

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
THE WOODLANDS OF SPEARFISH**

DOC. NO. 2001-5488

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Judy S. Mowbray



REGISTER OF DEEDS  
LAWRENCE COUNTY  
SOUTH DAKOTA

FEE \$ 112.<sup>00</sup>

52 pages

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# **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE WOODLANDS OF SPEARFISH**

**THIS DECLARATION**, made this 23rd day of October, 2001, THE WOODLANDS OF SPEARFISH, L.L.C., a South Dakota limited liability company of Spearfish, South Dakota, and BOKE RANCH, INC., a South Dakota corporation, as their interests may appear, hereinafter collectively for convenience referred to as "Declarant," and

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

Tract A, all located in the SW $\frac{1}{4}$  and the S $\frac{1}{2}$ NW $\frac{1}{4}$ , Section 12, Township 6 North, Range 2 East, B.H.M., Lawrence County, South Dakota, as shown on plat filed on October 2, 2001, at 11:30 A.M. and recorded as Doc. No. 2001-5062, as filed in the Office of the Lawrence County Register of Deeds.

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

WHEREAS, Declarant intends to sell lots within the Development and by this declaration imposes on the lots within the Development covenants, conditions, and restrictions under a general scheme or plan for the benefit of the owners, now therefore,

## **WITNESSETH:**

Declarant hereby declares the lots within the Development above described, or as such as may be hereinafter modified by Inclusion, shall be sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are imposed for the purpose of creating and keeping the Development desirable, attractive, beneficial, free from nuisance, and suitable in architectural design, materials and appearance, and for the purpose of guarding against fires and unnecessary interference with the natural beauty of the Development, and for the mutual benefit and protection of all owners of lots in the Development. The easements, restrictions, covenants and conditions imposed herein shall run with the land and be binding on all parties having any right, title or interest in the Development or any portion thereof, and their heirs, devisees, personal representatives, successors and assigns. However, nothing herein is intended to or shall limit application of all applicable planning and zoning ordinances and rules which impose restrictions more stringent or limited than those set forth herein.

## **ARTICLE I INTRODUCTION-DEFINITIONS**

The following terms shall constitute definitions of words, terms and phrases used in this Declaration of Covenants, Conditions, Easements and Restrictions for the Development.

- 1.1. **“Association”** shall mean and refer to The Woodlands of Spearfish Homeowner's Association, Inc., its successors or assigns.
- 1.2. **“Board”** or **“Board of Directors”** shall refer to the Board of Directors of the Association that is created or to be created.
- 1.3. **“Bylaws”** shall mean and refer to the Bylaws of the Association that is created or to be created that shall govern the activities of the Association and shall be incorporated herein by this reference.
- 1.4. **“Member”** shall mean and refer to a Person entitled to membership in the Association, as provided herein or in the Bylaws of the Association that is created or to be created.
- 1.5. **“Person”** is a natural person, corporation, partnership, Limited Liability Company, trust, trustee, or any other legal entity.
- 1.6. **“Owner”** shall mean and refer to one (1) or more Persons who hold the record title to any Lot within the Development, but excluding in all cases any party owning an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded Contract of Sale, and the Contract specifically provides, then the purchaser (rather than the fee Owner) will be considered the Owner.
- 1.7. **“Development”** shall mean and refer to the real property shown upon any recorded subdivision map(s) or plat(s) of the Development as amended from time to time, which is designated as a part of The Woodlands subdivision.
- 1.8. **“Lot”** shall mean and refer to any plot or tract of land shown upon any recorded subdivision map(s) or plat(s) of the Development as amended from time to time, which is designated as a numbered lot therein. Although some portions of the Common Area or other real property not yet formally platted into numbered lots may be platted as a "lot" on the subdivision plat, these lots shall be excluded from the definition of "Lot" as used herein. It is anticipated that there will be forty-five (45) numbered Lots in the Development, more or less. **Lots are classified as a Class A Lot or Class B Lot for assessment purposes as set forth in Article V.**
- 1.9. **“Declarant”** shall mean and refer to Boke Ranch, Inc. and The Woodlands of Spearfish, L.L.C.
- 1.10. **“Area of Common Responsibility”** or **“Common Area”** shall mean and refer to any area described or designated as common green, common areas, recreational easements, green belts, open spaces or public streets on any recorded subdivision plat of the Development or intended for or devoted to the common use and enjoyment of the Development, together with those areas, which by the terms of this Declaration, or by any contract or agreement with any Improvement District, or other governmental or quasi-governmental unit, become the responsibility of

the Association for the common use and enjoyment of the Owners. The Common Areas shall include by way of example but not limited to parks, open spaces, roads, facilities and easements for common use, watercourses or other utilities, exercise, hiking or maintenance paths, and others as designated by the Board.

**1.11. “Supplemental Declaration”** shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant or appropriate others which, by way of example and not limitation, subjects additional property to this Declaration, or imposes expressly or by reference, additional or different restrictions and obligations on the real property or the Owners thereof described therein.

**1.12. “Petition for Inclusion to Development”** The Lots within the Development may be modified by Petition for Inclusion, which shall conform substantially to the following, to-wit:

PETITION FOR INCLUSION

This Petition made this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by \_\_\_\_\_, the owner(s) of the following-described real property, to-wit:

hereby petition(s) for inclusion to the Development subject to the Declaration of Covenants, Conditions, and Restrictions for The Woodlands of Spearfish, which have been filed in the Office of the Lawrence County Register of Deeds as Document #01-\_\_\_\_\_, together with any amendments thereto, which by reference thereto the same are incorporated herein. Petitioners agree to be fully bound by the terms and conditions thereof, and the above described real property shall be subject thereto.

\_\_\_\_\_  
Signature of Petitioner(s)

(NOTARIZATION)

APPROVAL OF PETITION

The Woodlands of Spearfish Homeowners Association, Inc. hereby gives its express written consent and approval to the foregoing Petition for Inclusion to the Development subject to Declaration of Covenants, Conditions and Restrictions.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

THE WOODLANDS OF SPEARFISH HOMEOWNERS ASSN.

By: \_\_\_\_\_  
\_\_\_\_\_, President

ATTEST:

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

(NOTARIZATION)

THE WOODLANDS OF SPEARFISH, L.L.C.

The Woodlands of Spearfish, L.L.C. hereby gives its express written consent to the foregoing Petition for Inclusion to the Development subject to Declaration of Covenants, Conditions and Restrictions.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

The Woodlands of Spearfish, L.L.C.

By: \_\_\_\_\_  
Authorized Member

(NOTARIZATION)

**1.12.1.** A Petition for Inclusion shall be presented to the Association,

which shall act thereon and shall not unreasonably withhold its consent. That in the event of approval, the Petition shall be presented to Declarant, which shall not unreasonably withhold its consent.

**1.12.2.** Upon obtaining the approval of all necessary parties to a Petition for Inclusion, all documents in regard thereto shall be filed in the Office of the Lawrence County Register of Deeds, Deadwood, South Dakota, and upon such filing, said Lot shall thereafter be deemed included in the Development.

**1.13. “Declaration For Inclusion to Development”** The Declarant hereby reserves the right to add adjoining real property to the Development without the prior consent of any Owner or the Association by filing a form which shall conform substantially to the following, to-wit:

DECLARATION FOR INCLUSION

This Declaration made this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by \_\_\_\_\_, the owner(s) of the following-described real property, to-wit:

hereby declares that the above-described real property is hereby included in the Development subject to the Declaration of Covenants, Conditions, and Restrictions for The Woodland Hills, which have been filed in the Office of the Lawrence County Register of Deeds as Document #01-\_\_\_\_\_, together with any amendments thereto, which by reference thereto the same are incorporated herein. Declarant agrees to be fully bound by the terms and conditions thereof, and the above described real property shall be subject thereto.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

THE WOODLANDS OF SPEARFISH, L.L.C.

