

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT  
OF THE STATE OF WYOMING IN AND FOR FREMONT COUNTY

MARY V. KIERNAN  
Plaintiff,

vs.

Upper Little Warm Springs Association, a  
Wyoming non-profit corporation

Eriks Goodwin, an Individual

James W. Phillips, an Individual

Defendants.

2022-CV-0043476  
Civil Action No. \_\_\_\_\_

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**SUMMONS IN CIVIL ACTION**

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TO: Upper Little Warm Springs Association  
c/o Frontier Registered Agency Services  
2120 Carey Ave.  
Cheyenne, WY 82001

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Wyoming Rules of Civil Procedure. The answer or motion must be served on the plaintiff whose name and address are:

Mary Kiernan  
c/o Kelsey Good  
321 E. 43<sup>rd</sup> Street, Apt. 412  
New York, New York 10017

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF THE COURT

DATE 08-25-22

Cora J. Deputy

Civil Action No.  
Complaint

**PROOF OF SERVICE**

This Summons for Upper Little Warm Springs Association  
was received by me on (date)\_\_\_\_\_.

I personally served the summons on the individual at (*place*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on (*name of individual*) \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of (*name of  
organization*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other (*specify*): \_\_\_\_\_

My fees are \_\_\_\_\_ for travel and \_\_\_\_\_ for service.

DATE \_\_\_\_\_

Servers Signature

Servers Address \_\_\_\_\_

I declare under penalty of perjury that this information is true.

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT  
OF THE STATE OF WYOMING IN AND FOR FREMONT COUNTY

FREMONT COUNTY, WY  
FILED  
THE DISTRICT COURT  
*Kristi H. Green*  
AUG 25 2022

Kristi H. Green Clerk of Court  
By \_\_\_\_\_  
DEPUTY CLERK

MARY V. KIERNAN  
Plaintiff,  
vs.

Upper Little Warm Springs  
Association, a Wyoming non-profit  
corporation

Eriks Goodwin, an Individual

James W. Phillips, an Individual

Defendants.

*2022-CV-0043476*  
Civil Action No. \_\_\_\_\_

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**COMPLAINT**

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Plaintiff Mary V. Kiernan for her Complaint against individual Defendants named above alleges:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff is an individual who owns property in Fremont County, Wyoming with a street address of 33 Hart Trail, Dubois, Wyoming, consisting of Lot 18 of the Subdivision, which is more specifically described in a certain Warranty Deed recorded as Document No. 1394998 in the Office of the Fremont County Clerk

2. Defendant Upper Little Warm Springs Association (the Association) is a Wyoming nonprofit corporation, which has its principal office and place of business in Fremont County, Wyoming.

3. Individual Defendant, Erics Goodwin, is an officer of the nonprofit corporation, and President of the Board of the Home Owners Association for the Upper Little Warm Spring Creek Subdivision (the Subdivision), which consists of real property located in the S/2 and

SE/4NE/4 of Section 9, the W/2 and N/2NE/4 of Section 10, and the S/2SE/4 of Section 3, Township 41 North, Range 107 West, 6<sup>th</sup> P.M., Fremont County, Wyoming, which is more specifically described in certain Reservations and Restrictive Covenants (the Covenants) recorded as Document No. 868269 in the Office of the Fremont County Clerk.

4. Defendant Eriks Goodwin, upon information and belief, owns real property and resides in Fremont County, Wyoming at the street address: 20 Hart Court, Dubois, WY 82513.

5. Individual Defendant, James W. Phillips, is an individual who owns real property in Fremont County Wyoming with a street address of: Spring Creek Trail, Lot 17A, Dubois, WY 82513.

6. The Court has subject matter jurisdiction over this action pursuant to its general original jurisdiction. *See* Wyo. Const. art. 5, § 10; Wyo. Stat. Ann. § 5-3-102(a).

7. The Court has jurisdiction over Upper Little Warm Springs Association as a nonprofit corporation registered with its principal place of business in Fremont County Wyoming.

8. The Court has personal jurisdiction over Defendants as individuals residing in the State of Wyoming and to the extent of their interests in real property located in the State of Wyoming.

9. Venue is proper in the Ninth Judicial District, Fremont County, Wyoming where the real property at issue is located and where the relevant conduct occurred.

10. Plaintiff has standing to bring action to uphold the Restrictive Covenants per Paragraph 2. Extent of Restrictions which provides in part:

*Reservations, restrictions and limitations herein set forth shall be construed as conditions attached to the grant of each lot in said legal subdivision and as covenants running with the land; . . . they are created for the benefit of the entire legal subdivision and each lot therein contained and shall be enforceable at law or in equity in accordance with their several terms and provisions by the owners of the lots and tracts therein, individually and*

*collectively, against the person or persons violating any of the conditions of this instrument and either to prevent him from doing so, or to recover damages for such violation, or both. Exhibit A: Reservations and Restrictive Covenants to Upper Little Warm Spring Creek Subdivision.*

### **FACTS COMMON TO ALL CAUSES OF ACTION**

11. The Restrictive Covenants were recorded in the Office of the Fremont County Clerk on May 9, 1974.

12. The Restrictive Covenants govern real property located within the Upper Little Warm Springs Subdivision.

13. Defendants, Eriks Goodwin, James Phillips, like all other purchasers of real property within the Subdivision, took ownership of their property subject to all restrictions, reservations, covenants, and easements of record.

