

No 12487 C

DECLARATION OF RESTRICTIONS AND
COVENANTS TO RUN WITH THE LAND

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Roy Lake Estates, Ltd., by
Joseph E. Winklepleck, Jr.,
President of Roy Lake Estates, Inc.,
General Partner
to

Dated August 10, 1971
Acknowledged August 10, 1971
Commission expires Oct. 26, 1975
Filed
Recorded

Whom It May Concern

PART "A" PREAMBLE

THIS INDENTURE, made this 10th day of August, 1971, by ROY LAKE ESTATES, LTD., (hereinafter called the Company) a South Dakota Limited Partnership with its principal office located in Sioux Falls, South Dakota, the fee owner of Lots 1 through 37, inclusive, of Roy Lake Estates located in the Northeast Quarter (NE $\frac{1}{4}$) of Section 32, and the South One-half of the Southeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 29, Township 126 North, Range 55 West of the Fifth P.M., Marshall County, South Dakota, the plat thereof being recorded in Book 2 of Plats, page 233, in the office of the Register of Deeds, Marshall County, South Dakota;

WHEREAS, the plat hereinbefore referred to shows the location of various easements reserved by the said Company for the purposes of utilities, sewer and drainage, which said plat is made a part hereof by this reference; and

WHEREAS, the Company intends to develop and improve said tract of land and offer for sale the lots as shown in said plat, and is desirous of subjecting all of said tract of land to certain covenants, agreements, easements, restrictions, conditions and charges, as hereinafter set out;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the Company does hereby impose and charge Lots 1 through 37, inclusive, of Roy Lake Estates with the covenants, agreements, easements, restrictions, conditions and charges hereinafter set forth, hereby specifying that said declarations shall constitute covenants to run with the land, and shall be binding on all parties and all persons claiming under them, and for the benefit of and limitations upon all future owners in said tract, said restrictions and covenants being designed to keep said tract uniform and to insure the highest and best residential and recreational development of said property.

PART "B" EASEMENTS RESERVED

Easements and rights of way for utility, sewer and drainage purposes and functions are hereby expressly reserved to the Company, its successors and assigns, on, over, under, and across the rear five feet (5') of each lot, all as more particularly shown and described on the plat of Lots 1 through 37, inclusive, of Roy Lake Estates referred to hereinabove.

Such easements and rights of way may be used for the location of underground electric or communication cables, sanitary sewers, pipe lines for supplying gas or water, including mains, service pipes, and other necessary equipment incidental thereto.

The owner of each lot shall at his own cost and expense keep and preserve that portion of the easement and right of way within his own property line at all times in a good condition of repair and maintenance and neither erect nor permit erection of any building or structure of any kind or nature, nor permit any growth of any kind within said easement which might interfere in any way with the proper construction, maintenance, use, operation, repair, reconstruction and patrolling of any of the utility services located therein.

PART "C" RESIDENTIAL AREA COVENANTS

C-1. Definition. As used herein, the term "lot owner" shall mean and refer to the record title owner whether one or more persons or entities, of the fee simple title to any lot, or, if a lot is being purchased under a contract for deed, then to the equitable titleholder.

C-2. Committee. The Board of Directors of Roy Lake Estates Owners Association or its duly appointed agents or representatives shall constitute the "Committee", which said Committee shall exercise those duties and perform those functions set forth hereafter in this Indenture as applicable to the Committee.

C-3. Land Use and Building Type. No lot owner shall use any lot except for residential purposes exclusively. Only one single family dwelling house shall be erected, placed, or permitted to remain on any lot, which dwelling house shall not exceed two stories in height from the ground level, shall cost at least Five Thousand Dollars (\$5,000.00) to construct exclusive of the cost of outbuildings and ground improvements, and which shall be subject to the limitations provided by C-6 hereof.

C-4. Outbuildings. Suitable and necessary outbuildings to serve the principal dwelling structure may be permanently constructed but shall be subject to the limitations provided by paragraph C-6 hereof.

C-5. Sewer Systems. Each lot owner, except the Company, shall be responsible for the installation, maintenance, repair and upkeep of a septic tank or tanks to service the buildings and structures on his lot. Latrines and cesspools shall not be permitted and all private sanitary sewer systems shall be subject to the limitations provided by paragraph C-6 hereof.

Said sewer systems shall be subject to reasonable periodic inspection by the Committee. If, after ten written notice from the Committee, any purchaser fails to comply with directions given as to repairs or other work to be performed on his sewer system, the Committee may make such repairs or perform such work and bill the cost incurred to the lot owner.

