, or on or about the Development which will obstruct or interfere with the rights of other Owners, occupants, or other authorized persons to use and enjoy the property. Use and enjoyment include but are not limited to, freedom from unreasonable noise. No owner may permit any nuisance nor commit or allow any illegal or prohibited act to occur on their Lot.

19. Vacation Home Rentals: Vacation home rentals are permitted if the appropriate License has been obtained from the CID (when/if applicable). The owners and renters are required to operate/use the vacation rental in compliance with CID, County and State and/or applicable HOA Rules and Regulations, and any amendments thereto. RV's or mobile homes will not be allowed to be used as a rental unit or used in conjunction with a vacation home rental.

20. Outdoor Storage: No outdoor storage of any rubbish, waste, refuse, trash, discard, scrap, salvage, wreckage, or other similar materials including but not limited to large firewood containers, inoperable automobiles or automotive accessories, equipment or other items shall be kept or stored on any lot or property.

21. Residential Use and Home Occupation: Each lot shall be used only for residential purposes. No Lot may be used for business or commercial purposes in which the public is invited to the property to conduct business, except for vacation home rental of the property pursuant to the required license, or except for the use of a model/show home by the Developer or otherwise approved by the Developer.

22. Safe Condition: Without limiting any other provisions of these Covenants, each owner shall maintain his or her Lot in a neat, orderly, safe, sound, sanitary condition and in good repair at all times. Owners shall timely correct any condition and refrain from any activity, which might interfere with other owner's rights.

23. Signs: No signs, billboards, or other advertising devices shall be used on any Lot except for identification of a residence, road name, speed, direction, or sale. Signs may be directive or informative and shall be removed by the day of the closing of the sale. Notwithstanding any of the limitations herein, the Developer may erect a sign for

marketing purposes for sale and identification of properties within the Development. A builder or contractor may erect temporary, self-advertising signs during construction. All other signs must comply with State and County sign ordinances.

24. Temporary Structures: No temporary structures, including but not limited to a basement, tent, or other outbuilding shall be built on any Lot for use as a residence, except that a pre-approved garage structure may be built on the property provided construction of a permanent residence is also commenced and both completed in the same one (1) year period of the commencement of construction.

25. Vehicles: Excluding ATVs or snowmobiles, no more than one (1) properly licensed motor vehicle, trailer, camper or RV or other type of motorized or non-motorized vehicle, not in normal daily use may be kept on any Lot. Equipment of this type shall not be kept between the home and roadway fronting the property. No campers or recreational vehicles shall be maintained on a Lot and used as a temporary or long-term residence for more than fourteen (14) consecutive days, within a month. Rentals of RV's, mobile homes, or space to rent RV's, motor homes, etc., is not permitted.

26. Snowmobiles/ATVs: Snowmobiles shall only be operated on designated trails/access trails (or roadways leading to designated trails within the development) to the State trail system. ATVs are not to be ridden off-road within the Development or CID boundaries, except on designated trails within the CID area.

27. Violation of Law: No owner shall permit any activity or conduct to be done or kept on any Lot, which would constitute a violation of any local, state, or federal law.

28. Weed Control: The owner of any Lot shall be responsible for the control of weeds and noxious plants on their property. Such weed control and weed control products shall be in accordance with appropriate local, state, and federal laws.

29. Fire Protection Plan: The owner of any Lot shall comply with a current county-approved Fire Protection Plan for the Development.

30. Water and Sewer: All dwellings or residences shall connect to the community's water and sewer facilities and pay applicable fees. No other or new septic or drain field systems shall be allowed within the Development without Developer and County approval. Water meters are required and are to be installed upon the construction of a home. Water meters are purchased through the CID.

31. Building Materials:

- (a) Lot owners shall follow the Building Code adopted by Lawrence County and in existence at the time of construction.
- (b) Gutters and downspouts shall be constructed of noncombustible materials.

- (c) All exterior materials of residences must include full log, half log, cedar siding or comparable natural siding or maintenance-free materials with a wood/rustic metal appearance, along with log or similar material/rustic accent construction as approved by the Developer or as approved by the ARC. Real and cultured stone/rock is also an acceptable accent.

