

Prepared by:
The Centerville Development Corporation
Owner/Developer
741 Main Street, Centerville, SD 57014

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

Covenants for the Harvest Pointe Housing Addition in Centerville, SD

THE CENTERVILLE DEVELOPMENT CORPORATION'S HARVEST POINTE ADDITION TO CENTERVILLE, SD

THIS DECLARATION is made on this _____ day of _____, 2023 by CENTERVILLE DEVELOPMENT CORPORATION, a South Dakota nonprofit corporation, with its principal office located at 741 Main Street, Centerville, South Dakota, 57014, hereinafter called the "Developer,"

WHEREAS, the Developer is the fee owner of the real property hereinafter legally described as:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-One (21), and Twenty-Two (22) to the Harvest Pointe Addition to the City of Centerville, Turner County, South Dakota.

(hereinafter referred to as the "Property") shall be held, transferred, sold, conveyed and occupied subject to the conditions, restrictions, easements, charges and liens as hereinafter set forth, which covenants, restrictions and easements shall run with the Property and shall be binding upon all parties having any right, title or interest in the Property or any part thereof, together with their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

WHEREAS, Developer desires to subject all of the above-described property to certain covenants, agreements, easements, restrictions, conditions and charges as hereinafter set forth;

WHEREAS, the Developer intends to develop and offer for sale Lots and Tracts to be located within HARVEST POINTE ADDITION to Centerville, South Dakota (herein sometimes referred to as the "Development") and is desirous of subjecting all the land located within this Development to certain covenants, easements, restrictions, conditions, and charges as hereinafter set forth; and

WHEREAS, the Developer reserves for itself, its successors and assigns easements for public utilities, drainage and storm sewers which are identified and shown on the plat or plats of HARVEST POINTE ADDITION to Centerville, South, filed and to be filed by the Developer to insure the harmonious and systematic development of the Property.

NOW, THEREFORE, the Developer hereby declares that the real property located in Turner County, South Dakota, and legally described as:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-One (21), and Twenty-Two (22) to the Harvest Pointe Addition to the City of Centerville, Turner County, South Dakota.

ARTICLE I

Definitions

- 1.1 Definitions. The following words, when used in this Declaration, shall have the following meanings:
- (a) "Developer" shall mean and refer to the Centerville Development Corporation, a South Dakota nonprofit corporation, its successors and assigns.
 - (b) "Lot" or "Tract" shall mean and refer to any lot or tract or parcel of land designated as a Lot or Tract shown upon any recorded plat or subdivision map of the property. When used herein, the terms Lot or Tract may be used interchangeably.
 - (c) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot (excluding,

however, contract sellers and including in their place their contract purchasers), and excluding any person having such interest merely as security for the performance of an obligation.

(d) " HARVEST POINTE ADDITION " shall mean and refer to all the lands and associated streets and dedicated public access which is and/or will be a part of HARVEST POINTE ADDITION, an Addition to Centerville, Turner County, South Dakota and shown on the plat described herein.

ARTICLE II

Easements

2.1 Easements are hereby reserved by the Developer for water, sewer, electricity, gas, telephone, television, internet, and other similar public utilities.

2.2 Use of Easements. Said reserved Easement Areas may be utilized for the purposes of ingress, egress, and for the installation, replacing, repairing, and maintaining of utilities placed within the easement areas.

2.3 Dedication. The Easement Areas reserved by the Developer as shown on the recorded plats of HARVEST POINTE ADDITION are hereby dedicated to those utilities and entities that provide the various services referred to in paragraph 3.1 above.

2.4 Maintenance of Easement Areas. The Owner of a Lot or Tract shall maintain the Easement Area located upon his Property, except for those improvements for which a public utility or public authority is responsible. No structure, planting or other materials shall be placed or permitted to remain or to interfere with the dedicated Easement Areas.