If a general sewer line is hereafter laid to service all of the lots in this tract, it shall be incumbent upon each lot owner to establish connection at his own expense with said sewer system without delay, and thereafter to make use of same to the exclusion of any other sewer system.

C-6. Approval of Plans. No dwelling house, outbuilding, structure, wall, fence, or sewer system shall be commenced, installed, erected, maintained, or altered until the plans and specifications therefor showing the description, type, design, intended use, materials, location and estimated cost of same shall have been submitted to and approved in writing by the Committee provided for in paragraph C-2.

In the event said Committee fails to approve or disapprove such plans and specifications within thirty (30) days after their submission to it, such approval will not be required and this covenant will be deemed to have been fully complied with.

C-7. Used Structures. No lot owner may move or permit to be moved any used dwelling house, building, or any other structure onto any lot.

C-8. Temporary Structures. Temporary residential structures such as mobile or motor homes or trailers may not be used by any lot owner on his lot for a period longer than twenty-four (24) months following the date of purchase of the lot from company. Construction and erection of the permanent principal dwelling house must commence within twelve (12) months following the date of the purchase of the lot from company and be completed within twenty-four (24) months following said date of purchase.

C-9. Road. Company will provide a service road abutting the rear of each lot to be used for general ingress and egress to all lots, and will repair and keep said road so as to maintain it in its condition as of the date first above written.

C-10. Commercial Enterprise. No store, business or manufacturing of any kind, or anything of the nature thereof, shall be carried on or conducted on any lot; provided, however, that notwithstanding anything contained anywhere in this declaration to the contrary, the Company shall have the right to construct buildings or structures to house such business or businesses as it deems necessary and proper to the convenience or welfare of the lot owners, including but not necessarily limited to a bait shop and grocery store.

C-11. Water Pollution. In the interest of public health and sanitation and in order that the tract above described and all other land in the same locality may be benefited by a decrease in the hazards of water pollution and by the protection of water supplies, recreation, wildlife, and other public uses of waters and shorelands, no lot owner may use any lot for any purpose that would result in the draining or dumping into any public water any refuse, sewage or other material which might tend to pollute said waters.

C-12. Nuisances. No noxious or offensive activity, as defined by law, shall be carried on upon any lot in said tract, nor shall anything be done which may or become an annoyance or nuisance, as defined by law, to the neighborhood or individuals residing or owning property therein.

C-13. Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Animals, livestock, or poultry may be pastured or kept, with the prior consent and approval of Company, on property, other than lots 1 through 37, inclusive, belonging to Company.

C-14. Replating or Subdividing. No one, except Company shall at any time ever replat, subdivide or resubdivide any lot into a smaller lot, or in any other manner change this plat as it is now shown on the recorded plat of this tract.

C-15. Garbage and Refuse Disposal. Each lot owner shall be responsible for the removal of his own trash, garbage, or other waste material. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Should any lot owner fail to comply with these provisions, the Committee may have same done and bill the lot owner for the expenses incurred.

C-16. Vacant Lots. Owners of vacant lots must keep them neat and clean in appearance and must maintain them by mowing at least twice a year. Upon failure to do this, after three-day notice is given

C-18. Signs. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising a residence for sale or rent, or signs used by a builder to advertise the property during the construction and sale. On vacant lots, no sign shall be larger than three feet square.

Section 1. Property Subject to Restriction. All of the property located at Lots 1 through 37, inclusive, of Roy Lake Estates in the Northeast Quarter (NE 1/4) of Section 32 and the South One-half (S 1/2) of the Southeast Quarter (SE 1/4) of Section 29 Township 126 North, Range 55 West of the Fifth P.M., Marshall County, South Dakota, shall be subject to all of the restrictions which were previously filed of record and

shall be held, transferred, sold, conveyed and occupied subject to the declarations and restrictions stated herein.

ARTICLE III.

Section 1. Membership. Every person or entity who is the owner of a fee or undivided interest in a fee or has any interest in any lot which is subject by covenants of record to assessment by the Association shall be a member of the Association; provided, however, that any person or entity that holds such interest merely as security for the performance of an obligation shall not be a member unless and until through foreclosure or otherwise the security interest and title shall merge in the holder of the security.

Section 2. Classes of Voting Membership. The association shall have two classes of voting membership

(a) Class A Members. Class A members shall be all those owners as defined in Section 1 of Article III with the exception of the company. Class A members shall be entitled to one vote for each lot in which they hold the interest required for membership. Notwithstanding the fact that lots may be owned in undivided interest or purchased by Contract for Deed, no more than one vote may be cast with respect to any one lot.