By: \_\_\_\_\_  
Authorized Member

(NOTARIZATION)

**1.13.1.** The Declaration for Inclusion shall be presented to the Association for purposes of informing the Association of the inclusion of such real property to the jurisdiction of the Association.

**1.13.2.** All documents in regard to the Declaration for Inclusion shall be filed in the Office of the Lawrence County Register of Deeds, Deadwood, South Dakota, and upon such filing, said real property shall thereafter be deemed included in the Development.

**1.14. Platting:** Declarant tentatively plans forty-five (45) numbered Lots, more or less, to be located within the boundaries of the Development, which Lots shall be platted as the development of the project proceeds. Common Areas shall be platted as the project proceeds and upon completion of development thereof as determined by Declarant and upon approval by appropriate governmental entities of the plat thereof, the same shall be conveyed to the Association. Declarant may replat portions of the Development or add

additional property consistent with the development objectives of Declarant and place or grant such easements as deemed appropriate by Declarant for providing ingress, egress and services, including street lighting, for the Development and Owners without the prior consent of the Association or any Owner.

## **ARTICLE II** **USE AND RESTRICTIONS**

- 2.1. Access Drives:** Each Lot will be accessed by a private driveway that shall be constructed with proper drainage and culverts, unless designated as one of the following Lots that may share a common driveway (Lots are grouped together with those which may share a common driveway): Lots 5 & 6; Lots 11, 12, 13, 14 & 15; Lots 24 & 25; Lots 38, 39 & 40; Lots 41, 42, 43, 44 & 45.

Private Driveway Easements will be provided across appropriate Lots by the Declarant, and all Lots having common driveways will be subject to a separate Private Driveway Agreement which shall govern the use, maintenance and improvement of the common driveway. The Association shall be a party to each Private Driveway Agreement, and the Association shall have authority to impose Special Assessments upon the affected Lots for maintenance and improvement of common driveways pursuant to such Agreements. No common driveway shall become a public street nor shall any common driveway be deemed to be part of the Common Area. Each common driveway shall be owned as part of the Lot(s) over which the common driveway passes for the private ingress and egress of the affected Lot(s).

- 2.2. All-Terrain Vehicles, Trail Bikes and Tracked Vehicles:** Except as permitted for the Declarant and its agents in Section 2.16.4 below, all-terrain vehicles, snowmobiles, and trail bikes shall not be operated within the Development, except on an Owner's own Lot or in a direct route on the roadway to exit the Development or enter the Development to return to the Lot Owner's home. Tracked vehicles shall not be operated on paved roads.

- 2.3. Animals and Pets:** No animals, livestock, horses, or poultry of any kind shall be raised, bred, or kept on any Lot within the Development with the exception that dogs, cats, and other usual and common household pets may be permitted upon a Lot, provided that they are not kept for any reason other than as household pets. The combined total number of dogs, cats and other household pets permitted per Lot shall not exceed four animals. Pets shall not be permitted to roam free or in the sole discretion of the Declarant or Board, make objectionable noise, or constitute a nuisance or inconvenience to the Owner of any Lot within the Development and shall be removed upon request of the Board. All dogs outside of a residence after 10:00 P.M. shall be personally accompanied by a handler, and the handler shall keep the dog quiet. In no event shall dangerous animals or reptiles be kept in the Development.

- 2.4. Antennae and Satellite Dishes:** Television and radio antennae and satellite dishes are to be located as inconspicuously as possible, and are subject to

approval by the Architectural Control Committee.

- 2.5. **Firearms:** No firearms shall be discharged within the Development.
- 2.6. **Fireplaces (Outdoors) and Fires:** No incinerators, open fire pits, open burning or unscreened outdoor fireplaces shall be allowed. Controlled burning for safety purposes directed by any governmental unit shall be permitted.
- 2.7. **Garbage and Trash:** No garbage or trash shall be maintained on any Lot so as to be visible from another Lot. No Lot shall be used as a dumping or storage ground for rubbish, scrap, debris, or junk including, but not limited to junked cars or parts thereof, appliances, building materials, etc. All garbage and trash will be placed in covered tight garbage cans of the type in normal use in this locality, and shall be disposed of at least every seven (7) days. Owners bear the responsibility to insure at all times that no trash, debris, or material of any kind be allowed to blow off of their Lot.
- 2.8. **Gardens:** Gardens for the growing of flowers for domestic use and enjoyment and for domestic food consumption only are permitted (no commercial gardens of any type are permitted). No food produce gardens shall be located in the area between the residence and the roadway(s) fronting the Lot, and no flower or food produce gardens shall be permitted within twenty (20) feet from any other Lot line to prevent interference with easements.
- 2.9. **Homeowners Association:** Each person who purchases a Lot or enters into a contract for deed to purchase a Lot as described above shall join and thereafter continue to be a Member of The Woodlands of Spearfish Homeowners Association, Inc. and shall be bound by all rules and regulations as may be promulgated and approved by said Association.
- 2.10. **Hunting:** No hunting shall be allowed in the Development.
- 2.11. **Logging:** Removal of live healthy trees of 6 inches or more in diameter requires pre-approval in writing by the Architectural Control Committee under Section 4.14 below.
- 2.12. **Lot Size: Regardless of any applicable minimum lot size permitted by a subdivision or zoning ordinance, no Lot shall be subdivided into smaller Lots or conveyed in less than full or original dimensions as conveyed.** However, two or more adjacent Lots may be combined into one Lot and conveyed as one Lot. Re-platted Lots, combining two or more adjacent Lots, shall be subject to general and special assessments as a single Lot after the Lots have been re-platted and filed in the Lawrence County Register of Deeds Office. Should any re-platted Lots be subsequently separated and re-platted into multiple Lots, all newly-platted Lots created shall be subject to all assessments which would have accrued against each Lot except for the combination into a single Lot, and no such re-platting shall increase the number of newly-platted Lots beyond the number of Lots originally combined.

- 2.13. Lot Restrictions:** No more than one single-family dwelling may be constructed on any Lot. This does not exclude a guest room building upon a Lot that allows for construction of an outbuilding.
- 2.14. Mining:** No portion of the Development shall be used to explore for or remove gravel or minerals of any kind. No refining, quarrying, or mining operations shall be permitted upon and/or in any Lot. Nor shall underground fuel tanks, excavated tunnels, mineral excavations, or shafts be permitted upon and/or in any Lot.
- 2.15. Nuisances:** No owner shall permit anything to be done or kept on or within his or her Lot, or on or about the Development, which will obstruct or interfere with the rights of other Owners, occupants, or other authorized persons to use and enjoy the Development. No Owner may permit any nuisance or commit or allow an illegal act to occur on their Lot. For purposes of this section, a nuisance shall be construed in light of case law precedent for the State of South Dakota and any applicable statutes and ordinances.
- 2.16. Nuisances Per Se:** Notwithstanding the aforementioned, for the purposes of this section, the following activities within the Development shall be deemed a nuisance per se: unreasonable noise and barking dogs, discharging fireworks, and discharging firearms and/or hunting. In addition, this section shall apply to operating all-terrain vehicles (ATV's), snowmobiles, or other off-road recreational vehicles, except as follows:
- 2.16.1.** Upon the public portions of roads within the Development if the vehicle is properly licensed and with an operator observing all traffic laws, or
  - 2.16.2.** Upon trails designated by the Board for that purpose upon such conditions as the Board may require, or
  - 2.16.3.** Upon the Lot owned by the Owner of the vehicle consistent with Section 2.2 above, for limited times and purposes that do not disturb the serenity of the area and/or degrade the natural conditions of the Development, or
  - 2.16.4** Declarant and its agents shall be permitted to use ATV's, snowmobiles or other off-road recreational vehicles upon its Development real property and upon the Common Areas to conduct its business.
- 2.17. Outdoor Storage:** No outdoor storage of any material, firewood containers, automotive accessories, equipment, or other items shall be allowed between the home and the roadway(s) fronting the property.
- 2.18. Residential Use/Home Occupations:** Each Lot shall be used only for single-family residential purposes. However, Owners may use a portion of their home for limited business purposes. Businesses requiring or which

