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*Shene & Green N.S.*  
*Deputy*

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

# TABLE OF CONTENTS

## (Declaration of Covenants, Conditions and Restrictions for The Countryside)

	<u>Page</u>
ARTICLE I - INTRODUCTION and DEFINITIONS .....	1
ARTICLE II - ARCHITECTURAL AND LANDSCAPE CONTROL .....	5
Section 1. Appoint of Design Review Committee .....	5
Section 2. Plan Review. ....	6
Section 3. Development Standards .....	6
ARTICLE III - RESTRICTIONS .....	7
Section 1. Single Family Residential Use Areas .....	7
Section 2. Multi-Family Use Areas .....	7
Section 3. Storage Use Areas .....	7
Section 4. Building Setbacks and Heights .....	7
Section 5. Building Size .....	7
Section 6. Garages .....	7
Section 7. Exterior Colors .....	8
Section 8. Roofs .....	8
Section 9. Chimneys and Fireplaces .....	8
Section 10. Exterior Materials .....	8
Section 11. Foundations .....	9
Section 12. Windows, Doors and Skylights .....	9
Section 13. Solar Applications .....	9
Section 14. Parking .....	9
Section 15. Lighting .....	9
Section 16. Basketball Backboards .....	10
Section 17. Clothes Lines .....	10
Section 18. Signs .....	10
Section 19. Screening and Storage .....	10
Section 20. Antennas and Satellite Dishes .....	10
Section 21. Animals, Peace and Quiet .....	10
Section 22. Utilities .....	11
Section 23. Mailboxes .....	11

Section 24.	Completion of Construction .....	11
Section 25.	Changes or Additional Construction .....	11
Section 26.	Accessory Buildings .....	11
Section 27.	Fences .....	12
Section 28.	Site Work .....	12
Section 29.	Grading, Drainage and Subsoil Conditions .....	12
Section 30.	Trees .....	12
Section 31.	Landscaping Suggestions .....	12
Section 32.	Approval and Conformity of Plans .....	17
Section 33.	Non-Liability for Approval of Plans .....	17
Section 34.	Utility Easements .....	17
Section 35.	Boke Ranch Mineral .....	18
ARTICLE IV -- REPAIR, RESTORATION .....		19
ARTICLE V -- COVENANTS FOR ASSESSMENT .....		19
Section 1.	Introduction .....	19
Section 2.	Assessments Imposed; Lien Created. ....	19
Section 3.	Use of Assessments .....	20
Section 4.	Class A and Class B Lots. ....	20
Section 5.	General Assessments. ....	20
Section 6.	Special Assessments. ....	21
Section 7.	Reserves .....	21
Section 8.	Notice of Payment Status .....	21
Section 9.	Breach of Payment .....	21
Section 10.	Declarant's Reserved Rights for Non-Assessment. ....	21
ARTICLE VI -- COMMON AREA .....		22
Section 1.	Property Rights in Common Area .....	22
Section 2.	Association and Declarant Not Liable .....	23
ARTICLE VII -- WAIVER OF LIABILITY .....		23
Section 1.	Waiver of Liability .....	23
Section 2.	Condition of Liability .....	23
Section 3.	Exceptions to Waiver of Liability .....	23

ARTICLE VIII -- GENERAL PROVISIONS .....	24
Section 1. Severability .....	24
Section 2. Governance of Association .....	24
Section 3. Administration .....	24
Section 4. Duration and Amendments .....	25
Section 5. Incorporation by Reference on Resale .....	25
Section 6. Notices .....	25
Section 7. Enforcement .....	25
Section 8. Development of Adjacent Property .....	26
Section 9. Covenant of Cleanliness .....	26
Section 10. Invalidity and Severability .....	27
Section 11. Binding Effect and Compliance .....	27
Section 12. Rights of First Mortgagee .....	27
Section 13. Rights of Declarant .....	28

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Boke Ranch, Inc., a South Dakota corporation, hereinafter referred to as Declarant.

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

Lot 1A and Lot 1B, a Subdivision of Lot 1 in the E1/2 NW1/4 and the W1/2 NE1/4 of Section 13, and Tract B in the SW1/4 of Section 12, T6N, R2E, BHM, all located in the Spring Creek Addition to the City of Spearfish, Lawrence County, South Dakota: and, Tract 1, a Subdivision of Lot 1B, of Spring Creek Addition to the City of Spearfish, located in the E1/2NW1/4 and the W1/2NE1/4 of Section 13, T6N, R2E, BHM, Lawrence County, South Dakota, according to Plat filed in Document No. 2003-1196.

