

STATE OF SOUTH DAKOTA

**PERPETUAL RESTRICTIVE  
USE EASEMENT**

COUNTY OF PENNINGTON

THIS PERPETUAL RESTRICTIVE USE EASEMENT ("Easement") made as of this 15<sup>th</sup> day of December, 2017, by [REDACTED]

and **South Dakota Ellsworth Development Authority (SDEDA)**, a South Dakota body corporate and politic created pursuant to SDCL ch. 1-16J, located at 14 Saint Joseph Street, Suite 200, Rapid City, SD 57701 and **THE UNITED STATES OF AMERICA**, acting by and through the **Secretary of the Air Force (the "Grantee(s))** pursuant to 10 U.S.C. 2684a and delegated authority. When used in this Easement, unless the context otherwise specifies, "Grantor" includes its successors and assigns, and "Grantee" includes the assigns of South Dakota Ellsworth Development Authority and The United States of America and the successors of either or both of the Department and Secretary of the Air Force. The Grantor and the Grantee may be collectively referred to as "Parties," or in the singular, each may be referred to as a "Party," in which event those words include their respective successors and assigns.

In consideration of the sum of [REDACTED] and other good and valuable consideration, the sufficiency and receipt thereof acknowledged, the mutual covenants, terms, and conditions contained in this Easement, the Grantor hereby grants and conveys to the Grantee a restrictive easement in perpetuity over the land, which is described in Exhibit A. and incorporated herein by reference, of the nature and character, and to the extent, set forth in this Easement.

1. Purpose. It is the purpose of this Easement to limit any development or use of the Property that would otherwise be incompatible with the mission of Ellsworth Air Force Base (the "Installation"), or might interfere, whether directly or indirectly, with current or future military training, testing, or operations on, near, or adjacent to the Installation. It is not the intent of the parties that this Easement be interpreted to convey Fee Simple Title to the Grantee.

2. Rights of the Grantee. To accomplish the purpose of this Easement, the Grantor conveys the following rights by this Easement to the Grantee:

a. To limit any development or use of the Property that would otherwise be incompatible with the flying mission of the Installation as contemplated by the Air Installation Compatible Use Zones and referenced documents in effect on the date this Easement is granted, or as may be amended from time to time;

b. The right of ingress, egress and passage over Grantor's property in order to monitor compliance with, and enforce the terms of, this Easement;

c. To prevent any activity on, or use of, the Property that is inconsistent with the purpose of this Easement, and to require the restoration, by the Grantor, of areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to paragraph 4; including, but not limited to the right to prevent and remove the erection or growth upon Grantor's property of any building, structure, tree or other object that extends into the air space that exceeds a height established by C.F.R 14 Federal Aviation Regulations Part 77 (dated May 27, 2015 or as amended) or established by a military airport hazard area zoning standard together with the right of ingress, egress and passage over Grantor's property for the above purposes;

d. To unobstructed passage of all aircraft, ("aircraft" being defined as any contrivance now known or later invented used or designed for navigation of or flight in the air by whomsoever owned or operated, in all air space above the surface of Grantor's property, to an infinite height above Grantor's property);

e. To cause in all air space above the surface of Grantor's property such noise, vibrations, fumes, dust, fuel particles, light and all other effects that may be caused by the landing, taking off or any other operation of any aircraft or such as may be caused by the operation of any other thing directly or indirectly related to the mission of the Installation;

f. To post signs on the Property indicating the nature and extent of this Easement.

3. Rights retained by the Grantor. The Grantor retains the right to use the Property in any manner that is not prohibited by Section 4 Prohibited Uses.

4. Prohibited Uses. Any activity or use of the Property inconsistent with the purpose of this Easement is prohibited by the Grantor. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

a. Any use of the Property that is incompatible with the flying mission of the Installation as contemplated by the Air Installation Compatible Use Zones and other related documents in effect on the date this Easement is granted, or as may be amended from time to time.

b. Any structure, tree, or point on the ground, including a mobile object, that exceeds a height established by C.F.R 14 Federal Aviation Regulations Part 77 (dated May 27, 2015 or as amended) or established by a military airport hazard area zoning standard. This protected surface is to be kept free of obstructions in order to provide safe air navigation for flying operations.

c. No lighting shall be permitted that may be dangerous, distracting, or misleading to aircraft operating around the Installation. This type of lighting includes, but is not limited to, strobe lights, non-emergency vehicle rotating beacons or light sources above 16,000 lumens. Light sources above 16,000 lumens must be angled 15 degrees below the horizon.

d. No operations of any type shall be permitted that produce incompatible or interfering smoke, glare, or other visual hazards, or that encourage large concentrations of birds, that could interfere with aircraft operating around the Installation or could interfere with the mission of the Installation.