operate upon regular scheduled appointments shall not be allowed. No extraordinary traffic is allowed. No commercial business activity other than an in-home occupation use in conformance with this section may be conducted upon any Lot within the Development. However, nothing in this section shall be construed to relieve any person from compliance with any and all legal statutes, ordinances, rules and/or regulations applicable to home occupations and residential business uses. As with all laws, rules and regulations relating to restrictions on land uses and otherwise, the Owner shall be responsible to determine which regulations govern Owners intended and actual home occupation use and shall be responsible for complying with those regulations.

All home occupation uses within the Development shall be in compliance with the following restrictions so long as also permitted under applicable statutes, ordinances, rules and regulations:

- 2.18.1.** There shall be no offensive noises, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line of any Lot.
- 2.18.2.** No storage or display of business materials, signs, goods, supplies or products, equipment, tractors and/or other heavy equipment shall be visible from the outside of any structure located on the Lot.
- 2.18.3.** There shall be only incidental sale of stocks, supplies or products to customers and/or clients on the premises. However, catalog, postal and/or telephone sales are permitted. Retail trade or any other business activity involving customer traffic on a non-incidental basis is prohibited.
- 2.18.4.** A home occupation may have such employees that do not by their number or activity, annoy or disrupt the serenity of the area or the other Owners.
- 2.18.5.** Notwithstanding anything hereinabove to the contrary, the following businesses shall **not** be allowed as home occupations upon any Lot within the Property:
  - 2.18.5.1.** Body or mechanic repair or any business where the following services are carried out: general repair, engine rebuilding or reconditioning of motor undercoating of automobiles and/or the sale of engine fuels, motor oils, lubricants, grease, tires, batteries and accessories or body and paint work. This exclusion is not intended to prohibit an Owner from working on his/her own personal vehicle(s) including maintenance, repair, refurbishing, rebuilding, as long as such activity is within a completely enclosed garage or outbuilding which

completely screens the sight and sound of the activity from adjoining property, or;

**2.18.5.2.** Any other occupation which is determined as noxious, offensive, or annoying by the written petition signed by no less than Seventy-Five percent (75%) of the then record Owners of the Lots within the Development.

**2.19. Roads:** All roads within the Development are for Owners and their guests. No parking is allowed on the roads or utility accesses.

**2.19.1. Construction of Public Roads; Assumption of Maintenance by Association or Road District:** Declarant will initially construct and gravel the platted public Development roads. Upon completion of construction and graveling, such roads shall, without further action by Declarant or the Association, become the sole responsibility of the Association, and all subsequent road work (including without limitation maintenance, improvement or construction) and cost (except paving as provided below) shall be borne by the Association and assessed to the Owners as provided in these Covenants. However, Declarant reserves the right to form a Road District (a South Dakota public subdivision) and, if so formed, the Association shall transfer such road work responsibilities and obligations to the Road District, together with such other road responsibilities as the Association and Road District agree, for so long as such Road District exists; provided, however, that upon termination of the Road District, except to the extent the City of Spearfish or other governmental entity otherwise assumes total jurisdiction over road work (including without limitation maintenance, improvement or construction) of such Development roads, the Association shall be re-vested with such responsibilities and obligations without further action by any person or entity. **In all events, fee title to all Development public roads shall remain part of the Common Area.**

**2.19.2. Paving of Development Public Roads.** Declarant will arrange for the asphalt paving of the platted Development public roads (excluding access roads or drives serving a Lot) upon the earlier of the following to occur: (A) at or within a reasonable time after the acceptance by the City of Spearfish, Lawrence County, South Dakota, of the total road work responsibility (including without limitation maintenance, improvement or construction) over all such roads; (B) at or within a reasonable time after Twenty-Nine (29) Lots in the

Development have residences constructed upon them; or, (C) at or within a reasonable time after four years have elapsed after the completion date of the first residence in the Development.

**2.19.3. Road Paving Funds.** Until such time as the public Development roads are paved, Declarant agrees to set aside the sum of Seven Thousand and No/100 Dollars (\$7,000.00) from the net sale proceeds of each Lot for the purpose of paving such Development public roads, but only after such Lot is sold and closed and after the Declarant receives the total net sale proceeds from the Lot buyer. These funds shall be the sole property of the Declarant and neither the Association nor any Owner shall have any right, title or interest in or to such funds or any right to earnings or interest therefrom.

**2.19.4. Paving Standards.** Declarant agrees to pave such Development public roads according to prevailing standards applicable to asphalt roads of this class at the time of paving, but no curb or gutter shall be included.

**2.20. Safe Conditions:** Without limiting any other provision in this Section, each Owner shall maintain their Lot in a safe, sound, and sanitary condition and repair at all times. Owners shall correct any condition and refrain from any activity that might interfere with other Owners.

**2.21. Sewage Disposal Systems:** Unless applicable statutes or ordinances require a centralized sewage disposal system, only engineered sewage disposal systems shall be permitted in the Development which comply with Section 4.15 below.

**2.22. Signs:** No signs, billboards, or other advertising devices shall be used on any Lot except for identification of a residence, road, speed, direction, or sale which comply with Section 4.13 below). Signs erected by The Woodlands of Spearfish Homeowners Association, Inc. or the Declarant are exempt. Sale signs must be removed the day of the sale.

**2.23. Temporary Structures:** No trailer, recreational vehicle (RV), basement, tent, shack, garage, barn, or other outbuildings shall be placed or built on any Lot for use as a residence, either temporarily or permanently. No camper, tent, or recreational vehicle (RV) shall be placed on any Class B Lot (See *Article 5.0.3.*)

**2.24. Utilities:** Water service is stubbed to the property lines of each Lot. Electrical, telephone, and gas services are clustered in a utility easement located near a Lot corner. The extension of services from these locations to a residence is the responsibility of the Owner. No utility extensions shall be undertaken without notification and written approval by the Board of Directors.