14. Eriks Goodwin, is President of the Association, a non-profit corporation and of the Homeowners Association, officers of which have a duty to uphold the Restrictive Covenants and who are held to standards of conduct as cited in Wyoming Statutes 17-19-842 where conduct must be:

- a. In good faith
- b. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- c. In a manner the officer reasonably believes to be in the best interest of the corporation and its members, if any.

15. WY Stat §17-19-830 (b) *Directors' Standards and Liabilities* protects members of a board of any nonprofit corporation organized under the act from individual liability for any actions, inactions or omissions by the nonprofit corporation. This subsection, however, does not affect individual liability for intentional torts or illegal acts. *Id.*

16. The Restrictive Covenants state, in part, Paragraph 4. USE: *The use of the lots herein shall be limited to private **residential purposes** [emphasis added] and no more than one residential unit with outbuildings shall be located on any one lot; use and occupancy of the respective residential units shall be limited to one family; ..No unlicensed or inoperable motor vehicle shall be stored or parked within the legal subdivision. No **trailer house** [emphasis added] shall be stored or parked within the legal subdivision other than for the purposes of temporarily maintaining a residence during the construction of a building in conformity with the requirements as hereinafter set forth; provided, however, that trailer houses will be permitted of the type and quality approved by the Architectural Control Committee;*

17. Restrictive Covenant, Paragraph 7. Nuisances: *No conditions which constitute or create a nuisance or an unreasonable annoyance to the property owners in the legal subdivision shall be created or permitted to exist;”*

18. Restrictive Covenant, Paragraph 12: Fire Hazards: *All reasonable preventions shall be taken against fire hazards.*

19. On July 1, 2022, the Association and Eriks Goodwin were notified by Plaintiff’s email, with attendant photographs, of a nuisance and fire danger existing on Lot 17A, owned, upon information and belief, by James W. Phillips, and were asked to enforce Covenant restrictions: *“Could we ask that the board please make contact with the owner/camper and inform them of the prohibited camping.” Email From: Plaintiff, To: Association and Eriks Goodwin, Date: 7/1/2022.*

20. The Association and Eriks Goodwin failed to respond to the request to enforce the Covenant Restrictions and Mark Hirschberger, an Association officer, recklessly responded on behalf of the Association: *“No where in the covenants does it say that an owner of a lot in the*

*subdivision can not temporarily camp on their land.” Email From: Mark Hirschberger, To: Plaintiff and Association Board, dated 7/1/2022.*

21. On July 1, 2022, Plaintiff met with Mr. Phillips on his lot, witnessed a pitched tent, the active burning of large bundles of wood and debris which were creating excessive amounts of smoke which permeated Plaintiff’s property and dwellings, prohibiting the reasonable use and enjoyment of Plaintiff’s property.

22. Plaintiff requested Defendant Phillips cease the nuisance activity and recognize the fire hazard the activity created in violation of Restrictive Covenants.

23. Defendant Phillips failed to respond and recklessly continued the nuisance activity of burning multiple piles of debris.

24. On July 2, 2022, Plaintiff notified the Association and Eriks Goodwin by email that she had visited James W. Phillips on his lot, along with two other landowners, Van Velzers and Hazeldines, and witnessed “three burn piles, and the landowner attested that he had ‘water bottles’ to extinguish any uncontrolled flame. He admitted that he had no 5 gallon water containers, conditions which, given the high fire danger recorded in Fremont County, created an unreasonable risk of fire hazard in violation of Restrictive Covenants.

25. Upon receipt of Plaintiff’s July 2, 2022, notification to the Association and Eriks Goodwin requesting enforcement of Covenant USE restrictions, restricting the use of property to residential use only, the Association and Goodwin either refused to act or failed to respond to the requests.

26. Upon Plaintiff’s notification and written requests to uphold the Covenant Nuisance restriction, which prohibits an unreasonable annoyance to other property owners in the legal

subdivision against nuisance, the Association and Eriks Goodwin either refused to act or failed to respond to the request.

27. On 7/30/2022, as smoke once again rose from Lot 17A, permeating her property and residence, Plaintiff again notified the Association by email of the ongoing Covenant USE, Nuisance and Fire Hazard violations and again officers of the corporation failed to respond.

28. On 7/31/2022, Plaintiff emailed to the Association a proposed action plan to contact James Phillips and, *“explain that the covenants prohibit behavior that creates a nuisance. Suggest that perhaps the owner pile up debris and burn it under controlled burn circumstances in the winter.”* Email from Plaintiff To: Eriks Goodwin, Association, Dated 7/31/2022.

