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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
PHASE IV OF PHASE III,  
FALCON CREST SUBDIVISION**

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**COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR PHASE IV OF PHASE III,  
FALCON CREST SUBDIVISION**

**THIS DECLARATION**, made effective the \_\_\_ day of September, 2007, by, **Landmark Venture Capital, L.L.C.**, a South Dakota limited liability company, 1130 North Main, Suite 4, Spearfish, South Dakota 57783, owner of the property subject to this Declaration, hereinafter referred to as "Declarant," and

**WHEREAS**, Declarant owns the following described real property, to-wit:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Phase IV of Phase III in the Falcon Crest Subdivision, being a subdivision of a portion of Tract D of Miller Addition to the City of Spearfish, all located in the E1/2NE1/4NW1/4 and the W1/2NW1/4NE1/4 (except Rolling Hills Addition) of Section 24, Township 6 North, Range 2 East, B.H.M., Lawrence County, South Dakota,

which shall hereinafter be referred to as the "Property," which may be modified by Declaration for inclusion of adjoining real estate owned by the Declarant from time to time as hereinafter provided, and,

**WHEREAS**, Landmark Venture Capital, L.L.C., intends to sell lots within the Property and by declaration imposes on the lots within the Property covenants, conditions, and restrictions under a general scheme or plan for the benefit of the Owners, now therefore,

**WXTNESSETH:**

The Declarant hereby declares the Lots within the Property above described shall be sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are imposed to protect the value of the Lots, promote the purposes of the development of the Property, to maintain the aesthetic qualities, and to protect and promote the general welfare of the Owners of the 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 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

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

- A. "Owner" means and refers to the record owners, whether one or more persons or entities, of the fee simple title to any Lot within the Property, except contract sellers, in which event the contract purchaser shall be deemed for purposes of this Declaration to be the Owner; excluding those having such interest solely as security for the performance of an obligation. The rights of the Owner may be exercised by any other party or entity having the express written consent of the Owner.
- B. "Property" means and refers to all of the real estate legally described above and any subdivision or replat of any portion thereof.
- C. "Lot" means and refers to any plot or tract of land shown upon any recorded subdivision map(s) or plat(s) of the Property as amended from time to time, which is designated a lot therein, and which is or will be improved with a Single Family Residence in conformity with the building restrictions.
- D. "Single Family Residence" means and refers to any building or portion thereof without common walls shared with any other dwelling situated upon the Property and designated and intended for use and occupancy as a private residence located upon a Lot.
- E. "Declarant" means and refers to Landmark Venture Capital, L.L.C.
- F. "Covenants" refers to the covenants, conditions and restrictions set forth herein.

## 2. Platting

Declarant may, without the consent of any Owner, add additional property consistent with the development objectives of Declarant and place or grant such easements as deemed appropriate by Declarant for providing ingress, egress and services for the Property and Owners. Any adjoining property owned by the Declarant to be added to these Covenants shall be described in a written Declaration for Inclusion executed by the Declarant and recorded with the Register of Deeds, and thereafter such property shall be subject to these covenants as from time to time amended.

## 3. Structures

- A. Residences. All dwellings shall be Single Family Residences and shall be stick built on site. Single Family Residences shall not be greater than two stories above street level or the basement foundation level,

whichever height is greatest. A Single Family Residence with only one story above street level shall have a minimum of 1500 main level square feet, excluding the garage. A Single Family Residence with two stories above street level shall have a minimum of 1200 main level square feet, excluding the garage. Exterior siding materials and colors shall conform with existing Falcon Crest structures (earth tone siding with brick or rock accents). Garages shall be attached and have a minimum of two stalls.

B. Foundations. All un-faced visible surfaces of concrete masonry or concrete foundations walls and piers must receive a stucco, rock, stone or brick finish and shall blend unobtrusively with adjacent materials. Surfaces of more than 24 inches in height may not be painted or mortar-washed.