NOW, THEREFORE, Declarant hereby declares that the property described above (hereinafter "subdivision") shall be held, sold and conveyed subject to this declaration for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Declarant may annex nearby property from time to time.

## ARTICLE I

### INTRODUCTION and 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 Countryside Homeowner's Association, Inc., its successors or assigns (to be filed with the S. D. Sec. of State).
- 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 Countryside of Spearfish 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. **Lots are classified as a Class A Lot or Class B Lot for assessment purposes as set forth in Article V.** Lots may also be classified for residential, office or multi-family use by the Declarant.
- 1.9. **“Declarant”** shall mean and refer to Boke Ranch, Inc.
- 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 Countryside of Spearfish, which have been filed in the Office of the Lawrence County Register of Deeds as Document #0\_\_\_\_-\_\_\_\_\_, 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 Countryside 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 COUNTRYSIDE OF SPEARFISH HOMEOWNERS ASSN.

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

ATTEST:  
\_\_\_\_\_  
Secretary

(CORPORATE SEAL)  
(NOTARIZATION)

APPROVAL OF BOKE RANCH, INC.

Boke Ranch, Inc. 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\_\_\_\_.

By: Boke Ranch, Inc.  
\_\_\_\_\_  
President

(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 Countryside of Spearfish, which have been filed in the Office of the Lawrence County Register of Deeds as Document #0\_-\_\_\_\_\_, 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\_\_\_\_.

Boke Ranch, Inc.  
By: \_\_\_\_\_  
President

(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.** *“Supplemental Declaration for Small Lot Residential and Multifamily/Office Park”* Declarant hereby reserves the right, without the consent of the Association or any Owner, to file from time to time one or more supplemental declarations for covenants, conditions and restrictions concerning that portion of the Development classified as “Small Lot Residential” and “Multifamily/Office Use.”
- 1.15.** *“Platting”* Declarant tentatively plans 180 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.**

### **ARCHITECTURAL AND LANDSCAPE CONTROL**

**Section 1. Appointment of Design Review Committee.** There shall be a design review committee which may have up to four (4) members consisting of two representatives appointed by Declarant and two representatives appointed by the Board of Directors of the Association. The following persons shall constitute the initial design review committee and shall serve until their successors and other members, as the case may be, are appointed:

<u>Name</u>	<u>Address</u>
James W Boke	234 West Kansas Street Spearfish, South Dakota 57783
Carol H Boke	234 West Kansas Street Spearfish, South Dakota 57783
Richard V Furnish	1210 2 <sup>nd</sup> Street Spearfish, South Dakota 57783

**Section 2. Plan Review.** All construction, plat site plans, and landscaping plans and specifications showing the nature, kind, shape, height, materials, color and location must be submitted to and approved in writing as to the harmony of external design, color and location in relation to surrounding structures and topography before construction may commence by the design review committee. In the event that the design review committee fails to approve or disapprove such color design and location within thirty (30) days after said plans and specifications have been submitted, approval will not be required and the application will be deemed to have been approved. However, such deemed approval shall not waive compliance with the development standards set out herein. Approval of any plan shall require not less than three (3) votes therefore.

**Section 3. Development Standards.** The design review committee shall establish reasonable procedural rules, regulations and restrictions, architectural standards, design guidelines and development standards (collectively the “development standards”), which the design review committee may, from time to time in its sole discretion, amend, repeal or augment. The development standards may include, among other things, those restrictions and limitations set forth below.

## **ARTICLE III.**

### **RESTRICTIONS**

**Section 1. Single Family Residential Use Areas.** The Lots designated as single family lots shall be used for single family residence purposes only and no business, trade, commercial or industrial purpose shall be permitted excepting a home occupation defined as a gainful occupation conducted only within the dwelling which is clearly incidental and secondary to the use of the dwelling. No home occupation signs may be displayed on the property. No facilities for the temporary care or keep of non-family members are permitted, including but not limited to day care and senior care homes. No Lot may have more than one (1) residence. Only stick built structures may be constructed on a Lot. The Lots may not be further subdivided.