29. On 7/31/2022, Plaintiff again emailed the Association, a formal request to support a motion to: *“Move that: The board president is to contact the landowner, James Phillips, and explain that the covenants prohibit behavior that creates a nuisance including continuous open burning creating smoke within a close proximity to other residents whose use and enjoyment of their property is negatively impacted.”* Email from Plaintiff, To: Association, July 31, 2022.

30. On 7/31/2022, The Association and Eriks Goodwin responded, *“The Board has discussed the issues and no Director proposed any of the ULWSA.”* Email from Eriks Goodwin, To Plaintiff, dated 7/31/2022.

31. On 7/31/2022, Mark Hirschberger, Director of The Association responded to the proposed motion stating: *“To deny him [Mr. Phillips] the ability to do what he is doing on his land negatively impacts his use and enjoyment of his property”.* Email From Mark Hirschberger, Director, August 1, 2022, To: Plaintiff and Association Board.

32. The Association negligently acted to protect Mr. Phillips right to use and enjoyment, recklessly giving permission to Mr. Phillips to continue his covenant violations, while



aware of the fire hazard and knowingly, deliberately and through calculation, failing to acknowledge and uphold their duty to act in the best interests of the community by enforcing the Restrictive Covenants against Mr. Phillips in order to provide for the safety of the community.

33. On 8/11/2022, at approximately 6:00 pm, after smoldering for 10 days on Mr. Phillip's unattended lot, fire erupted on Lot 17A, and Plaintiff watched in horror as the Fremont County volunteer fire department and Forest Service personnel responded to extinguish a fire.

34. The fire burned within 40 yards of Plaintiff's property and structures, the result of inadequate fire extinguishing and proximately caused by the Association and Eriks Goodwin's reckless disregard for multiple warnings of the risk of fire hazard and the calculated breach of their duty of care and good faith to uphold the Restrictive Covenants in a manner reasonably believed to be in the best interest of the corporation and its members.

35. The Association and Mr. Goodwin continue to remain unresponsive to requests to uphold the Restrictive Covenants restricting USE to private residential purposes, as defined in plain and unambiguous language; to restrict nuisance activity which is stated in unambiguous terms in the Restrictive Covenants; to uphold Restrictive Covenants limiting temporary residence during construction of a building in conformity with Covenant requirements to a trailer house; and to take all reasonable preventions against fire hazards as required by Covenants and statute;

- a. In good faith
- b. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- c. In a manner the officer reasonably believes to be in the best interest of the corporation and its members.

36. The Association and Eriks Goodwin claim an unauthorized interpretation of the Covenants, distorting the plain and unambiguous language thereof, by rewriting the covenants to suit their negligent failure to act to uphold, claiming : *"Tent camping is not prohibited by the*

*Covenants, Fires are not prohibited by the Covenants, and; Normal campfire or slash pile burning smoke is not a "nuisance" Therefore, there is no action to be taken by the Association." Email From Eriks Goodwin, To: Plaintiff and Association, dated July 31, 2022.*

37. Plaintiff has suffered (and continues to suffer) severe emotional distress from the fire that burned within life threatening proximity to her property and structures and she fears that another smoldering fire might erupt at a time when it would not be seen by passersby and reported before catastrophe caused destruction of life and property.

38. As a direct result of the Association and Eriks Goodwin's reckless failure to act to enforce the Restrictive Covenants Plaintiff must continue to live with the fear of destruction and annihilation by fire.

39. Plaintiff's fear and anxiety have been reinforced by the Association and Goodwin's inexplicable refusal to have contact of any kind with her which continues to make it impossible to alleviate the fear, risk and anxiety imposed by the Associations failure to act in a manner that is in the best interest of the landowners and members of the community.

**FIRST CAUSE OF ACTION  
NEGLIGENCE  
(Against Non-Profit Corporation)**

40. Plaintiff incorporates herein and realleges the allegations in paragraphs 1 through 39, inclusive as if fully set forth herein.

41. The Upper Little Warm Springs Association had a duty to discharge its duties in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the officer reasonably believes to be in the best interests of the corporation and its members. The Association breached that duty by refusing to uphold the Restrictive Covenants which resulted in an actual fire which was potentially lethal.

42. The Association was warned by Plaintiff, in writing, multiple times of the potential danger and Defendant foresaw or should have foreseen that its failure to act in good faith with the care of an ordinarily prudent person would injure the Plaintiff.

43. As a direct and proximate result of the Associations conduct, Plaintiff has suffered (and continues to suffer) severe emotional distress in an amount to be proven at trial.

**SECOND CAUSE OF ACTION  
BREACH OF FIDUCIARY DUTY  
(Against Non-Profit Corporation and Eriks Goodwin, an Individual)**

44. Plaintiff incorporates herein and realleges the allegations in paragraphs 1 through 43, inclusive as if fully set forth herein.