- 2.25. Vehicles:** No more than one properly licensed motor vehicle, trailer, or other type of motorized or non-motorized vehicle, not in normal daily use, may be kept outside of a fully enclosed building on any Lot. However, if such a vehicle is brightly colored, large, conspicuous, attention-attracting or otherwise creates a distraction from the natural beauty of the setting in the judgment of the Board, the Board may limit or eliminate such parking privilege on any Lot or require that, where permitted, an approved outbuilding be constructed within a reasonable time wherein the vehicle will be required to be parked. Equipment of this type shall not be kept between the home and the roadway(s) fronting the Lot. No campers or recreational vehicles shall be maintained on a Class A Lot as a residence for more than seven (7) consecutive days, it being understood the term “consecutive days” shall not permit successive periods of such use between short periods of non-use, and the overall pattern of such a use shall be relevant in determining compliance with this restriction. No vehicles, trailers, or any vehicular equipment shall be parked along any of the public roadways that serve the Development. Recreational Vehicles (RV's), fifth wheels, camper trailers, horse trailers, boats, boat trailers and similar vehicles must be parked or stored in approved outbuildings on Lots that allow them, and storage or non-use of the same outside of an approved outbuilding is not permitted. Un-licensed, unused, stripped down, partially wrecked, immobile or inoperative vehicles must be parked inside approved outbuildings, and cannot be parked outside of such an outbuilding. Truck-tractors and/or semi trailers and/or commercial two axle vehicles that are twenty (20) feet in length or greater are not permitted to park anywhere within the Development.
- 2.26. Violation of Law:** No Owner shall permit anything to be done or kept in his or her Lot, which would be in violation of any local, state, or federal law.

### **ARTICLE III** **ARCHITECTURAL CONTROLS**

- 3.1.1 Control Committee:** An Architectural Control Committee for the Development is hereby constituted. The initial Committee shall consist of the undersigned individuals executing this Declaration of Covenants, Conditions, Easements and Restrictions in their capacities as officers of The Woodlands of Spearfish, L.L.C. until such time as the Association Board of Directors appoints a standing committee. All notices to the Committee required herein shall be sent to the following address until such time as the Association Board of Directors authorizes another address, which may be changed from time to time by the Board:
- The Woodlands Architectural Control Committee  
234 West Kansas Street  
Spearfish, SD 57783
- 3.1.2.** All Committee actions or decisions shall be by majority vote. The Committee may designate a representative to act for it, which representative may or may not be a member of the Committee. Neither the members of the Committee nor its designee shall be entitled to any compensation of any kind for services performed, but the Committee may, with Board approval, engage and pay for professional consulting services as needed. In the event of a vacancy due to the

death, termination or resignation of any member of the Committee, a replacement shall be duly appointed by the Association Board. The Declarant, or a representative of the Declarant, shall be a permanent member of the Committee until such time as the Declarant no longer has an interest in any of the real property subject to this Declaration.

- 3.1.3.** The approval or consent of the Committee or its representative on matters properly coming before it shall be conclusive and binding on all interested persons. Any approval or permission granted by the Committee shall not be construed to constitute approval or permission by any governmental official, commission, or agency. During the construction phase, or at any other applicable time, the Owner shall be solely responsible for obtaining any and all permits, application, or other written instruments required by any private, public or governmental agency and shall be responsible for the work to proceed within the parameters of the plans as approved by the Committee.
- 3.2. Submission to Committee:** No soil may be removed or excavated, nor any naturally occurring grade altered, nor any home, or outbuilding shall be commenced for construction or erection on any Lot within the Development until the submission requirements in the following Section have been fulfilled and the Committee has issued written approval of plans based upon the submission data.
- 3.3. Submission Requirements:** Prior to disturbing any soil or initial construction of a home or outbuilding, the Owner must submit the following data to the Committee:

  - 3.3.1.** A plan for the improvement, which shall include the following information: square footage, floor plan, drawings of exterior elevations of the structure, and specifications describing external colors and materials including roofing material. Plans shall include landscaping, outdoor lighting, swimming pools, tennis courts, and the like. Distances and locations of all planned improvements in relation to the other improvements shall be included; the intent being that the improvements must be appropriately integrated.
  - 3.3.2.** A site plan of the Lot showing the location of all proposed structures and septic system (if applicable).
  - 3.3.3.** A plan for the proposed excavation(s) that shall include plans to control and mitigate any erosion that may subsequently occur to the excavation(s).
  - 3.3.4.** Any other information as may be required by the Committee in order to ensure compliance with the requirements contained herein.
- 3.4. Approval Standards and Procedures:** The Committee shall consider the submission data in light of the requirements, restrictions, intent, and spirit of this Declaration. Approval shall be based upon, among other things: compliance with the terms provided for in Article IV entitled Standards Relating to Improvements;

reasonable aesthetic appeal (including colors, materials, and designs); the compatibility of the proposed improvement with the following: proposed location of the improvement in relation to the topography, roads, adjacent Lots, and other existing or approved improvements, and/or the use of the Lot within the intent and spirit of all provisions in this Declaration.

- 3.5. Prompt Action:** No construction may commence without Committee approval. All applications shall be acted upon without unreasonable delay and approvals under this paragraph shall not be unreasonably withheld. Under usual circumstances, the Committee is encouraged to render a decision within two to three weeks after receipt of all required information, but this processing time may be shorter or longer as determined in the sole discretion of the Committee. In the event the Committee disapproves of any submitted plans, the Committee shall, if requested, make reasonable efforts to assist and advise the applicant in achieving an acceptable submission. Approvals shall be issued in writing containing any conditions or stipulations and the denial of any submission shall be accompanied with a written statement of the basis for the denial.
- 3.6. Decisions of Committee:** The approval or consent of the Committee or its representative on matters properly coming before it shall be conclusive and binding on all interested persons.
- 3.7. Committee Not Liable: Approval or disapproval of any proposed improvement does not constitute endorsement or rejection of any particular design or aspect thereof, nor does the action constitute any representation of fitness (or lack of fitness) of the design for any purpose. Neither Declarant, the Association, Architectural Review Committee or any of the respective members thereof shall be liable in any manner whatsoever for any claims, actions, liability, damages, costs or expenses of any kind, for any approval or disapproval by the Committee or its representative with respect to any submission made pursuant to this Article.**
- 3.8. Renovations:** No substantial alteration or renovation of the exterior of any home or outbuilding situated on a Lot shall be performed without receiving Committee approval which may be obtained in the same manner as approval for original construction of improvements.
- 3.9. Timed Completion:** Once the Committee has approved plans for construction, it is expected that the construction shall commence within twelve (12) months from the date of approval. Unless extended by the Committee, if construction has not commenced within twelve (12) months from the date of approval, said approval shall be deemed expired and the submission and approval process must be reinitiated. Once construction begins, any home or improvement or alteration thereto approved by the Committee shall be diligently pursued to completion. All homes and other improvements on any Lot shall be completed within twenty-four (24) months of commencement thereof unless, in the discretion of the Committee, exigent circumstances are deemed to exist or a longer period is established by the Committee at the time of the approval of the construction plans.

- 3.10. **Clean Construction Site:** An Owner must insure during construction and afterwards that the Lot is kept as neat and clean and free of debris as possible.

**ARTICLE IV**  
**STANDARDS RELATING TO IMPROVEMENTS**

- 4.0.0 **General Considerations:** Guiding the discretion of the Architectural Control Committee are the following general considerations:
- 4.0.1. The Committee shall strive to create an ambiance that is in harmony with and does not unnecessarily detract from or alter the natural beauty of the setting. Improvements shall be designed to blend in with, and compliment, rather than draw attention away from, the natural amenities.
- 4.0.2. As far as possible without compromise to safety, the natural contours of the landscape of the Development shall be preserved, the natural vegetation and rock features shall not be unnecessarily disturbed, and special care will be given to prevent erosion of the soils. Tall structures that challenge the treetops or natural skylines for prominence or that obstruct the views from adjacent Lots shall not be permitted.
- 4.0.3. Within the parameters of the standards set forth herein, architectural diversity is encouraged and replication of styles is discouraged, particularly on adjacent Lots or where improvements are simultaneously visible from any point in the Development.