**Section 2. Multi-Family/Office Use Areas.** The provisions of the Spearfish Zoning, Ordinance governing multi-family and commercial office use are incorporated herein by this reference and shall apply to areas designated as multi-family or office. Plans must be approved by the design review committee. For any Lot designated and sold for Church use, any change in use from that of a Church must first be approved by the Declarant and the Association, or if the Declarant no longer retains rights hereunder, then by the Association.

**Section 3. Storage Use Areas.** The storage use areas may only be used for storage. Plans must be approved by the design review committee.

**Section 4. Building Setbacks and Heights.** The provisions of the Spearfish Zoning Ordinance will apply in all areas as a minimum standard. The design review committee may establish stricter or greater setbacks based on topography or to promote lines of sight.

**Section 5. Building Size.** Single family ranch style homes must contain a minimum of 1,100 square feet on the main floor. Two story homes must have a combined minimum square footage of 1,300 square feet. Minimum floor size does not include a garage or outbuildings. The committee shall be more concerned with style and design than size. Percent of Lot covered by building as designated in Spearfish zoning ordinances takes precedence over these covenants if they are in conflict.

**Section 6. Garages.** Each residential dwelling shall provide a garage suitable for the shelter of two or more automobiles. As a rule, the garage must be attached to the primary residential structure and must be offset a minimum of twelve (12) inches from adjacent wall areas when garage doors face the street. Garage doors may be wood, wood composition, insulated

panel, or heavy-gauge metal panel. Garage doors shall be painted or stained to blend appropriately with the approved color scheme of the residence. This section does not apply to multi-family or office.

**Section 7. Exterior Colors.** The color combination of exterior materials should generally be subtle and tasteful to blend with the neighborhood and landscape. Traditional muted pastels, beiges, earth tones and grays are acceptable wall colors. Extreme contrast in colors of individual masonry units or between masonry units and their grout matrix should be avoided. Roofing materials shall be of darker tones. Bright red, yellow and purple colors are not permitted. All color schemes must be approved by the design review committee prior to use. Application for approval of colors must include samples of a size adequate to visualize the entire color scheme of the home.

**Section 8. Roofs.** As a rule, primary roof systems on all residences shall have pitched roofs with a minimum pitch of 4/12.

- (a) Allowable sloped roof forms include gable, hip, gambrel or mansard roofs.
- (b) Allowable roofing materials include wood shakes or shingles, flat concrete or clay tiles, non-reflective metal roofing with standing seams or battens, copper, fiberglass or premium dimensional asphaltic shingles. Rolled roofing is not allowed.
- (c) All exposed metal or plastic on the roof (except for approved pre-finished products, copper or brass), including, but not limited to, flashing, vent pipes, spark arresters, eave troughs chimneys, ridge or eave vents and skylight frames, shall be primed and painted or be black plastic so as to blend unobtrusively with adjacent materials.

**Section 9. Chimneys and Fireplaces.** Zero-clearance chimneys must be concealed with a chimney enclosure; free-standing exposed chimney pipes will not be allowed.

**Section 10. Exterior Materials.** Predominately, exterior wall materials will consist of stucco, dryvit, native stone, brick, and wood materials including shingles, natural logs,

beveled or tongue-in-groove board siding, board-on-board, board-on batt, lap siding or rough sawn textured hard board manufactured siding.

**Section 11. Foundations.** All un-faced visible surfaces of concrete masonry or concrete foundation walls and piers must receive a stucco, mortar-wash, paint, rock, stone or brick finish and shall blend unobtrusively with adjacent materials. Surfaces of more than 24 inches in height may not be painted or mortar-washed. A drain tile is recommended around all footings.

**Section 12. Windows, Doors and Skylights.** Highly reflective glazing material and reflective subscreening films are prohibited for use in windows, glazed doors, skylights, or for other exterior applications. In addition, all metal windows, doors, skylight frames, etc. must be painted anodized or pre-finished with baked enamel; raw metal components, especially aluminum or galvanized iron, are prohibited.

**Section 13. Solar Applications.** Passive solar design is encouraged. Active solar applications can only be approved by the design review committee.