ARTICLE III

Review Committee and Approval of Plans Prior to Construction

3.1 Purposes and Authority. In order to maintain the criteria for standards, to prevent the impairment of the attractiveness of the individual Lots, and to maintain the desired tone of the residential community, and thereby secure to each Owner the full benefit and enjoyment of the Lot with no greater restriction on the free and undisturbed use of a Lot than is necessary to ensure the same advantages for the other Owners, the Developer or individuals appointed by the Developer, including the Centerville Development Corporation Executive Board of Directors will serve as the Review Committee.

3.2 Procedure. Before commencing any permanent improvement on or to any of the described Lots, including landscaping, the construction or external alteration of any building, enclosure, fence or any other structure, the Owner shall first submit a site plan and plans and specifications, including as applicable, in the sole discretion of the Review Committee and for the written approval of the Review Committee. In the event the Review Committee fails to approve or disapprove plans submitted to it or to request additional information reasonably required within thirty (30) days after the receipt of the plans, the plans will automatically be considered approved.

3.3 Right to Inspect. Any member of the Review Committee shall have the right, during reasonable hours and after reasonable notice, to request inspection for the purpose of ascertaining whether or not the covenants contained in this Declaration have been or are being complied with.

3.4 No Waiver of Future Approvals. The approval of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

3.5 No Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Review Committee shall not bear any responsibility of ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, land use regulations or any other governmental regulations or requirements. The Developer or individuals appointed by the Developer, including the Centerville Development Corporation Executive Board serving as the Review Committee shall not be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any unit.

ARTICLE IV

Restrictions

4.1 Zoning and Yard Requirements. The Property is zoned single-family residential. The size of the Lots, maximum height of structures and the permitted uses as contained in the Ordinances shall, as a minimum, comply with the applicable ordinances and regulations of Centerville, South Dakota. Minimum yard requirements are as follows: front yard setback twenty-five (25) feet; side yard setbacks seven (7) feet; rear yard setback ten (10) feet.

3.6 4.2 Land Use. No Lot shall be used for any purpose except for a single- family

residential dwelling, except for lots One (1), Two (2), Three (3) and Four (4), which may have a multi-family dwelling of new construction only. Before commencing any construction on multi-family lots, the Owner shall first submit a site plan and plans and specifications, including as applicable, in the sole discretion of the Review Committee and for the written approval by the Review Committee. No Lot in the Property may be reduced in size or re-platted to any Tract smaller than the whole of the Lot as presently platted, except by the Developer. Lot owners may purchase additional lots. However, each additionally purchased lot will be for the sole purpose of building a single-family residential dwelling. The footprint or surface area of an additional free standing storage buildings or detached garages may not be larger than the main dwelling and must comply with the applicable Centerville ordinances and regulations of Centerville, South Dakota and may be subject to a conditional use permit.

4.3 Style and Nature of Buildings. No building shall be constructed, altered, or permitted to remain on any Lot in the Property other than a single-family dwelling. One Story, One and One-Half Story, Split Foyer, Multi-Level and Two-Story homes are allowed. No structure shall exceed two stories in height above the highest point on the Lot where the surface of the earth contacts the structure. No wood footings are allowed. All building construction must comply with the restrictions and requirements of these covenants, any County or City Ordinances, amendments or building code requirements of Centerville, South Dakota.

All external furnaces, air conditioners, heat pumps and other items or devices of like or similar nature shall be concealed from the public view by foliage or appropriate screening devices. Construction, once commenced on any Lot, must be diligently and steadily pursued until completion. Each dwelling constructed on the Property shall conform to the following requirements:

- (a) For purposes of these restrictions, "surface level" is the first or main floor level that is entirely upon the surface of the earth. Any floor level that is in whole or in part below the surface of and/or surrounded by earth shall not be considered a "surface level". Garages and open porches are excluded in square foot area calculations.
- (b) Any dwelling constructed on a single-family lot of 0.30 acres or more shall contain a minimum of 1,200 square feet on its main level, exclusive of a garage and open porches. Dwelling on lots of 0.30 acres or more must also have at minimum a two-stall garage.
- (c) Any dwelling constructed on a single-family lot of 0.44 acres or more shall contain a minimum of 1,400 square feet on its main level, exclusive of a garage and open porches. Dwelling on lots of 0.44 acres or more must also have at minimum a two-stall garage.