**The following standards create a minimum code of uniformity for the construction of homes, outbuildings or other improvements within the Development.**

- 4.1. **Temporary Structures:** No previously occupied dwelling or structure may be moved onto or placed on any Lot. No manufactured homes, modular homes, trailer houses or mobile homes may be placed on a Lot.
- 4.2. **Dwelling/Minimum Areas:** No dwelling shall be constructed, erected, or maintained without a minimum of the following square footage (excluding garages):

Ranch Style Home	1,200 sq. ft.
Split Foyer Home	1,200 sq. ft.
One and one-half Story Home	1,000 sq. ft. main floor 500 sq. ft. second floor
Two Story Home	1,000 sq. ft. main floor 500 sq. ft. second floor
Tri-level Home or More	800 sq. ft. per floor

Garages must be attached or architecturally connected to homes so as to

appear to be one unit. All structures must comply with the latest editions of the local, State, and national building codes, rules, and regulations, including but not limited to the following:

U. B. C. Standards of the Uniform Building Code  
U. S. F. A. United States Fire Administration  
N. E. C. A. National Electrical Code Association  
South Dakota Plumbing Code

**4.3 Building Setbacks:** The minimum building setbacks for all structures on any Lot shall be sixty (60) feet from the center of the road and twenty (20) feet from all other Lot lines. The Association Board of Directors by a two thirds (2/3) vote may permit a lesser setback if approved by the adjacent Lot owners. However, all setback requirements must comply with applicable zoning and subdivision ordinances.

**4.3.1. Location of Structures; “Building Envelopes”:** The Declarant has identified a primary building location for each Lot. Some Lots also have a secondary building location identified, which may be selected in place of the primary location without any prior approvals. These “building envelopes” shall be the designated location(s) upon which the residence structure shall be built. However, the Architectural Control Committee will consider a variance from the designated building location if the Owner makes application to such Committee containing: (a) a specific identification of the desired building location site shown by drawing, survey or other means that include measurements or other means of clearly identifying the location; and, (b) the written consent of all adjoining Lot Owners to the change in building location shown on the above-mentioned drawing or survey. This application will be processed by the Architectural Review Committee as provided in Article III of these Covenants.

**4.4. Changes in Construction:** All exterior changes or additions to the approved plans before, during, and after construction shall be approved in writing by the Committee or its representative prior to the changes or additions being implemented.

**4.5. Easements:** Easements for installation and maintenance of utilities, public, and private, including water and/or sewer services, are reserved with a twenty (20) foot strip adjacent to all lot lines. Special easements also exist for access to or from hiking/exercise trails and maintenance trails.

**4.6. Exterior Colors:** The color combinations of exterior materials must be subtle and tasteful to blend with the environment. Earthen tones are required. Exterior white trim is not allowed. Extreme contrast in color of paints, stains, and masonry are discouraged. Roofing materials must be of darker green, gray or brown tones. **All color schemes must have prior approval in writing by the Committee or its representative.**

**4.7. Dwelling Height:** Dwelling height not to exceed one standard residential story above the natural ground level of the main dwelling will be enforced on designated Lots to minimize impact upon the natural beauty of the area. This

restriction applies to roof peak of the walkout side of the upper floor, and is not intended to restrict the number or height of the lower floors. Other height restrictions may be applied as deemed necessary by the Committee (for example, as provided in Section 4.0.2 above). These heights restrictions apply to the following Lots (and may apply to other Lots in the discretion of the Committee): Lots 1, 2, 11, 13, 14, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39 and 40.

- 4.8. Outbuilding/Minimum Area:** Any detached outbuilding, including but not limited to any detached guestroom, shop, additional garage, or other outbuilding may be allowed on a case by case basis on all Lots except those designated below upon which no outbuilding shall be permitted. These buildings shall have a minimum of five hundred (500) square feet and not exceed one thousand (1,000) square feet, shall be designed to match the main home, shall be of new construction and be constructed of substantially the same new materials as the main home, and must also be approved by the Committee prior to the start of construction. No “Pole Buildings” are permitted, and no corrugated or panel metal exteriors shall be permitted (except approved steel roofs). All outbuildings must be constructed on-site upon a permanent foundation and all materials must comply with Section 4.9 below. Maximum building height and location will be approved by the Committee on a per case basis to minimize visual impact on the Development. Building height normally will be limited to one story. Lots that exclude these buildings are: Lots 4, 12, 22, 23, 24, 29, 35, 36, 37 and 38. Additional Lots may be restricted in the discretion of the Committee.
- 4.9. Materials:** All buildings shall be of new materials, new construction, and set on a permanent foundation. No homes shall be moved onto any Lot from any other location. Homes constructed on-site of pre-fabricated walls and roof sections are allowed. All structures shall be newly constructed and visible materials shall consist of wood, stone, brick, or maintenance free materials with the prior approval of the Committee, or a combination of these materials. To reduce the risk of fire, roofs of all structures shall be covered with composite, concrete or tile shingles. No roof of any structure may be covered with natural wood or with wood shake shingles. Appropriate steel roofs may be approved by the Committee.
- 4.10. Alterations Require Approval:** Once approved, there shall be no changes to building plans unless agreed in writing by the Committee. Owners are responsible to insure that the construction proceeds according to the plans as approved and are responsible for completing the improvements within the approved guidelines. Owners will be required to correct any aspect of the improvement that in the reasonable opinion of the Committee is noncompliant or nonconforming, regardless of whether the nonconforming aspect is discovered before, during or after completion.
- 4.11. Outdoor Lighting:** Outdoor lighting shall be according to standard electrical specifications and shall be designed to minimize light pollution and scatter in a horizontal direction. Exterior lights shall be subject to Committee guidelines and approval.
- 4.12. Fences:** The construction of any type of fence must have written approval of

the Committee. Enclosures or other means of protection for plants, trees, gardens and other landscaping may be used subject to the right of the Committee to require modification or removal. Barbed wire, chain link and plain wire fences are not permitted except as may be required around the perimeter of the Development to prevent livestock trespass. As approved by the Committee, decorative fences that compliment and conform with intent and spirit of the architectural controls and requirements herein shall be allowed as long as they are kept in a state of good repair and free from debris and refuse. No fence shall interfere with the access of any easement for utilities or roadways.

- 4.13. Signs:** No signs of any kind shall be displayed on any Lot except as follows:
- 4.13.1.** Any signs placed by the Association or the Declarant.
  - 4.13.2.** One sign of no more than five square feet advertising the property for sale or rent.
  - 4.13.3.** Signs of no more than 32 square feet used by a builder to advertise the property only during the construction period.
  - 4.13.4.** Signs for the identification of a residence that do not exceed eight (8) square feet.
- 4.14. Landscaping:** All ground disturbed by construction shall be returned to a natural condition or landscaped within twelve (12) months of completion of the improvement. In order to enhance each Lot and the overall ambiance of the Development, landscaping and plantings shall be added and maintained in a manner that respects the natural beauty of the Development. Lawns, trees, shrubs and other plantings are allowed. However, every effort should be made to preserve the naturally occurring flora. Soil disturbance before, during and after construction should be kept to an absolute minimum. Introduced species shall not offend the overall natural appearance of the Development. Removal of naturally occurring trees with a trunk six (6) inches in diameter or larger measured breast high shall only be allowed with the prior approval of the Committee. In considering requests to remove such trees, the Committee shall balance the interest of preserving the overall natural appearance of the Development against the equally important but more personal legitimate objectives sought to be achieved by the petitioning Owner by removal of the tree(s). Any Person removing a tree described herein without the prior approval of the Committee shall be liable to the Association or any other aggrieved Owner for damages as provided by law, with damages to be based upon the highest value of such tree(s) for ornamental purposes, but not less than Twenty Five Dollars (\$25.00) per lineal foot of height, per tree (i.e., a 40 foot tall tree would have a minimum value of \$1,000.00).
- 4.15 Sewage Disposal Systems:** Only engineered sewage disposal systems shall be permitted in The Woodlands. Sewage disposal for each Lot shall be accomplished by individual septic tanks or as otherwise required and approved by an appropriate governmental agency. All wastewater systems must be designed by a Professional Engineer (P.E.) licensed in South Dakota, who will prepare and stamp the permit application that must be submitted to the