**Section 14. Parking.** In addition to garage space, each home shall have one off-street parking space for each vehicle owned by the household, which number shall not be less than two (2) for houses fronting on streets not less than 32 feet in width nor less than four spaces for Lots fronting on streets of 22 feet in width. The number of spaces designated in Spearfish city ordinances shall apply to multi-family and office areas.

Homeowners who possess trucks (larger than pickup trucks), buses, motor homes, camper vehicles, trailers, boats, motorcycles, snowmobiles, or any other motorized vehicle other than a conventional automobile, must store or park such vehicles within an enclosed garage, or on an off-site location. The parking of a guest's motor home or other large recreational vehicle will be allowed for loading and unloading only for a period not to exceed three (3) days.

**Section 15. Lighting.** A uniform lighting scheme has been implemented by the Declarant. Supplemental lighting adjacent to the right-of-way may be no higher than 72 inches above grade. Additional site lighting is permitted within the Lot's boundary, provided such lighting does not result in excessive glare toward the street or neighboring properties. All exterior lighting must be of a low-level subdued intensity and is subject to prior approval by the design review committee. It is the intent of these covenants to use as much indirect lighting as possible to minimize light pollution while providing adequate safety. Approval of lighting is not final but is rather subject at all times to additional regulation.

**Section 16. Basketball Backboards.** Wall-mounted or free standing basketball backboards will be allowed subject to design review committee approval. Support posts and brackets and the backboards for free standing and wall-mounted basketball goals shall be painted to blend unobtrusively with their visual backdrop surroundings.

**Section 17. Clothes Lines.** Clothes lines will be allowed in the back yard which must be taken down after each use such as retractable or collapsible clothes lines.

**Section 18. Signs.** Except for subdivision identification or directional signs, no other signs of any kind shall be permitted on the property or displayed to the public view, provided, however, that it shall be permissible to display on any Lot one sign of not more than four foot square for the limited purpose of advertising the land for sale or lease by an Owner or his agent or by a builder, except that it shall be permissible to display signs, of up to 100 square feet, for the purposes of advertising the property during the construction and sale period by the undersigned. Name signs are permitted, subject to color and design standards. Signs for multi-family and office areas shall be subject to city ordinances, but shall also be subject to approval by the design review committee.

**Section 19. Screening and Storage.** No trash, rubbish, or refuse may be accumulated on the subdivision except in suitable receptacles screened from public view and protected from disturbances. Contractors shall use dumpsters during construction or such other receptacles as may be approved by the design review committee. There shall be no dumping or stockpiling of material on any Lot.

Firewood shall be kept out of sight and stored in neat ricks or stacks. Cutting and splitting areas shall be maintained in a neat and orderly manner and all bulk wood shall be promptly cut and split. All Lots shall be maintained in a neat and orderly condition according to rules adopted from time to time by the design review committee.

**Section 20. Antennas and Satellite Dishes.** Antennas and traditional large diameter (four feet and larger) satellite dishes are not allowed. Television reception is available via a central cable system. Newer 18-inch and smaller diameter “direct” television dishes are generally acceptable provided they blend with surrounding materials and are situated in a non-obtrusive location. All satellite dishes must be approved by the design review committee.

**Section 21. Animals, Peace and Quiet.** There shall be no commercial breeding or feeding of livestock, horses or poultry in the subdivision. Pets not exceeding a total number of four (4) are allowed if confined, not allowed to roam at large and which do not disturb the peace and quiet of the neighbors. The neighbors shall have the right of enforcement and the association

shall not be required to enforce this requirement, but may do so. No noxious or offensive activity shall be carried on within the subdivision; nor shall anything be done or permitted which shall constitute a public nuisance therein. Dog kennels are not allowed. Prior design review committee approval is required for dog runs.

**Section 22. Utilities.** Utility services are stubbed to the property lines of each Lot at developer's expense, including water, sewer, electricity, natural gas, telephone and cable television. All utility service extensions to the house must be underground at the homeowner's expense.

**Section 23. Mailboxes.** Mailboxes may be cluster, at Declarant's discretion, in which case the homes so served may not erect additional mailboxes or newspaper boxes.

**Section 24. Completion of Construction.** Any building commenced on any Lot shall be completed and landscaped within twelve (12) months unless such completion is unavoidably delayed by inclement weather, disaster or by approval of the design review committee.