(b.) Class B Member. The Class B member shall be the company. The Class B member shall be entitled to three votes for each lot in which it holds the interest required for membership in Section 1, Article III hereof. Class B membership shall cease and terminate and become converted into Class A membership upon the happening of either one of the following events:

(1) When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or

(ii) On January 1, 1974.

(c.) Upon the happening of either one of the two foregoing events, the Class B membership shall be deemed a Class A member with one vote for each lot owned by the company.

ARTICLE IV.

Section 1. Payment of Assessments and Charges. Owners of all lots covenant and agree to pay to the Association:

(a) Annual assessments and charges, if any, as agreed to by members of the Association.

(b) Special assessments for capital improvements, if any, as agreed to by members of the Association.

Section 2. Lien for Assessments and Charges. The annual and special assessments shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Assessments and charges shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

Section 3. Purpose of Assessments. Assessments shall be utilized for improvement, repairs and maintenance, and for the promotion of the health, safety and recreational enjoyment of the members of the Association.

Section 4. Amount of Assessments. The amount of the annual assessments, if any, shall be as determined by the board of directors of the Association from time to time.

Section 5. Special Assessments. The Association may levy in any assessment year a special assessment for the purpose of capital improvement or for the purpose of the repair or replacement of existing capital improvements; provided, however, that such assessment shall have the assent of two-thirds of the members of each class of members entitled to vote thereon at a meeting called for such purpose.

Special 6. Basis of Assessments. The amount of the assessment against each lot, both annual and special, shall be determined by dividing the total number of lots in the tract into the amount of the annual assessment as determined by the board of directors and into the amount of the special assessment as previously authorized by the membership for a special assessment.

Special 7. Due Dates of Assessments. The annual assessments shall be due and payable on the first day of April of each year.

The due date of any special assessment authorized shall be fixed in the resolution authorizing such assessment.

Special 8. Written Notice of Assessments. At least 30 days prior to the due date of the assessment the Association shall provide owners with written notice of the amount of the annual or special assessment. Notice shall be deemed to have been properly given when mailed, postpaid, to the last known address of the person who appears as member or owner on the records of the Association at the time of mailing.

Section 9. Subordination of the Lien. The lien for assessments shall be subordinated to the lien of any mortgage or mortgages now or hereafter placed on the properties subject to the assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 10. Certificate of Payment. The Association shall upon demand at any time furnish to any owner a certificate in writing signed by an officer of the corporation setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of the fact of such payment.

ARTICLE V.

Section 1. Duration. These supplemental restrictions and covenants shall be for the same period as stated in the original declaration of restrictions and covenants to run with the land affecting this property. However, a two-thirds vote of each class of members may record an instrument in the office of the Register of Deeds, Marshall County, South Dakota, agreeing to change or abolish these supplemental restrictions in whole or in part.

IN WITNESS WHEREOF, the said ROY LAKE ESTATES, LTD., has caused these presents to be signed by Joseph E. Winklepleck, Jr., President of Roy Lake Estates, Inc., General Partner.

ATTEST:

Dale R. Wehrkamp,
Dale R. Wehrkamp, Secretary
of Roy Lake Estates, Inc.

(CORPORATE SEAL)

ROY LAKE ESTATES, LTD.,

By Joseph E. Winklepleck Jr.
Joseph E. Winklepleck, Jr.,
President of Roy Lake Estates, Inc.
General Partner of Roy Lake Estates, Ltd.

STATE OF SOUTH DAKOTA }
COUNTY OF MINNEHAHA } SS

On this 27th day of August, 1971, before me, David J. Vickers, the undersigned officer, personally appeared Joseph E. Winklepleck, Jr., and Dale R. Wehrkamp who acknowledged themselves to be the President and Secretary, respectively, of Roy Lake Estates, Inc., the Corporate General Partner of Roy Lake Estates, Ltd., and that they, as such President and Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of this corporation by themselves as President and Secretary, respectively.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(NOTARIAL SEAL)

My commission expires: October 26, 1975

David J. Vickers
Notary Public-South Dakota

STATE OF SOUTH DAKOTA)
COUNTY OF MARSHALL) SS

OFFICE OF REGISTER OF DEEDS

I hereby certify that the within instrument was filed in this office on the 27 day of August 1971 at 2:20 o'clock P.M. and duly recorded in Book VM of Misc. in page 524-5. Leonard Gangle, Register of Deeds