- (d) Any dwelling constructed on a single-family lot of 0.65 acres or more shall contain a minimum of 1,400 square feet on its main level, exclusive of a garage and open porches. Dwelling on lots of 0.65 acres or more must also have at minimum a two-stall garage.
- (e) All garages shall have a fully enclosed double garage or larger to serve the principal residence. All such garages must be permanently constructed on concrete foundations, and the exterior shall be in conformance with the principal residence.

4.4 Construction Time Frames & Other Requirements. To promote the orderly development of this addition buyers and builders must agree to the follow:

- (a) Timeframe to start building construction will be twenty-four (24) months from the closing date on Lot.
- (b) Timeframe to complete building construction will be twelve months (12) from start of the issuance of a building permit.
- (c) If construction is not started on the dwelling within twenty-four (24) months the developer maintains the option to purchase back the undeveloped lot(s) for ninety percent (90%) of the remaining purchase price after applying the earnest money deposit.
- (d) Yard must be seeded or sodded within nine (9) months of the issuance of a certificate of occupancy.
- (e) All hedges or shrubbery shall be kept and maintained in neat condition and appearance and may not exceed seven (7) feet in height.
- (f) At least two (2) trees of at least one and one-half inches in diameter shall be planted and at least one (1) must be in the front yard of each dwelling within nine (9) months of the issuance of a certificate of occupancy. Evergreen trees must be a minimum of eighteen (18) inches in height at the time of planting. Trees shall be proportionally spaced with respect to other trees and existing structures, as well as at least seven (7) feet from the property line. No Box Elder, Cottonwood, Elm, Ash or Poplar shall be planted on any Lot.
- (g) One garden will be allowed. However, it will be placed in the backyard with a maximum of three hundred (300) square feet and nothing growing higher than six (6) feet.
- (h) Only natural wood, brick, stucco, natural stone, textured hardboard (lap application) or oriented strand board (lap application) shall be used as siding materials on the

structures located within the Lot. No plywood, hardboard, or oriented strand board siding in the form of panels or sheets shall be used as main siding. Decorative board & batten style and product similar to LP Smartside shall be allowed. All roofs shall be covered with cedar shingles, cedar shakes, clay tile, asphalt, fiberglass shingles, and all types of steel roofs are permitted.

- (i) Except as is immediately required for the construction of a particular dwelling, the grade of a Lot shall not be altered or changed in any significant fashion.
- (j) All roofing, siding, and colors at time of original construction or future changes thereto shall be submitted to and approved by the Review Committee. Exterior colors allowed are: earth tone colors on siding, intended to mean a color scheme that draws from a color palette of browns, tans, warm grays, greens, blue, along with white. Final color schemes subject to approval.
- (k) Homeowners shall be responsible to furnish and install grinder pump station and connection to service stubbed at the City right of way. Grinder pump station shall be provided as follows: model WH101-124 or WR101-124 as provided by Environment One, or a pump of comparable standards to be approved by the Review Committee. Homeowner shall be responsible for the maintenance and replacement of their sanitary sewer service system from the house to the City Right of Way.
- (l) Main dwelling roof slopes shall be a minimum 5:12 pitch. Decorative porches, dormers, three seasons rooms and similar additions may be a minimum of 3:12 pitch.
- (m) Main front approach driveways and all walkways shall be constructed of concrete, stone, or brick. Secondary driveways to a detached secondary garages or sheds shall be made of at minimum $\frac{3}{4}$ inch road gravel, crushed concrete or recycled black top and have a clearly defined and maintained path.
- (n) Free stand buildings, other than your main dwelling, shall be allowed only on lots 0.50 acres or greater. The structure must be similar in materials, style, design, and appearance as the main dwelling. The structure may be placed in the backyard only. The minimum and maximum square foot of surface level will comply with City Ordinance. All detached free-standing buildings will require approval by the Review Committee and may also require a conditional use permit from the Centerville Planning & Zoning Committee and Centerville City Council. Free standing out buildings will be required to have clearly defined driveway made of either concrete, crushed concrete, road gravel or recycled black top.
- (o) The front yard of any lot shall not be fenced. The rear yard of any lot may be