32. Architectural Review Committee (“ARC”): The ARC shall be composed of members of the Board of Supervisors of the CID All actions taken by the ARC shall require the affirmative vote of a majority of its members present at a meeting of the ARC.

33. Variance: A variance may be requested by any Lot owner. Variance requests shall be acted on by the Board of Supervisors within a reasonable time, but not more than sixty (60) days from the date of receipt of a request for a variance. A copy of the variance request shall be submitted in writing to all adjacent property owners at least thirty (30) days prior to final action on the request by the Board of Supervisors. The board shall take into consideration the comments and/or concerns of the adjacent property owners and existing or amended county ordinances prior to making any decision on the request. The intent of these covenants shall be the guiding factor in the board’s decision.

34. Driveways, Approaches and Drainage: A proper approach shall be constructed at the commencement of any construction upon a Lot in order to protect the shoulders of the roads and the natural vegetation and drainage and to prevent tracking mud and debris onto the roads of the District. The Owner shall direct all vehicular traffic, for construction purposes or otherwise, to enter and exit only upon said approach. All Owners shall construct approaches and driveways accessing any public street with appropriate gravel, asphalt, or concrete of sufficient depth to provide a safe, stable, clean driving surface in all weather. All drainage of water from any Lot shall be managed to eliminate standing water and runoff in a way that will not permit erosion or cause damage to neighboring properties or streets.

35. Clean Construction Site and Post-Construction Cleanup: An Owner must insure during construction and afterwards that the Lot is kept as neat and clean and free of debris as possible. All debris, rubbish, rubble, trash, waste, including but not limited to leftover construction material on site or related or associated with construction of any structures on any given lot or adjacent property, must be cleaned up and removed by the contractor or lot owner daily and final cleanup is to be completed within five (5) days of the completion of construction. The property owner shall inform and advise the contractor of this covenant and requirement.

For new construction, the Lot owner shall be responsible for informing and ensuring that their building contractor is aware of this requirement and that it is strictly complied with so that cleanup of the construction site is done daily to ensure construction waste and debris is not deposited on neighboring properties during construction.

If the CID or Developer implements or adopts Construction Rules and Policies, Owner shall be responsible for and ensure compliance with such Rules and Policies by Contractor.

36. The invalidation of any one of the covenants, conditions, restrictions, or reservations herein by judgment or court order shall in no way effect any other provision which shall remain in full force and effect.

ARTICLE IV. GENERAL

1. Administration. The Board shall be responsible for the administration and the enforcement of these covenants as provided herein. The Board is empowered and has the right to implement, provide, perform, and to enforce any or all of the following within the Development:

- a. All of the provisions in this Declaration of Restrictive Covenants and the Articles of Incorporation.
- b. Reasonable rules and regulations, which Owners, their families, guests, and visitors shall comply with.
- c. Maintenance and drainage areas in the Development.
- d. Penalties for violations of rules, regulations, and failure to pay assessments.
- e. Contract with third parties for necessary services.
- f. Determine the amount, payment period, payment schedule, and levy assessments pursuant to these covenants.

2. Duration and Amendments. 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 Developer, its legal representatives, successors and assigns, owners, and adjoining property owners. During the twenty (20) year period following the filing of these Covenants with the Lawrence County Register of Deeds Office, these Covenants may not be amended except upon the consent of two-thirds of the then Lot owners and the Developer. Thereafter this Declaration may be amended at any time, except where permanent easements or other permanent rights of interests are created, or rights or interests are created in third persons by an instrument signed by owners of a majority of the real estate described within the Development (one vote per Lot) and placed on record where this Declaration is recorded. No such amendment shall be effective unless written notice of the proposed amendment is sent to every owner and Developer at least thirty (30) days prior to action being taken on the proposed amendment or all of the Lot owners in a particular phase of the Development consent to the amendment in

writing. No change of circumstances or conditions shall amend any of the provisions of this Declaration, which may be amended only in the manner described.

A preliminary platted lot shall be treated the same as a platted lot in all respects, including assessments, charges and voting rights.