appropriate governmental agency for review before a system is constructed. No cesspools or outside toilets are permitted. All septic tanks must be pumped at least once every three years and evidence of pumping must be provided to the Board of Directors or their agent prior to the annual meeting in June 2004, and on a continual basis thereafter. When Lot owners cannot locate qualifying leach fields within their property boundaries, easements may be granted into adjoining commons areas for installation of those fields by the Board. Surface area and appearance must be restored and maintained in the natural condition. There is **“NO PROPOSED PUBLIC SEWAGE DISPOSAL SYSTEM.”**

- 4.16. Driveways and Approaches:** A proper approach shall be installed at the commencement of any construction upon said Lot in order to protect the shoulders of the roads and the natural vegetation and to prevent tracking mud onto the roads of the Development. Owners shall direct all vehicular traffic, for construction purposes or otherwise, to enter and exit only upon said approach. All Owners shall surface any driveways, approaches, or other surfaces driven upon on their Lot(s) with asphalt, concrete or gravel of sufficient depth to provide a stable, clean driving surface in all weather. Shoulders shall be well dressed and slopes kept to a minimum. Surface gravel **size** shall not exceed 1 inch minus. Culverts shall be installed wherever necessary to prevent standing water and runoff water shall be managed in a way that will not permit erosion.

## **ARTICLE V**

### **COVENANTS FOR ASSESSMENT**

- 5.0. Introduction.** The Board will determine the amount of the general assessment for each Lot subject to assessment. General and special assessments are due and payable on dates specified by the Board. The Board shall make reasonable efforts to determine the amount of the general or special assessment and to give written notice of the assessment for each Lot to the owner with due dates of periodic installments to be paid. The Board shall maintain a roster of the Lots and the general or special assessments due and shall make the roster available for inspection of a Member on request. Assessments may be collected on a monthly, quarterly, semi-annual or annual basis at the discretion of the Board.
- 5.0.1. Assessments Imposed; Lien Created.** Each Owner, whether or not it is expressed in any deed or document of conveyance, agrees to pay to the Association general and special assessments or charges levied on a monthly, quarterly, semi-annual, or annual basis, and special assessments or charges to be fixed, established and collected from time to time, as hereinafter provided. The general or special assessments, together with interest thereon, at the statutory rate for money due and owing from time to time from, and after the date the same becomes due and payable, together with costs of collection, shall be a charge on each Lot subject to assessment and shall be continuing lien against which such assessment is made. Each assessment, together with interest thereon, and costs of collection, in addition to becoming a lien against each Lot, shall also be a joint and several personal obligation of the person, group of persons or entity who was the owner of such Lot at the time when the assessment became due and payable, or who acquired ownership thereafter. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage now or hereafter placed upon any Lot subject to

assessments; provided, however, that sale or transfer pursuant to a decree of foreclosure, or any other proceedings in lieu of foreclosure shall not relieve such Lot from liability for any assessments becoming due after such sale or transfer nor from any lien of any such subsequent assessments.

**5.0.2. Use of Assessments.** General or special assessments shall be used to promote welfare and safety, and to protect the investment of the Owners and residents of the Development. Assessments shall be used for, but not limited to, the following:

- (a) Operating Expenses
- (b) Management and Administration
- (c) Taxes
- (d) Insurance Costs
- (e) Reserves
- (f) Improvements
- (g) Maintenance.

**5.0.3. Class A and Class B Lots.** All Lots are classed as A or B. A Class B Lot is any Lot without building improvements and retains this status until a building permit is issued. A Class B Lot, for assessment purposes, becomes a Class A Lot on the 1<sup>st</sup> day of the month following the issue of a building permit. The additional prorated assessment amount for the calendar year shall be paid within 30 days.

## **5.1 General Assessments.**

**5.1.1.** The Board may set the general assessment on a Class A Lot at a base rate not to exceed \$600.00 per year. The Board may fix the general assessment on Class B Lots at 66% of the base rate of the general assessment on a Class A Lot. If the Association provides water, the Board of Directors shall set an amount to be charged per 1000 gallons of water or portion thereof used in excess of 10,000 gallons of water per calendar month.

**5.1.2.** After January 1, 2002, the Board may increase the amount of the general assessment by no more than an additional ten percent (10%) each year without approval by two-thirds of the Owners present or represented by proxy at an annual meeting or at a special meeting called for that purpose.

**5.1.4.** The general assessment on all Lots shall be effective on the first day of January each year and is a lien on the property. Failure to make timely payments, as set by the Board of Directors, results in a lien attaching to the Lot which may be enforced by the Board as provided herein.

**5.2 Special Assessments:** The Board may impose special assessments, in addition to the general assessments, for capital improvements or capital replacements. Special assessment shall only be levied by a resolution approved by two thirds of the votes of the Owners present or represented by proxy at an annual meeting or at a special meeting called for that purpose. Any special assessment shall be on a

per Lot basis only. However, special assessments under a separate Private Driveway Agreement shall be imposed as provided in the agreement.

- 5.3. Reserves:** The Board may establish a reserve fund for replacements and for general operating expenses by the allocation and payment monthly or other term of an amount to be designated. Such fund or funds shall be deemed to be a common expense of the Association and shall be deposited in F. D. I. C. insured accounts, as the Board deems appropriate. The reserve for replacements may be used only for improvements on the property or replacement of improvements or for operating contingencies of non-recurring nature. The proportionate interest of any Lot owner in any reserve shall be considered an appurtenance of the Lot and shall not be separately withdrawn, assigned, or transferred or otherwise separated from the Lot for which it appertains and it shall be deemed to be transferred with the Lot.
- 5.4. Notice of Payment Status:** The Board shall, upon request at any reasonable time, furnish to any Lot owner liable for assessment a certificate signed by an officer or other authorized agent of the Board stating whether such assessment is paid or unpaid. This certificate shall be conclusive evidence that payment has been received. A charge may be levied for each certificate issued.
- 5.5. Breach of Payment:** Any general or special assessment not paid on the date due shall be deemed delinquent and shall accrue with interest at the rate of judgment and cost of collection, become a continuing lien on the Lot. The assessment shall be binding upon the Lot owner, his or her heirs, devisees, personal representatives, successors and assigns. The obligation of an owner to pay an assessment shall also remain his or her personal, joint and several obligations. (See ENFORCEMENT).
- 5.6 Declarant's Reserved Rights For Non-Assessment; Road or Improvement District Assessments:** Notwithstanding the provisions as hereinabove set forth, Declarant, or its assigns or successors in interest, excluding Owners, shall not be required to pay general assessments or special assessments or other charges or fees, including without limitation any assessments or fees imposed by any Road District or Improvement District, for any Lot or real property in which it has an interest. The foregoing limitations shall not apply to any Lot within the Development formally platted and filed with the Lawrence County Register of Deeds in which the Declarant, or its assigns or successors, excluding Owners, possesses an interest, but only from and after the date and time the Lot has been occupied for residential purposes. Further, the foregoing limitations only with regard to assessments imposed by a Road District shall not apply to any Lot within the Development formally platted and filed with the Lawrence County Register of Deeds in which the Declarant, or its assigns or successors, excluding Owners, possesses an interest, from and after the date and time Twenty-Nine (29) Lots in the Development have residences constructed upon them.