**Section 25. Changes or Additional Construction.** All changes or additions to the approved plans before, during, or subsequent to their initial construction must be approved by the design review committee before the alteration may be implemented.

**Section 26. Accessory Buildings.** Design review committee approval is required for accessory buildings. Approval will be based upon, but not limited to the following criteria:

- (a) Outbuildings must be of the same or generally recognized as complimentary architectural style, color and materials as that of the residence.
- (b) The roof must match the roof style of the residence.
- (c) Outbuildings may not unreasonably obstruct adjacent neighbors/ views.
- (d) Outbuildings should be located in the back or side yards and comply with city regulations.

**Section 27. Fences.** Fences and/or walls constructed by Declarant along or abutting property lines, arterial streets, collector streets, and local streets may be removed, replaced, or painted a different color or altered, including, adding a gate, without approval of the design review committee. If any such fences and/or walls constructed by Declarant which are located upon a homeowner's property are damaged or destroyed, the homeowner shall repair or recondition the same at the home-owner's expense. All fences will be constructed based on the design described in the remainder of these covenants. All fences must receive design review committee approval.

**Section 28. Site Work.** No excessive excavation or fill will be permitted on any Lot except where specifically allowed by the design review committee due to terrain considerations; every attempt should be made to balance, cut and fill with minimal use of retaining walls and engineered building pads.

**Section 29. Grading, Drainage and Subsoil Conditions.** Site grading must be accomplished with minimum disruption to a Lot, without altering natural discharge points of surface drainage from a Lot, and without creating conditions that could precipitate unnecessary soil erosion, slippage, or subsidence. Residential design for hillside Lots (having a variation of natural grade elevation in excess of five vertical feet across the footprint of a proposed structure), must incorporate slope conditions into the design solution so that the proposed structure terraces or steps with the natural slope.

**Section 30. Trees.** Living trees naturally existing upon a Lot, except to the extent necessary for construction purposes, shall not be cut down or removed from any property. Routine thinning in conformity with good forestry practices will be permitted.

**Section 31. Landscaping Suggestions.**

- (a) **General.** The purpose of this section is to help prepare an appropriate landscaping plan for homesites. Careful landscape planning and design will greatly enhance the ultimate appearance of the community.
- (b) **Slopes.** In some cases, there may be relatively steep slopes on an Owner's property. It is important to note that if slopes are left un-landscaped, severe erosion and silting may occur. As a result, it is recommended that slopes be landscaped by the homeowner as soon as possible after moving in. Slopes and banks should be planted with drought tolerant plants.

Erosion of slopes can be lessened by terracing, or surfacing with stone or other free-draining materials. Loose aggregate or wood chips are not recommended on slopes unless measures are taken to prevent erosion or displacement by wind and/or water. Slopes can also be seeded with ground covers, shrubs and bushes to prevent erosion. Rock gardens are another technique to help prevent Lot slope erosion and create a landscape amenity. Slopes given proper design treatment can become attractive, interesting parts of the landscape.

- (c) **Retaining Walls.** Retaining walls may be used to accommodate or create abrupt changes in grade. Such walls should be properly anchored to withstand overturning forces. Stone walls should be made thicker at the bottom than at the top to achieve stability. To avoid destructive freeze-thaw action, all retaining walls should incorporate weep holes into the wall design to permit water trapped behind them to be released. Timbers for walls or other landscape use should be treated to resist decay. Walls should provide for adequate drainage over or through (by means of weep holes or drain tile) the wall structure. Approval of the design review committee is required.
- (d) **Soil Preparation.** Soil conditions may vary throughout the subdivision. Individual soil testing is suggested for each Lot to determine the exact nature of the soil and the desired level of the amendment needed as mulch, sand and fertilizer to optimize plant growth. Soil preparation is very important due to our soil and climate. Local nurseries may offer assistance in determining the proper quantity and type of soil amendment. After the soil has been amended, make sure that the existing drainage pattern is re-established on the Lot.
- (e) **Rockscapes.** Boulders and cobbles present an attractive alternative landscape element if used appropriately within the overall landscape composition. Large expanses of this type material are discouraged. Approval of the design review committee is required.