fenced, provided that any such fence includes but not limited to, vinyl coated chain-link fence that is black or brown in color, rod-iron style decorative fencing, and vinyl or similar material privacy fence and its exterior color is complimentary of the main dwelling. Net type fences constructed of chains or ropes and wooden are not permitted. Opaque fencing for screening a patio or deck or any other fence requests may be permitted in the sole discretion of the Review Committee. All fencing must comply in all respects with all applicable city regulations, codes, and ordinances.

- (p) Basements walls shall be made of concrete or wood. No wood footings are allowed. If wood is used for basement walls standards shall be 2x6 southern yellow pine lumber, .06 green treated, ¾ inch, .06 green treated plywood exterior. 12 inch on center framing for walls. Foundation coating on exterior of plywood. 8x16 inch concrete footings.
- (q) Dog runs, or kennels shall not be permitted in the front yard and must meet the required rear yard and side yard setbacks, and the size of the dog runs, or kennels must contain no more than two-hundred (200) square feet. Materials for the dog runs or kennels must be approved by the Review Committee. The structure of the dog run or kennel must meet standard lot setbacks and may not be put on property lines.
- (r) Mail Boxes. Permanent mail boxes will be uniform in style and placed in a location at the discretion of the United State Postal Service. Mail boxes shall not be changed or altered without the consent of the U.S. Postal Service. If due to weather, temporary mail boxes are necessary or needed, such boxes will be provided by the homeowner.

Article V

Prohibited Activities.

- (1) Modular homes, mobile homes, tents, shacks, barns, temporary buildings, structures of a temporary character or existing houses and garages. Pre-manufactured homes built off sight to be moved in must be pre-approved by the Review Committee. Speculator homes constructed by builders or general contractors must be approved by the Review Committee.
- (2) Satellite dishes, except those less than four (4) feet in diameter, which shall be in the rear yard not any closer than twenty (20) feet from the rear and side yard lot lines except a permissive satellite dish must be at least twenty-five (25) feet from the rear lot line. If attached to the structure, the dish may not extend more than five (5) feet

above the roof line at the point of attachment.

- (3) Recreational vehicles (RV's), campers and camping trailers except and while loading and unloading, and except those RV's that are owned by guests. RV's, boats, and trailers of guests, unless garaged, shall not be parked on the street or in the main driveway for more than 72 hours. Such RV's, campers, boats, etc. shall be allowed to be parked for extended periods if parked on a hard surface made of concrete that is located behind or on the side of the house.
- (4) Animals, livestock, or poultry of any kind raised, bred or kept on any Lot, except that of dogs or cats may be kept provided that they are kept, bred or maintained for no reason other than as household pets. Limit number of dogs/cats to three (3) per household.
- (5) Business enterprises, including self-employed businesses where the public is invited, except for those businesses that are allowed by City Ordinance.
- (6) The operation of non-licensed road and recreational vehicles shall not be permitted on any of the Lots subject to these covenants and restrictions. City Ordinance's apply.
- (7) No noxious or offensive activity, as defined by law, shall be carried on upon a Lot in the Property, nor shall anything be done which may become an annoyance or nuisance, as defined by law.
- (8) Window or wall heating units and window or wall air conditioning units. Mini split heating and cooling units shall be allowed on four seasons rooms and detached garages only.
- (9) Wind turbines or solar panels except those less than five (5) feet in diameter, if attached to the structure, the turbine or panel may not extend more than five (5) feet above the roof line at the point of attachment and may not be seen from any angle from the street.
- (10) Spot-lights, flood lights or other lighting that point at or interferes with the enjoyment of adjoining or neighboring Lots.
- (11) No unsightly or unkept conditions shall be seen from any angle from the street, including but not limited to; permanent clotheslines, woodpiles, rain barrels, and compost bins.