4. Incorporation by Reference on Resale. If any owner sells or transfers property within the Development, any deed affecting the transfer shall contain a provision incorporating these covenants, conditions, and restrictions. Failure to do so shall not be deemed to defeat, alter or terminate any of these covenants, conditions, and restrictions.

5. Notice. Any notice required to be sent to any owner of a property within the Development, Declarant or any mortgage, shall be deemed to have been given when mailed by first class mail, or confirmed Email.

6. Enforcement:

a. If any person violates any of the provisions of this Declaration it shall be lawful for the Developer, or any Lot owner in the Development, to initiate proceedings pursuant to these Covenants, to enforce the provisions of these covenants, to restrain the person violating them and recover damages, actual and punitive, including reasonable attorney's fees and expenses incurred in the enforcement of these Covenants.

b. The Board may enforce these covenants and restrictions. However, in the event the Board fails to/or refuse to do so, any Owner may enforce these Covenants upon prior written notice to the Board. Enforcement of these covenants may be by Association proceedings as set forth in Bylaw, by administrative proceedings, or by legal proceedings against any person violating any covenant or restriction, either to restrain or enjoin a violation or to recover damages, and against the Property or any Lot to enforce any lien created by these Covenants. The failure of the Board to enforce any provisions of these Covenants, shall in no event be deemed a waiver or work as estoppel of the right to do so.

c. If an assessment, water/sewer, or similar bill, if/when applicable, is not paid within 30 days after the due date, the Board may bring an action against the Owner. The Board may also foreclose a lien against the Lot in the amount provided by law. In either event, the Board shall recover from the owner or out of the proceeds of a foreclosure, accrued interest of collection, including but not limited to reasonable attorney's fees. No Owner may waive or otherwise escape liability for assessments provided for in the Declaration by non-use or abandonment of a lot.

d. In a voluntary conveyance of a Lot, the grantee of the Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the Lot.

e. Invalidation of any of the covenants by court order shall not affect any of the remaining covenants, which shall remain in effect.

7. Invalidity and Severability. All of these covenants, conditions, and restrictions are deemed severable. In the event any one or more of these covenants, conditions, and restrictions are declared invalid, all remaining covenants, conditions, and restrictions shall remain in effect.

8. 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 this Declaration and any amendment adopted to these covenants. Failure to comply with these provisions shall be grounds for action for injunctive relief.

ARTICLE V. COVENANTS FOR ASSESSMENT

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

2. Owner Responsibility. Each owner, whether or not it is expressed in any deed or document of conveyance, agrees to timely pay the general or special assessments or charges levied on a monthly, quarterly, or annual basis, and special assessments or charges to be fixed, established, and collected from time to time as hereinafter provided. The general assessments, together with interest thereon at the statutory judgment rate, 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 a continuing lien against the Lot upon 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 obligations 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.

3. Purpose. General or special assessments and fees shall be used to promote the public welfare and safety and to protect the investment of the owners and residents of the Development. Assessments and fees shall be used for, but not be limited to

maintenance and repair of roads, snow removal, pool maintenance and community building, wastewater collection and disposal system and the water treatment system, the oversight of pumping and inspections, enforcement of the covenants, and any other expenses approved by the Board of Supervisors of the CID.

4. Breach of Payment. Any general or special assessment not paid on the date due shall be deemed delinquent, shall accrue interest at the statutory rate of interest for judgments in South Dakota, and it, with the cost of collection shall become a continuing lien on the Lot. The assessment shall be binding upon the Lot owner, his heirs, devisees, personal representatives, and assigns. The obligation of an owner to pay an assessment shall remain his or her personal, joint and several obligations.

Dated this _____ day of _____, 2021.

DEVELOPER
BH Development, LLC

By Jennifer Kaschmitter
Its: Managing Partner

By Greg Kaschmitter
Its: Managing Partner

State of South Dakota)
)ss.
County of Lawrence)

On the ____ day of _____, 2019, before me, the undersigned officer, personally appeared Jennifer Kaschmitter and Greg Kaschmitter, who acknowledged themselves to be the Managing Partners of BH Development, LLC, and that they, as such officers being authorized so to do, executed the foregoing instrument for the purposes therein contained.

(SEAL)

Notary Public
My Commission Expires: _____

Map of Area Here