45. The Association and Eriks Goodwin have, without the care an ordinarily prudent person in a like position would exercise under similar circumstances, recklessly exposed Plaintiff, Plaintiff's property, the subdivision and the town of Dubois to an unreasonable fire hazard by refusing to uphold the Restrictive Covenants against Fire Hazard.

46. The Association and Eriks Goodwin have, without the care an ordinarily prudent person in a like position would exercise under similar circumstances, recklessly supported the continuation of covenant violations which create an unreasonable annoyance to property owners in the legal subdivision by failing to uphold the Restrictive Covenants against Nuisances.

47. The Association and Eriks Goodwin have breached their fiduciary duty to uphold the Restrictive Covenants by recklessly maintaining that, "*Tent camping is not prohibited by the Covenants*" which is in direct conflict with the plain and unambiguous language of the Restrictive Covenants which corporate officers are entrusted to uphold and which state "*use of the lots herein shall be limited to private residential purposes*".

48. The Association and Eriks Goodwin have breached their fiduciary duty to uphold the Restrictive Covenants by recklessly maintaining, via email, dated 7/31/2022, "*Fires are not prohibited by the Covenants*" refuting the unambiguous language of the Restrictive Covenants which he is entrusted to uphold, which state "all reasonable preventions shall be taken against fire hazards".

49. The Association and Eriks Goodwin have breached their fiduciary duty to uphold the Restrictive Covenants, which they are entrusted to uphold, by recklessly maintaining, via email, dated 7/31/2022, "*Normal campfire or slash pile burning smoke is not a "nuisance"*", when photographic evidence clearly indicated that there was not a "normal campfire" and that fact was confirmed by an email response of other Board members.

50. Per Paragraph 2 of the Restrictive Covenants, Plaintiff, acting as an individual property owner in the Subdivision is entitled to enforce the Covenants at law against a person who violates them, including through the recovery of damages. *Reservations and Restrictive Covenants, §2.*

51. Plaintiff is therefore entitled to an award of monetary damages resulting from Defendants' breaches of fiduciary duty.

52. Under ARTICLE XIII of the Corporate Bylaws Plaintiff is entitled to damages, injunctive relief or any combination thereof and may recover the costs of a proceeding arising out of an alleged default by the Association including without limitation, attorneys' fees.

**THIRD CAUSE OF ACTION  
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS  
(Against Non-profit Corporation and Eriks Goodwin)**

53. Plaintiff incorporates herein and realleges the allegations in paragraphs 1 through 52, inclusive as if fully set forth herein.

54. The Association and Eriks Goodwin owed a duty to Plaintiff to act in good faith and to use ordinary care to prevent against fire hazards as contemplated in the Restrictive Covenants.

55. The Association and Goodwin, individually and collectively, were at all times aware of and repeatedly notified by Plaintiff of the nuisance caused by excessive smoke and the attendant fire danger and were at all times aware, after Defendant Goodwin and Director Hirschberger visited Lot 17A, of tent camping and burning, and were or should have been aware of the danger of fire breaking out where Mr. Phillips had no fire suppression equipment, no water hookup and lacked the proper tools to suppress a run-away blaze as reported by Plaintiff.

56. Upon information and belief, Goodwin and Hirschberger recklessly failed to object and/or gave Mr. Phillips permission to continue his covenant violations and recklessly failed to uphold the Restrictive Covenants, which caused Plaintiff substantial risk of serious bodily harm and/or death, extreme anxiety and emotional distress. *Email dated 7/31/2022 From Gail Rae to Association: "He [Mr. Phillips] has been told by other directors that what he is doing is okay, if not fool hardy."*

57. That risk was manifest into reality on August 11, 2022 at appx. 6:00 pm when fire broke out, caused and by the Association and Goodwin's reckless failure to uphold Restrictive Covenants and by Mr. Phillips failure or inability to adequately extinguish multiple burn piles prior to abandoning Lot 17A.

58. From July 1, 2022, through July 31, 2022, due to the extreme risk of fire, Plaintiff was repeatedly and unceasingly emailing the Association and Eriks Goodwin requesting the enforcement of the Covenants to minimize the risk of a fire.

59. The Association and Goodwin recklessly failed to engage in certain acts as alleged herein and above, which proximately resulted in fire and severe emotional distress to Plaintiff.

60. At all times material herein, the Association and Defendant Goodwin knew, or in the exercise of ordinary care should have known, that unless Defendants acted to enforce the Restrictive Covenants the violating conduct would continue, thereby subjecting Plaintiff, and all subdivision landowners, to personal injury, loss of property and severe emotional distress.

61. As a direct and proximate result of the Association and Eriks Goodwin's actions against Plaintiff, as alleged above, Plaintiff has suffered and continues to suffer general damages including but not limited to significant and enduring emotional distress including sleeplessness, mental anguish and physical distress, fear of fire and physical injury in a sum to be proven at time of trial.