C. Out-buildings. Out-buildings are permitted in the rear area of a Lot, shall conform to the main dwelling structure in architectural design and appearance, shall be 150 square feet or smaller, and shall be located within ten feet of the main dwelling structure.

D. General Conditions. All construction of all structures shall be of new material and new construction and no structure shall be moved onto any Lot from any other Lot or from outside the Property. All construction shall comply with applicable building codes and requirements.

E. Building Envelopes. Each Lot has a “building envelope” which is the designated site for location of the Single Family Residence on the Lot. Any deviation for construction of a Single Family Residence outside the building envelope location must first be approved by the Declarant, or appointed Committee, as stated in F below.

F. Architectural Review.

(1). Declarant's Rights. The Declarant retains architectural review and approval of building design, materials and colors, and Declarant is not required to follow any Committee procedures under (2) below.

(2). Committee. However, Declarant may at any time resign and appoint a Committee of three or more Owners of Lots in the Property for purposes of architectural review and approval. Once appointed, the Committee shall have sole authority for review and approval as stated below. If a Committee member resigns, the remaining Committee members shall appoint a replacement member. Upon the request of a majority of the remaining Committee members, or upon the petition of a majority of the

Owners of Lots in the Property, a Committee member may be removed for good cause. The Committee may adopt bylaws for operation of Committee business and may incorporate as a non-profit corporation, but shall in any event reasonably comply with the most current version of Robert's Rules of Order concerning Committee meetings.

- (3). Prior Approval For Improvements Required. Except any structures or improvements placed by the Declarant, all of the following will require the prior approval of the Declarant or appointed Committee: (a) construction of any structure (residence, permitted outbuilding, fence, wall, etc.) on a Lot; (b) exterior alteration or modification of an existing structure; or, (c) modification of the "building envelope".
- (4). Content of Plans Submitted for Review. Plans submitted for review should include: (a) square footage, floor plan, drawings of exterior elevations of the structure, and specifications describing external colors and materials including roofing material, landscaping and plant materials, and outdoor lighting; (b) a site plan of the Lot showing all proposed structures, distances in relation to the other improvements, and (c) any other information the Declarant or appointed Committee requests.
- (5). Consideration of Proposal; 30 Day Limit. The project is reviewed according to the requirements, restrictions, intent, and spirit of this Declaration. Approval is based on such things as compliance with the Declaration, overall aesthetic appeal, and compatibility with the topography, roads, adjacent Lots, and other existing or approved improvements. The decision of the Declarant or appointed Committee on matters properly coming before it is conclusive and binding on all interested persons. If a project is not approved within 30 days after complete plans and specifications are submitted, the project is deemed approved.
- (6). Non-Liability for Approval or Disapproval. Approval or disapproval of any proposed improvement does not constitute endorsement or rejection of any particular design or aspect thereof, nor does the action constitute any representation of fitness (or lack of fitness) of the design for any purpose. **Neither Declarant nor any appointed Committee, their representatives, or any of the respective members thereof, shall be liable in any manner whatsoever for any claims, actions, liability, damages, costs or expenses of any**

**kind, for any approval or disapproval hereunder with respect to any submission made pursuant to this Article.**

#### **4. Set-Backs**

No structure shall be located on any Lot nearer than twenty-five (25) feet to the front lot line, nor nearer than ten (10) feet from any side lot line; however, if applicable zoning or building codes require more stringent set-backs, then the more stringent set-backs shall apply.

#### **5. Use Limitations**

No commercial use, feed lot, noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

#### **6. No Temporary Residences**

No trailer, basement, moved in house, tent, shack, garage, or any building shall be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence at any time.

#### **7. Completion of Construction**

Once construction of any Single Family Residence on any Lot is commenced, all exterior construction shall be completed within two hundred forty (240) days. This restriction does not apply to minor items relative to construction on the inside of the structure.

#### **8. Satellite Dishes and Antennas**

Satellite dishes shall be located in the rear of the dwelling, shall be attached to the Single Family Residence structure (or to a deck attached to the Single Family Residence structure), and shall be reasonably small in diameter and low in profile. No exterior antennas are permitted.