5. Grant of Easements Only: Warranty of Title. Grantor is not hereby conveying any land or title thereto, but merely is granting the rights, privileges and easements hereinabove set forth. Grantor hereby represents, warrants and covenants that Grantor owns fee simple title to the Property and is duly authorized and empowered to execute and deliver this Easement and grant the rights, interests and easement herein.

6. Compliance with Applicable Law. Nothing shall be constructed and no use shall be permitted on the Property unless it is in full compliance with all applicable city, county, state, or federal codes, ordinances and statutes, as may be amended from time to time. This includes, but is not limited to, South Dakota Codified Law Title 50 – Aviation, all as may be amended from time to time.

7. Enforcement and Remedies. Upon any breach of a term of this Easement, the Grantee may institute suits to enjoin any breach or enforce any term by injunction and require that the Property be restored promptly to the condition required by this Easement. The remedies of the Grantee shall be cumulative, and shall include all attorneys' fees, costs, and any other rights and remedies available to the Grantee at law or in equity.

8. Discretion of the Grantee. Enforcement of the terms of this Easement shall be undertaken at the discretion of the Grantee. No failure on the part of the Grantee to enforce any term of this Easement on one occasion shall discharge or invalidate that term or any other term of this Easement, or affect the enforcement right of the Grantee in the event of a subsequent breach or default.

9. Notices. Any notice, approval, or communication that either Party is required or desires to give related to this Easement must be given in writing and may be served personally (including by recognized courier service) or sent by certified mail, return receipt requested, by the U.S. Postal Service, to:

10. Subsequent Transfers. The Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of the Fee interest or any lesser interest. The Grantor further agrees to give written notice, by the means specified in section 9, to the Grantee of the transfer of any interest in the Property at least twenty (20) days prior to it.

11. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of that provision to persons or circumstances other than those in favor of which it is found to be invalid, as the case may be, shall not be affected.

12. Runs with the Land. The covenants, terms, conditions, and restrictions of this Easement shall be deemed to touch and concern, and run with, the land.

13. Entire Agreement. This Easement sets forth the entire agreement of the Parties for the conveyance of a restrictive use easement in the Property, and supersedes all prior discussions, negotiations, understandings, or agreements, oral or written, relating to this Easement, all of which are merged into this Easement.

### **LEGAL DESCRIPTION OF THE PROPERTY ENCUMBERED BY THE EASEMENT**

- A. Lots 1, 2, 3, 4, 5 and 6 of Capital Estates in the City of Box Elder, Pennington County, South Dakota, as shown on the plat filed in Document No. A201408065;
- B. Lot 22 of the Subdivision of the Southwest Quarter (SW1/4) of Section 19, Township 2 North, Range 9 East of the Black Hills Meridian, in the City of Box Elder, Pennington County, South Dakota, as shown on the plat filed in Plat Book 4, Page 9; and
- C. Lots A and B of Lot 23 of the Subdivision of the Southwest Quarter (SW1/4) of Section 19, Township 2 North, Range 9 East of the Black Hills Meridian, in the City of Box Elder, Pennington County, South Dakota, including a 30 foot wide private access easement across Lot A to serve Lot B, as shown on the plat filed in Plat Book 23, Page 93.

Containing **30.47** acres of land, more or less.

Nine Pennington County Parcel Identification Numbers:

2219302022	2219302024	2219302025	2219426010	2219426011	2219426012
2219426013	2219426014	2219476002			

### **MAPS OF LAND ENCUMBERED BY THE EASEMENT**

- See attached EXHIBIT A - Pages 2 + 2A; 3 + 3A; 4 + 4A; 5 + 5A; 6 + 6A; 7 + 7A; 8 + 8A; 9 + 9A; 10 + 10A; as well as, Page 11.