62. Plaintiff is further entitled to prejudgment interest in an amount to be shown at trial.

63. Defendants' intentional, deliberate, calculated and malicious refusal to act resulted in foreseeable emotional distress to Plaintiff. Defendants' actions were reckless and resulted in an actual fire, threatening life and property. Plaintiff is thus entitled to and herein seeks punitive and exemplary damages from Defendants, in an amount according to proof at trial, to punish Defendants and deter Defendants and others from engaging in similar future conduct.

64. Punitive damages are also available based upon negligent infliction of emotional distress where the plaintiff can show that the defendant intentionally performed an act from which he knew, or should know, it is highly probable that harm will result.

**FOURTH CAUSE OF ACTION  
BREACH OF COVENANTS  
(To include All Defendants including James W. Phillips)**

65. Plaintiff incorporates herein and realleges the allegations in paragraphs 1 through 64, inclusive as if fully set forth herein

66. Defendants have individually and collectively breached the covenants which are specific and unambiguous by giving permission to and/or permitting James Phillips to live in a car or a tent on subdivision property which is in direct conflict with the plain and unambiguous language of the covenants which limit the use of lots to private residential purposes.

67. Defendant, James W. Phillips, has breached the Restrictive Covenants which are specific and unambiguous regarding the “use” of lots, which is restricted to residential use, by occupying a tent, which cannot be defined, pursuant to Covenants as a “residence”.

68. Defendant, James W. Phillips, has breached the Restrictive Covenants which are specific and unambiguous stating that a *trailer house* (not a tent) may be stored or parked within the legal subdivision for the purposes of temporarily maintaining a residence during the construction of a building in conformity with the requirements set forth in the Restrictive Covenants.

69. The Association, Eriks Goodwin and James Phillips have breached the covenants by permitting to exist, in direct violation of Restrictive Covenants, conditions which create a

nuisance or an unreasonable annoyance to other property owners preventing their reasonable use and enjoyment of their property.

70. The Association, Eriks Goodwin and James Phillips have breached the covenants by refusing to take reasonable preventions against fire hazards as required by Restrictive Covenants and which resulted in a fire.

71. Under Paragraph 2 of the Covenants, Plaintiff, acting as an individual property owner in the Subdivision is entitled to enforce the Covenants at law against a person who violates them, including through the recovery of damages.

72. Plaintiff is therefore entitled to an award of monetary damages resulting from Defendants' breach of covenants.

73. Under ARTICLE XIII of the Bylaws Plaintiff is entitled to damages, injunctive relief or any combination thereof and may recover the costs of a proceeding arising out of an alleged default by the Association including without limitation, attorneys' fees.

**FIFTH CAUSE OF ACTION  
PERMANENT INJUNCTION  
(Against Non-Profit Corporation and Eriks Goodwin)**

74. Plaintiff incorporates herein and realleges the allegations in paragraphs 1 through 73, inclusive as if fully set forth herein

75. After multiple requests, the Association and Eriks Goodwin have failed to uphold the Restrictive Covenants, as is their fiduciary duty, and have recklessly fostered threats to life and property in breach of their duty of care: Thus a pattern of action has been established.

76. Mr. Goodwin's and the Association's ongoing and future breaches of fiduciary duty and of the Covenants threaten to cause irreparable harm from fire, loss of property values, diminishment of the effectiveness of the Covenants, confusion among current and prospective



landowners, and inadvertent Covenant violations by confused landowners which cannot be adequately compensated through an award of monetary damages.

77. Plaintiff is therefore entitled to a permanent injunction requiring Mr. Goodwin and the Association to act to enforce the Covenant use restrictions, act upon nuisance activities which prohibit landowners reasonable use and enjoyment of property and enforce covenant restrictions which would reasonably act to prevent fire hazards.

Plaintiff therefore requests the Court acts to enforce the Covenants by requiring Defendants to uphold USE, Nuisance, Fire clauses of Restrictive Covenants; permanently enjoin Defendants from authorizing property use which is not residential and which is in conflict with the Covenants; award Plaintiff damages, costs, and attorneys' fees; and provide other relief the Court deems appropriate.

Dated: 8.25.2022


By:   
Mary Kiernan  
c/o Kelsey Good  
321 E. 43<sup>rd</sup> Street, Apt 412  
New York, New York 10017

EXHIBIT A

RESERVATIONS AND RESTRICTIVE COVENANTS  
TO UPPER LITTLE WARM SPRINGS CREEK SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS:

Warm Springs, Inc., a Wyoming corporation, fee owner of the following described real property, located in Fremont County, Wyoming:

A tract of land located in the south half (S $\frac{1}{2}$ ) and the southeast quarter of the northeast quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 9, the west half (W $\frac{1}{2}$ ) and the north half of the northeast quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ ) of Section 10; and the south half of the southeast quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ ) of Section 3, Township 41 North, Range 107 West, of the Sixth Principal Meridian, Fremont County, Wyoming, more particularly described as follows: Beginning at the southwest corner of Section 9, Township 41 North, Range 107 West, of the Sixth Principal Meridian, Fremont County, Wyoming, and considering the west line of said Section 9 to bear north 00°59'03" West with all bearings contained herein relative thereto; thence North 00°59'03" West along the west line of said Section 9 a distance of 2650.07 feet to a point on the north line of the southwest quarter (SW $\frac{1}{4}$ ) of said Section 9; thence North 88°56'01" East along the north line of the southwest quarter (SW $\frac{1}{4}$ ) of said Section 9, a distance of 2628.03 feet to the northeast corner of the southwest quarter (SW $\frac{1}{4}$ ) of said Section 9; thence continuing North 88°56'01" East along the north line of the southeast quarter (SE $\frac{1}{4}$ ) of said Section 9, a distance of 1324.00 feet to the southwest corner of the southeast quarter of the northeast quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of said Section 9; thence North 00°58'43" West along the west line of the southeast quarter of the northeast quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of said Section 9, a distance of 1320.91 feet to the northwest corner of the southeast quarter of the northeast quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of said Section 9; thence North 88°59'36" East along the north line of said southeast quarter of the northeast quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of said Section 9, a distance of 1320.70 feet to the northeast corner of the southeast quarter of the northeast quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of said Section 9; thence North 01°07'18" West along the west line of Section 10, a distance of 1319.54 feet to the northwest corner of said Section 10; thence North 89°37'41" East along the north line of said Section 10 a distance of 2639.82 feet to the north quarter corner (N $\frac{1}{4}$ COR) of said Section 10; thence North 00°29'34" West along the west line of the southwest quarter of the southeast quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section 3 a distance of 1319.96 feet to the northwest corner (NWCOR) of said southwest quarter of the southeast quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of said Section 3; thence North 89°36'50" East along the north line of the south half of the southeast quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ ) of said Section 3 a distance of 2652.14 feet to the northeast corner (NECOR) of said south half of the southeast quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ ) of said Section 3; thence south 00°02'30" West a distance of 41.14 feet; thence South 87°47'43" West a distance of 642.10 feet; thence South 17°18'50" West a distance of 2713.06 feet; thence South 89°43'32" West along the southline of the northwest quarter of the northeast quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 10 a distance of 1179.96 feet to the southwest corner (SWCOR) of said northwest quarter of the northeast quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ ) of said Section 10; thence South 00°30'24" East along the east line of the west half (W $\frac{1}{2}$ ) of said Section 10 a distance of 3611.35 feet to the northeast corner (NECOR) of Little Warm Springs Creek No. 1 Subdivision, a subdivision as recorded in the records of Fremont County, Wyoming; continuing along the northerly and westerly boundary of said Little Warm Springs Creek No. 1 Subdivision by the following twenty (20) courses:

358269

Fremont County, Wyo. No.  
Recorded

At 2:29 P.M. Book 81 of MISS, Page 592  
L. A. Faulking  
County Clerk

deed, grant, conveyance and encumbrance shall be subject to the terms and conditions hereof, whether or not so expressly stated; they are created for the benefit of the entire legal subdivision and each lot therein contained and shall be enforceable at law or in equity in accordance with their several terms and provisions by the owners of the lots and tracts therein, individually and collectively, against the person or persons violating any of the conditions of this instrument and either to prevent him from doing so, or to recover damages for such violation, or both.

3. SIZE OF LOTS: Lots in this legal subdivision shall contain at least two acres, more or less, which, in unusual circumstances, could contain less, upon approval of the Architectural Control Committee,

4. USE: The use of the lots herein shall be limited to private residential purposes and no more than one residential unit with out-buildings shall be located on any one lot; use and occupancy of the respective residential units shall be limited to one family; no commercial or business use of any of the lots or residential units shall be permitted, including, but not limited to, outfitting and guiding hunters and fishermen, nor shall any commercial or business activity be conducted within the legal subdivision. No unlicensed or inoperable motor vehicle shall be stored or parked within the legal subdivision. No trailer house shall be stored or parked within the legal subdivision other than for the purposes of temporarily maintaining a residence during the construction of a building in conformity with the requirements as hereinafter set forth; provided, however, that trailer houses will be permitted of the type and quality approved by the Architectural Control Committee; and provided further, however, that unoccupied campers and camp trailers may be stored upon the premises by the beneficial owners of the property. Livestock for pleasure purposes, such as saddle horses and domestic pets shall be permitted; the raising, maintenance, keeping or harboring of any kind of barnyard fowl, sheep, goats and cattle, swine or other similar animals not ordinarily raised for pleasure purposes only is prohibited. No lot, the subject of this subdivision, shall be further subdivided unless, after subdivision, each lot contains at

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the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation.