#### **9. Easements**

A. Utility. Easements of public utilities, including but not limited to gas, electricity, telephone, cable television, water and sewer shall exist over and across Lots. A five foot utility easement shall be reserved on all Lot lines. Such easements shall be for the purposes of installation, maintenance, repair or shutoff of such services.

B. Declarant's Right to Grant Further Easements. Declarant and its duly-authorized agents, representatives, employees, as well as its successors, assigns, licensees and mortgagees, except Owners, shall have and there is hereby reserved unto Declarant the right and authority to grant to adjacent property owners use of the easements described in this section for the

purpose of enjoyment, use, access and development of the adjacent property without the consent of any Owner. A grant under this provision shall not constitute an enlargement of the scope of the easement affected.

C. Private Easement and Right-of-Way for Pedestrian Access in Drainage-Way.

(1) A Private easement and right-of-way is hereby reserved by the Declarant over and across the East and North boundary line of the Property, but excluding all side and front lot lines of all Lots, which shall run in favor of the present and future Owners of Lots in the Property which are platted out of the Property with boundary lines to the East and/or North, being Lots 1, 2, 3, 8, 9 and 10 of Phase IV of Phase III of Falcon Crest Subdivision, being a subdivision of a portion to Tract D of Miller Addition to the City of Spearfish, all located in the E1/2NE1/4NW1/4 and the W1/2NW1/4NE1/4 (except Rolling Hills Addition) of Section 24, Township 6 North, Range 2 East, B.H.M., Lawrence County, South Dakota inclusive, and their successors and assigns and bind such Lots for the sole purpose of the ingress and egress of such Lot Owners for pedestrian passage over and along a strip ten (10) feet in width adjacent to the rear boundary line inward to the West and South within the drainage-way to the rear of the Lots and the Property subject to this Declaration. This is not a public easement or right-of-way, and no public dedication of any kind is intended by this reservation.

(2) No pedestrian passages within any of the above-described easements may be developed or improved, but shall remain with only natural-type paths to, from and within the drainage-way.

(3) The Declarant expressly reserves the right, at its sole discretion, to place improvements, landscaping, and/or other site disturbances within this easement area without the consent of any Owner.

### **10. Signs**

Except as provided below, no sign of any kind shall be displayed to the public view on any Lot except one professional, directive or informational sign of not more than thirty-two square foot, and one sign of not more than five square feet per Lot advertising the property 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 square feet. In addition, the Declarant may place a sign of up to eight square feet on each Lot designating the Lot number or other reference information.

### **11. Animals and Pets**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of the property with the exception of pets maintained totally within the dwelling and dogs or house cats not to exceed a total of three in combination with the number of dogs limited to two in any event, provided they are confined to the inside of the dwelling or, if outside, be kept on a leash or confined to the residence yard. In no event shall pets be allowed to run at large or allowed to create noise or trespass upon properties of other Owners. Pets may be kept for private household enjoyment, but pets shall not be bred for commercial purposes.

### **12. On and off-Street Parking on Bridgestone Circle**

A. On-Street Parking. No curbside parking on Bridgestone Circle is permitted except for temporary parking by guests or visitors for up to 72 consecutive hours.

B. Off-Street Parking. Off-street parking in any driveway for vehicles such as motor homes, camper trailers, storage trailers, utility trailers, or any other recreational or utility-type vehicle shall be limited to no more than 48 consecutive hours. No such vehicle shall be stored on any street or driveway, and if parked for more than 48 consecutive hours must be stored inside an enclosed garage.

### **13. Maintenance**

A. Yard Maintenance. Owners are responsible to maintain the real estate and all structures in a neat and orderly manner. Structures shall be painted and maintained, and personal property shall be stored and screened in an orderly fashion. Yards shall be landscaped and vegetation shall be kept under control so as not to become a fire hazard. Maintenance of the boulevard areas shall be the responsibility of the adjacent Owner. Boulevard areas shall be maintained as grass areas with low profile shrubbery allowed.