Article VI

Required Activities.

In addition to said prohibited activities, Owners of Lots within the Development shall do and

perform the following:

- (1) Owners of vacant Lots must keep and maintain those Lots in a neat and clean appearance. Each Lot shall be regularly mowed to keep the length of grass and weeds growing thereon at six inches or less, and weeds shall be sprayed at least annually. Upon failure to comply with this covenant, and after three days' notice is given, the Developer or City may perform such maintenance as is necessary and bill the Lot Owner, as provided herein, for all expense incurred.
- (2) Refuse and rubbish. No Lot shall be used or maintained as a dumping ground. Garbage or other waste shall be kept within sanitary and recycling containers, and shall be stored either within garages, or within a screened device for that purpose.
- (3) Signs. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than six square feet advertising a celebration announcement, a residence for sale, or garage sale, signs used by the Developer or a Contractor to advertise the property during the construction and sales period. Exception: Permanent identification signs may be constructed by the Developer at the perimeter of the area, and signs of a temporary nature may be placed by the Developer to advertise the Development during the development and sale of the Property.
- (4) Removal of Soil and Grade Level. No soil shall be removed from the Addition resulting from any excavation without first obtaining the written approval of the Developer. There shall be no material change in the grade levels as they now exist without approval of the Review Committee.
- (5) Runoff and erosion shall be controlled on site during construction with erosion control barriers. All disturbed ground areas of a building site shall be sodded, seeded, covered with plants, or mulched with approved landscape materials.
- (6) All dwellings and structures, drives and walkways, fencing, landscaping including trees and turf shall be properly maintained. If property is not properly maintained, written notice will be given by the Review Committee and a reasonable time period will be allowed within which repairs must be made.
- (7) Homeowners shall be responsible to furnish and install grinder pump stations and connection to service stubbed at the City Right of Way. Grinder pump stations shall be provided as follows: model WH101-124 or WR101-124 as provided by Environment One. Homeowner shall be responsible for the maintenance and replacement for of the sanitary sewer service system from the house to the City Right of Way.

ARTICLE VII

General Provisions

7.1 Term. 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-five (25) 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 within the Addition has been recorded in Turner County South Dakota. Register of Deeds office agreeing to change said covenants in whole or in part.

7.2 Amendment. These Covenants may be amended during any term as follows:

- (a) By Developer at any time on the unsold Lots in the Development.
- (b) When all Lots have been sold by two-thirds (2/3) of the total number of the Lots Owners.

7.3 Enforcement. Upon the sale of all the lots subject to this Declaration, Developer may but shall have no duty to enforce or ensure compliance with the covenants and restrictions contained herein. Any person or persons with any interest in the property affected by this Declaration may enforce the terms and conditions contained herein. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

7.4 Failure to Enforce: The failure to enforce any of the Covenants herein set forth as to any violation by the Developer, its agent(s) and/or assignees, or any property Owner, of any term, condition or covenant contained herein shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or different term, condition, or covenant herein. Moreover, no such failure to enforce shall entitle any Owner to claim, sue for, or receive any damages or other payment from developer. In addition, if Developer is named by any Owner in any legal action, Developer shall be entitled to recover from said Owner reasonable attorney fees in defending said action.

7.5 Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Dated on this _____ day of _____, 2023

Harvest Pointe Housing Addition
Centerville Development Corporation

Signed By: _____

Print: _____
Its: President

Signed By: _____

Print: _____
Its: Executive Director

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF TURNER)

Notary Public State of South Dakota, County of Turner, SD

On this the _____ day of _____ 2023, before me, the undersigned officer, personally appeared Brad Preheim being the President of the Centerville Development Corporation and Jared Hybertson being the Executive Director of the Centerville Development Corporation, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness, whereof, I hereunto set my hand and official seal.

Notary Public
My Commission Expires _____