9. RIGHTS-OF-WAY AND EASEMENTS: Each lot in the legal subdivision shall possess and shall be burdened by the following rights and easements held, possessed and enforceable by all lot owners jointly and severally: The right to the free and uninterrupted passage of that amount of water to which each lot is entitled over, through, and across adjacent lots over which such passage may be necessary from time to time; easements and rights-of-way as may be reasonably necessary for the installation, maintenance and repair of water, power and gas mains and lines, which shall be buried, or other installations as the same may now or in the future be installed or erected; provided, nevertheless, that no such easement or right-of-way shall hinder, damage or obstruct residential buildings constructed or in the process of construction at the time of such installation; provided further, that the use of such easement and exercise of rights thereunder shall be conducted with due care in regard to the surface, and in the event the surface shall be damaged in installation, maintenance or repair, it shall be, upon completion of the work, restored to its original condition.

10. INVALIDATION AND AMENDMENT: Invalidation of any of the covenants, restrictions and limitations contained in this instrument by judgment or court order shall in no way affect any of the other provisions hereof which shall remain in full force and effect. The rights, duties, obligations and restrictions herein created are for the benefit of all of the land in said legal subdivision and they are and shall be irrevocable and perpetual until and unless revoked, obligated, modified or amended by instruments executed and acknowledged in the form prescribed for the execution of deeds by 75-percent of the owners of the property in this legal subdivision.

11. GARBAGE DUMPING: No part of the property shall be used or maintained as a dumping ground for rubbish, trash, garbage, debris, or other waste, except upon a temporary basis, and in that event, kept

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designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then record owners of a majority of the lots shall have the power, through a duly recorded written instrument, to change the membership of the Committee.

WITNESS this 9 day of May, 1974.



WARM SPRINGS, INC., a Wyoming corporation

By: Perc E. Yarborough  
President

Attest:

H. H. Hamberger, Jr.  
Secretary

STATE OF WYOMING )  
                          ) ss.  
County of Fremont )

The foregoing Reservations and Restrictive Covenants for Upper Little Warm Spring Creek Subdivision was acknowledged before me by Perc E. Yarborough, President of, and acting for and on behalf of Warm Springs, Inc., this 9th day of May, 1974.

WITNESS my hand and official seal.



Cleo Arcuella  
Notary Public

My commission expires:

CORRECTIVE

AMENDATORY ADDENDUM TO DECLARATION OF PROTECTIVE COVENANTS  
TO UPPER LITTLE WARM SPRING CREEK SUBDIVISION

This document is filed to correct the addendum filed May 7, 1986  
book 264 of microfilm page 903 Fremont County Wyoming #1083331.

At the duly called regular meeting of the members of the Upper Little  
Warm Spring Creek Subdivision held on May 5, 1986, at the Dubois town  
hall, Dubois Wyoming, a majority of the membership was represented and  
approved the following amendments to the Declaration of Protective  
Covenants of Upper Little Warm Spring Creek Subdivision, First Filing,  
as recorded by the Fremont County Clerk, Lander, Wyoming.

Paragraph 17. STREETS AND ROADS: - is amended to read as follows:

All platted roads in the subdivision shall be public roads, for use  
by the general public for ingress and egress.

All other covenants and provisions of the Declaration of Protective  
Covenants shall remain the same and shall not be affected or impair-  
ed by the above addendum.

The undersigned hereby release and waive all rights existing under and  
by virtue of the homestead exemption laws of the State of Wyoming, for  
the purposes of this document.

Dated this 10<sup>th</sup> day of October, 1986

UPPER LITTLE WARM SPRING CREEK SUB.

Leslie V. Hixon  
Leslie V. Hixon, Co-Chairman

Floyd A. Clark  
Floyd A. Clark, Chairman

Fremont County, Wyo. No. 1083331  
Recorded

OCT 20 1986 Book 274 of Microfilm Page 584  
10:20 o'clock AM James A. Farthing  
County Clerk

STATE OF WYOMING }  
COUNTY OF FREMONT } ss

Above instrument was acknowledge before me October 14  
\_\_\_\_\_, A. D., 1986

James A. Farthing  
Notary Public



IN THE DISTRICT COURT OF FREMONT COUNTY, WYOMING  
NINTH JUDICIAL DISTRICT

FILED  
IN THE DISTRICT COURT  
*Kristi H. Green*  
AUG 25 2022  
Kristi H. Green, Clerk of Court  
By *[Signature]*  
DEPUTY CLERK

MARY V. KIERNAN, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
UPPER LITTLE WARM SPRINGS )  
ASSOCIATION, etal, )  
 )  
Defendants. )

No. 2022-CV-0043476

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**NOTICE OF ASSIGNMENT**

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The above captioned case has been assigned to District Judge **Jason M. Conder**. Copies of this notice have been provided as indicated below.

DATED this 25<sup>th</sup> day of August, 2022.