B. Trash Disposal. 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 that such shall be emptied and disposed of at least once every fourteen (14) days.

C. Easement in Drainage-Way. The North and East boundary line of the Property extends to the center of a drainage-way. A forty foot (40') easement is hereby reserved for Declarant and its duly-authorized agents, representatives, employees, and assigns for the Property along the North and

East boundary lines, which is twenty feet (20') on either side of the drainage way center. No site disturbance including grading, accessory buildings, retaining walls, fences, etc., may be placed within the referenced drainage way easement by any Owner. The Declarant expressly reserves the right, at its sole discretion, to place sidewalks, roadways, walls, fences and other improvements, landscaping, and other site disturbances within this easement area without the consent of any Owner.

D. Construction Easement. The Declarant expressly reserves a permanent construction easement and right-of-way for Declarant and its duly-authorized agents, representatives, employees, and assigns during the construction of roads, sidewalks, walls, fences, landscaping and other improvements, as follows: (i) within 100 feet from the centerline of Bridgestone Circle; (ii) within 100 feet of the centerline of the reserved easement and right-of-way extending between Lots 6 and 7 of the Property; (iii) within 40 feet of the centerline of the drainage-way easement; and, (iv) within 20 feet of the centerline of the pedestrian walkway easement.

E. Easement for Back Slopes and Other Structures. The Declarant expressly reserves a permanent easement and right-of-way for Declarant and its duly authorized agents, representatives, employees, and assigns to construct back-slopes, fill-sections and other structures necessary for the construction and maintenance of roadways, bridges, sidewalks, walls, fences, landscaping and other improvements, within the Easements under Section C and D above, and also adjacent to each Lot line adjoining Bridgestone Circle to the extent deemed necessary by the Declarant for such purposes.

F. Maintenance and Reconstruction of Bridgestone Circle Improvements. Each Owner of a Lot in the Property shall equally share the responsibility for and cost of maintaining, repairing and replacing the landscaping within the Cul-De-Sac on Bridgestone Circle, and the bridge railings, timbers, rock pillars and landscaping surrounding the bridge area on Bridgestone Circle crossing the drainage-way. In the event such improvements are removed or destroyed in the future for whatever reason, and if continuing encroachment within the City of Spearfish right-of-way is approved by the City, reconstruction of such improvements shall be subject to the approval of a majority of the Owners in the Property, each Lot having one vote, and if approved, the cost of reconstruction shall be equally shared by all Lots within the Property.

#### **14. Fencing**

Privacy and/or security fencing is permitted (except past the No-Development Line). No fencing is permitted in the front yard, defined as the

portion of the Lot extending from the front of the Single Family Residence to the street side Lot lines. Privacy and/or security fencing in rear yards shall not exceed a maximum height of four (4) feet and must match any existing fencing. All fencing materials shall be of natural-type colors.

#### **15. Subdivision**

No Lot shall be divided or subdivided and no portion of any Lot other than the entire Lot shall be transferred or conveyed for any purpose. The provisions of this subsection shall not apply to the Declarant and the provisions hereof shall not be construed to prohibit the granting of any easement or right of way to any political subdivision, public utility or other public body or authority.

#### **16. Binding Effect**

Any transfer of title by deed or otherwise, or of possession by lease or otherwise, shall be subject to the provisions of the protective covenants herein contained.

#### **17. Incorporation by Reference on Resale**

In the event any Owner sells or otherwise transfers his or her 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 Property transferred.

#### **18. Covenants Running With the Land and Amendment**

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 said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the Lots subject to such covenants has been recorded, agreeing to change said covenants In whole or in part. These covenants may be amended in whole or in part by a recorded instrument signed by a majority of the then owners of the Lots subject to such covenants. However, any amendment or change to these covenants whenever occurring shall also require the written consent of Declarant so long as Declarant owns any interest in the Property or in real property adjoining the Property (including any property added by Declaration for Inclusion).