## **ARTICLE VI** **COMMON AREA**

- 6.1. Property Rights in Common Area:** Upon transfer of platted Common Areas to the Association, every Owner shall have a right and non-exclusive easement of use, access, and enjoyment in and to the Areas of Common Responsibility and/or the

Common Area, which shall be appurtenant to and shall pass the title to Owner(s) Lot, subject to:

- 6.1.1. This Declaration as it may be amended from time to time that any restrictions or limitations contained in any deed conveying such property to the Association;
- 6.1.2. The right of the Association to limit the number of users and to adopt rules regulating the use and enjoyment of the Common Area;
- 6.1.3. The right of the Board to suspend the right of an Owner to use any facilities or improvements within the Common Area:
  - 6.1.3.1. For any period during which any fee, charge or assessment against such Owner's Lot remains delinquent; and
  - 6.1.3.2. For a period not to exceed thirty (30) days for a single violation and for a longer period in the case of any continuing violation of this Declaration or the Bylaws or Rules of the Association;
- 6.1.4. The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Areas of Common Responsibility or Common Areas; provided, however, the dedication or transfer of any highways, streets, roads or public right-of-ways which are part of the Common Area and which are necessary for ingress and egress to and from any Lot shall be subject to the Owners non exclusive easement of use, access, and enjoyment in and to the Common Area; and,
- 6.1.5. If formation of or inclusion within an Improvement District , Road District, or other private, quasi-public or public entity, is deemed by the Board to be in the best interests of the Development, each Owner, by acceptance of his or her Deed or a recorded Contract of Sale or lease is deemed to covenant and consent to the creation of such a District and to have executed the separate documents so consenting to the creation of the District.
- 6.1.6 **Association and Declarant Not Liable: The open and natural Common Areas may be populated by plants and animals that may pose risks to users of Common Areas. In addition, the terrain of Common Areas and any improvements thereon (such as trails, walkways or sitting areas, if any) may pose risks to users due to the degree of slope, surface conditions, or the like. The designation of Common Areas by the Declarant, or any development or improvement thereof by the Declarant or the Association, does not constitute any representation by them of the fitness or safety of the Common Areas or any improvements thereon for any particular purpose or use. Each user of Common Areas or improvements thereon is deemed to assume all risks inherent in such use. Neither Declarant, the Association, or any of the respective members thereof, shall be liable in any manner whatsoever for any claims, actions, liability, damages, costs or expenses of any kind, arising from any use made by any person of the Common Areas or any improvements thereon or any risk to which such user may be exposed.**

## **ARTICLE VII EASEMENTS**

- 7.1. Easement for Utilities:** Utility easements as shown on the recorded plats for the Development are reserved unto the Declarant, its successors and assigns and granted for wires, electricity lines, gas lines, telephone lines, cable television or any other public or quasi-public utility services for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkway, sidewalks, bicycle paths, lakes, ponds, wetlands, water or drainage systems, sewers and sewer systems, street lights, signage, and meter boxes, telephones, gas, electricity; provided the exercise of this easement shall not unreasonably interfere with the use of any Lot and, except, in an emergency, entry into any Lot shall be made only after reasonable notice to the Owner or occupant thereof. Should any entity furnishing a service covered by the easement herein provided, request a specific easement by separate recordable document, Declarant shall have the right to grant such easement over the Lot or otherwise within the Development without conflicting with the terms hereof.

Declarant shall have the power to dedicate portions of the Area of Common Responsibility or Common Area or any platted roadways or highways to Lawrence County, South Dakota, the City of Spearfish, a duly formed Improvement District, Road District, or to any other local, state, or federal governmental entity; however, dedication shall not convey fee title of any Common Area.

- 7.2. Easements to Serve Additional Property:** Declarant and its duly-authorized agents, representatives, employees, as well as its successors, assigns, licensees and mortgagees, shall have and there is hereby reserved unto Declarant the right and authority to grant to adjacent property owners use of the easements described in this section for the purpose of enjoyment, use, access and development of the adjacent property. A grant under this provision shall not constitute an enlargement of the scope of the easement affected.
- 7.3. Bicycle, Exercise and Foot Paths:** Owners may use specifically located paths in the Common Areas for exercise, bicycle riding or hiking. These activities shall not be allowed other than on the designated paths. Any user of said paths uses the same at his/her own risk of injury, death or damage to said user's property. Neither Declarant, the Association, or any of the respective members of either shall be liable in any manner whatsoever for any claims, actions, liability, damages, costs or expenses of any kind.

## **ARTICLE VIII GENERAL**

- 8.1. Governance of Association:** The operation of the Association shall be governed by the Bylaws.
- 8.2. Administration:** "The Woodlands of Spearfish Homeowners Association Restrictive Covenants" will be administered by "The Woodlands of Spearfish Homeowners

Association, Inc.” (a South Dakota nonprofit corporation) Board of Directors. The Board is empowered and has the right to implement, provide, perform, and to enforce any or all of the following within the Development (the following listing is not intended to limit the general powers of the Board granted by law):

- 8.2.1. All of the provisions in this Declaration of Restrictive Covenants, the Articles of Incorporation, and the By-Laws of The Woodlands Homeowners Association, Inc.;
  - 8.2.2. Regulations, maintenance and improvements of all roads and water supply systems within the Development (except to the extent transferred to a Road District or City of Spearfish, with the stipulation that upon termination of the existence of such Road District, the Association shall be automatically re-vested with such power without further action by any person or entity except as otherwise assumed by the City of Spearfish or other governmental subdivision);
  - 8.2.3. Reasonable rules and regulations, with which owners, their families, guests and visitors shall comply;
  - 8.2.4. Penalties for violations of rules, regulations and failure to pay assessments;
  - 8.2.5. Constructions, improvements, and maintenance to any Association property necessary;
  - 8.2.6. Contract with third parties for necessary services;
  - 8.2.7. Purchase or lease of any equipment necessary for construction, maintenance, or improvements; and,
  - 8.2.8. The amount, payment period, payment schedule and levy assessments pursuant to these covenants.
- 8.3. **Duration and Amendments:** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable first by the Association, but if the Association fails to act, then by any Owner, their respective legal representatives, successors and assigns for a term of 25 years from the date of recordation of the Declaration, after which the said covenants shall be automatically extended for successive periods of 25 years each. However, this Declaration may be amended at any time, except where permanent easements or other permanent rights of interests are created, or rights or interests are created in third persons, by an instrument signed by Owners of two thirds (2/3) of the Lots described within the Development, (One vote per Lot owned) and placed on record where this Declaration is recorded. No such amendment shall be effective unless written notice of the proposed amendment is sent to every Owner thirty (30) days prior to action being taken on the proposed amendment. No change of circumstances or conditions shall amend any of the provisions of this Declaration, which may be amended only in the manner described. None of the provisions of this Declaration shall be construed as a condition subsequent or as creating a possibility of reverter.