*Kristi H. Green*

\_\_\_\_\_  
Clerk of the District Court

*[Signature]*

\_\_\_\_\_  
Deputy Clerk of the District Court

Copies To:

- M. KIERNAN
- Upper Little Warm Springs Assoc. via service
- E. Goodwin via service
- J. Phillips via service



STATE OF WYOMING IN THE DISTRICT COURT  
COUNTY OF FREMONT NINTH JUDICIAL DISTRICT

FREMONT COUNTY, WY  
FILED  
IN THE DISTRICT COURT  
*Kristi A. Green*  
AUG 25 2022  
Kristi A. Green, Clerk of Court  
By *[Signature]*  
DEPUTY CLERK

MARY V. KIERNAN, )  
 )  
Plaintiff, )  
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vs. )  
 )  
UPPER LITTLE WARM SPRINGS )  
ASSOCIATION, etal, )  
 )  
Defendants. )

No. 2022-CV-0043476

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**NOTICE REGARDING SELF-REPRESENTATION**

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The court recognizes that one or more of the parties in this matter are representing themselves. That is their right. However, unless or until counsel is retained, the **FOLLOWING NOTICE IS GIVEN TO THE SELF-REPRESENTED PARTY:**

1. By law, the court, the court's staff, and the Clerk's Office may not, and will not, provide legal advice or act as an attorney for any party, including self-represented litigants. Legal advice may include, but is not limited to, specific information, guidance, opinions, research, recommendations, or answers regarding the application or implementation of applicable laws, rules, or procedures to your specific case.
2. The administration of justice requires reasonable adherence to procedural rules and requirements of the court. Therefore, self-represented parties are expected to know the law and are required to follow the Wyoming State Statutes, Wyoming Rules of Civil Procedure, the Wyoming Rules of Evidence, the Uniform Rules for the District Courts, and other applicable laws and procedures as may be relevant to the particular case. The court also directs self-represented

CC: M. KIERNAN  
Upper Little Warm Springs Assoc. via service  
E. Goodwin via service 1  
J. Phillips via service

parties to Rule 801 of the Uniform Rules of the District Courts regarding guidelines for courtroom decorum, as well as Rule 901 of the Uniform Rules of the District Courts regarding sanctions that may be imposed for failing to follow the Uniform Rules of the District Courts.

3. The Wyoming Rules of Civil Procedure, the Wyoming Rules of Evidence, the Uniform Rules for the District Courts, Wyoming statutes, and some Wyoming case law may be available through a variety of online legal resources and/or internet searches, as well as the Fremont County Courthouse Law Library.

4. Self-represented parties **must be aware** that their failure to follow procedural rules, statutes, applicable case law, and/or their failure to competently represent themselves and their legal interests may prejudice their case. The court gives this notice so that self-represented parties have realistic expectations regarding what it means to act as their own lawyer, and that they are aware that the failure to adequately prosecute or defend a claim, simply because they chose to represent themselves, may not be a persuasive argument in this court or on appeal.

5. Self-represented parties may retain counsel at any time. If this occurs, counsel must file an entry of appearance as soon as possible, and all communication with the court shall be through counsel.

6. Self-represented parties are also directed to free and low-cost legal services that may be of assistance, which may include but are not limited to:

a. Legal Aid of Wyoming provides a variety of legal services to income-eligible litigants, ranging from full representation to having legal questions answered through a volunteer attorney program, Wyoming Free Legal Answers. Contact information is available at <https://www.lawyoming.org>

b. The Wyoming State Bar offers a Modest Means program which offers some services to income-eligible individuals. More information, the Modest Means application, and a contact phone number are available through the drop-down menu listing on the State Bar's website, at <https://www.wyomingbar.org/for-the-public/hire-a-layyer/modestmeans-program/>

c. The University of Wyoming College of Law Civil Legal Services Clinic offers some representation services. Contact information can be found at

<http://www.uwyo.edu/law/experiential/clinics/civil-legal-serv-clinic.html>

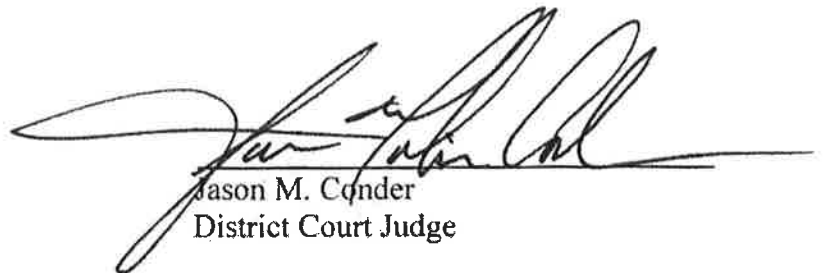
d. The Wyoming Supreme Court website <https://www.courts.state.wy.us/legalassistances-and-forms/> offers a wide array of information for self-represented parties and those seeking counsel.

e. Equal Justice Wyoming provides a host of information regarding self-representation, limited scope representation, and other similar resources, all of which can be found at <https://equaljustice.wy.gov/index.php>.

7. Self-represented parties are reminded that the court, the court's staff, and the Clerk's Office may not, and will not, provide legal advice or act as an attorney for any party, including self-represented litigants.

8. Self-represented parties are reminded that they are expected to know the law and they are required to follow and adhere to applicable statutes, rules, procedures, and case law, and the failure to do so may adversely impact their case.

DATED this 25<sup>th</sup> day of August, 2022.



Jason M. Corder  
District Court Judge