**8.4. Incorporation by Reference on Resale:** If any Owner sells or transfers a Lot(s), any deed affecting the transfer shall contain a provision incorporating these covenants, conditions and restrictions. Failure to do so shall not be deemed to defeat, alter or terminate any of these covenants, conditions and restrictions.

**8.5. Notices:** Any notice required to be sent to any Owner of a Lot(s) or any first mortgagee, shall be deemed to have been given when mailed by first class mail to the Owner or mortgagee at the address appearing on the records of the Association at the time of the mailing. It shall be the duty of each Owner to provide written notice of addresses or changes of address to the Association.

**8.6. Enforcement.**

**8.6.1.** If any person violates any of the provisions of this document it shall be lawful for the Association or any Lot owner in the Development to initiate proceedings to enforce the provisions of this document, to restrain the person violating them and recover damages, actual and punitive.

**8.6.2.** The Association shall enforce these covenants and restrictions; however, in the event the Association fails or refuses to do so, any Owner may enforce them upon prior written notice to the Board . Enforcement of these covenants and restrictions may be by Association proceedings as set forth in the Bylaws, by administrative proceedings, or by legal proceedings against any person violating any covenant or restriction either to restrain or enjoin violation or to recover damages, and against the property or any lot to enforce any lien created by these covenants. The failure of the Association to enforce any covenant or restriction shall in no event be deemed a waiver or work as estoppel of the right to do so.

**8.6.3.** If an assessment is not paid within thirty (30) days after the due date, the Association may bring action against the Owner. The Association may also foreclose a lien against the Lot in the amount provided by law. In either event, the Association shall recover from the Owners or out of the proceeds of a foreclosure, accrued interest and costs of collection, including but not limited to, reasonable attorney's fees. No owner may waive or otherwise escape liability for assessments provided for in this Declaration by non-use or abandonment of their Lot.

**8.6.4.** In a voluntary conveyance of a Lot, the grantee of the Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the Lot.

**8.7. Development of Adjacent Property:** The Development is situated adjacent to property to the north, south, east, and west which may be rezoned, subdivided and developed in the future. No expectations are given to Owners that said privately owned property adjoining The Development shall remain in its open and vacant state. Owners of Lots within the Development acknowledge the right of owners of said adjacent land to rezone, subdivide and develop the same.

**8.8. Covenant of Cleanliness:** Owners shall keep their Lot neat, clean and free of debris at all times. Upon failure to keep the Lot neat and clean and free of debris,

after ten (10) days' written notice thereof by the Declarant or the Association, the Declarant or the Association may at the Declarant's or Association's election, perform such services as are necessary to keep the Lot neat, clean and free of debris and bill the Owners for any expenses incurred. Said expenses, if unpaid, shall allow the Declarant or the Association to file and enforce a lien against the Lot.

**8.9. Invalidity and Severability:** All of these covenants, conditions and restrictions are deemed severable. In the event any one or more of these covenants, conditions and restrictions is declared invalid, all remaining covenants, conditions and restrictions shall remain in effect.

**8.10. Binding Effect and Compliance:** Each Owner, the Owner's heirs, devisees, personal representatives, successors and assigns or any person acquiring any rights or privileges therefrom shall be fully bound by and shall comply with the provisions of these declarations, by the Bylaws and Articles of Incorporation of The Woodlands of Spearfish Homeowners Association, Inc., the decisions and resolutions of the Board of Directors or their authorized agent of the Association, and any amendments adopted to these covenants or Bylaws or Articles. Failure to comply with these provisions, decisions or resolutions shall be grounds for action to recover sums due or for; damages, or action for injunctive relief.

**8.11. Rights of First Mortgagee:**

**8.11.1** Other provisions of this Declaration notwithstanding, the Association, the Board of Directors of the Association and the Members shall not without the prior written approval of all first mortgagees of record of lots: (1) Totally abandon all the covenants and restrictions established by this Declaration; or, (2) Partition, subdivide, sell or otherwise dispose of Common Areas or community facilities for any purpose other than the repair or restoration of such Common Areas or community facilities or unless such partition, subdivision, sale or disposition does not restrict or modify the Owners' rights of use or enjoyment.

**8.11.2** No first mortgagee of record of any Lot shall: (1) Be required to cure any breach of this Declaration which is not readily curable as to a Lot acquired by such mortgagee by foreclosure or by conveyance in lieu of foreclosure; provided, however, that such mortgagee is liable for all assessments which become due after such foreclosure or conveyance in lieu of foreclosure; or, (2) Be affected by any amendment to this Declaration unless written consent thereto is given or unless prior to such amendment all such first mortgagees of record have been given 30 days' advance written notice of the proposed amendment and at least two-thirds of such mortgagees have given their written approval to such amendment.

**8.11.3.** Upon written request therefor, first mortgagees of record shall be given written notice by the Board of Directors of the Association of

any default in payment of assessments or in the discharge of other obligations pursuant to this Declaration not cured within the time provided by the Owner of a lot in which such mortgagee has a security interest.

- 8.11.4.** First mortgagees of record of Lots shall have the right to examine the books and records of The Association at reasonable times and to obtain, upon written request therefor, annual reports and financial data prepared by the Association.

**8.12 Rights of Declarant .**

- 8.12.1.** All other provisions of this Declaration notwithstanding, the Association, its Board of Directors, the Members, and any Road District or Improvement District shall **not** without prior written approval of Declarant: (1) Amend or totally abandon the covenants and restrictions established by this Declaration; or, (2) Amend or totally abandon the Articles or the Bylaws of the Association; or, (3) Impose general assessments or special assessments or other charges or fees upon the Declarant or upon any real property in which Declarant has an interest; or, (4) Partition, subdivide, sell or otherwise dispose of Common Areas for any purpose. No such action shall be valid without the prior written approval of the Declarant.

- 8.12.2.** Further, Declarant reserves the right to prepare and file from time to time such Supplemental Declaration(s) as may be necessary or appropriate to: (A) carry out the purposes of such Supplemental Declaration(s) as is provided in Article 1.11 of these Covenants; and, (B) without the prior consent of the Association or any Owner, to conform these Covenants to governing ordinances as may be necessary, if at all, in the event the Development becomes a part of the City of Spearfish, Lawrence County, South Dakota.

- 8.13. Termination of Declarant's Rights:** Declarant's rights as set forth in the foregoing section and all other provisions as herein contained requiring the consent or approval of Declarant shall terminate upon the date the Declarant no longer has an interest in any real property within the Development (which shall include any real property within the boundary of the Development as it currently exists and as changed by Petition For Inclusion or Declaration For Inclusion).

THE WOODLANDS OF SPEARFISH, L.L.C.

By: James W. Boke  
James W. Boke, Authorized Member

BOKE RANCH, INC.

By: James W. Boke  
James W. Boke, President

State of South Dakota     )  
  )ss.  
County of Lawrence        )

On this 22 day of October, 2001, before me, the undersigned officer, personally appeared James W. Boke, who acknowledged himself to be the Authorized Member of The Woodlands of Spearfish, L.L.C., a limited liability company, and that he, as such Authorized Member, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as such Authorized Member.

In Witness Whereof, I hereunto set my hand and official seal.



(SEAL)  
My commission expires: 4-27-2006

[Signature]  
Notary Public

State of South Dakota     )  
  )ss.  
County of Lawrence        )

On this 22 day of October, 2001, before me, the undersigned officer, personally appeared James W. Boke, who acknowledged himself to be the President of Boke Ranch, Inc., a corporation, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such President.

In Witness Whereof, I hereunto set my hand and official seal.



(SEAL)  
My commission expires: 4-27-2006

[Signature]  
Notary Public