- (f) **Irrigation.** Watering is recommended to be done early in the early morning or evening. One of the most common tendencies is to over-saturate the Lot. We urge each homeowner to conserve water and as a result minimize problems on their own Lots as well as on adjacent owner's Lots caused by over-watering. This can be accomplished by watering at shorter cycles more often during the course of the day. Several systems can be used to water lawns: manual and automatic sprinkler systems and portable sprinklers. The following are some facts to consider in selecting the type and location of the sprinkler system to be used: (a) Size and shape of areas to be watered; (b) type of turf or ground cover; (c) available water supply and pressure; (d) environment of the area – wind, rain, temperature, (e) low spraying irrigation devices may help to minimize wasted water due to wind; (f) installation of an irrigation system directly adjacent to front sidewalks may eventually cause undermining and deterioration to concrete and paved areas; (g) type of soil and its ability to accept water. Local nurseries or do-it-yourself sprinkler stores have detailed information concerning the type and installation of irrigation systems; (h) drip irrigation systems are recommended for tree and shrub areas.
- (g) **Suggested Plant List.** For your convenience, the following list of shrubs, trees, flowers and grasses is provided:

Large Deciduous Trees

Ohio Buckeye  
Linden  
Oak  
Seedless Ash  
Thornless Honeylocust  
Hackberry

Evergreen Trees

Colorado Spruce

Deciduous Shrubs

Ginnale Maple  
Amur Honeysuckle  
Bluestem Willow  
Bush Cinquefoil  
Chinese Lilac  
Common Purple Lilac  
Red-Osier Dogwood  
Rocky Mtn. Sumac  
Serviceberry  
Siberian Peashrub  
Silver Buffaloberry

Cedar  
Rocky Mountain Juniper  
Austrian Pine  
Ponderosa Pine

Viburnum  
Western Chokecherry  
Yucca  
Barberry  
Spirea

Small Deciduous Trees

Crabapple Species  
Newport Plum  
Russian Olive  
Quaking Aspen  
Canada Red Cherry  
European Mountain Ash  
Hawthorn Species  
Chokecherry  
Golden Raintree

Evergreen Shrubs

Junipers  
Mugho Pine  
Arborvitae

Groundcovers, Vines

Boston Ivy  
Clematis  
Periwinkle  
Sedum  
Snow-in-Summer  
Strawberries  
Virginia Creeper  
Woolly Yarrow  
Common Yellow  
Honeysuckle  
June Berry  
Blue Fescue Grass  
Trumpet

**(h) Recommended Grasses, Wildflowers, Trees and Shrubs to attract birds.**

- (1) High Maintenance Areas.** Use a mixture of the grasses listed below for a quality lawn. This type of lawn will need to be irrigated during dry periods.

Kentucky Blue Grass  
Park Kentucky Blue Grass  
Other varieties of Blue Grass

Creeping Red Fescue  
Annual Ryegrass

- (2) **Low Maintenance Areas.** Use a mixture of short grasses listed below. These types of grasses will need very little water after the grass is established.

Tall Red Fescue  
Creeping Red Fescue  
Annual Ryegrass  
Buffalo Grass  
Blue Grama  
Alsike Clover  
White Dutch Clover  
Perennial Ryegrass

- (3) **Wildflowers.** “P” is for perennial: “A” is for annual

P	Purple Cane Flower
P	Perennial Lupine
P/A	Lemon Mint
P	Blackeyed Susan
P	Tickseed
P	Purple Prairie Clover
P	Blanket Flower
P	Blue Flax
P	Ox Eyed Daisy
A	Red Corn Poppy
A	Blue Bell
P	Prairie Coneflower
P	White Prairie Aster
P	Wild Rose
P	Pale Purple Coneflower

- (4) **Trees and Shrubs that attract birds:**

Juniper  
Chokecherry  
Sarsaparilla or June Berry

Bitter Sweet Vine  
Dogwood  
Russian Olive  
Hawthorne  
Mountain Ash  
Black Elder  
Sand Cherry  
Buffalo Berry  
Hanson Bush Cherry  
Nankina Cherry  
Flowering Crab

**Section 32. Approval and Conformity of Plans.** No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefore which have been submitted to and approved by the design review committee in accordance with the development standards as to harmony of external design and location in relation to surrounding structures and topography.

**Section 33. Non-Liability for Approval of Plans.** Plans and specifications shall be approved by the design review committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the design review committee, the members thereof, nor the Declarant assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. Neither the design review committee, any member thereof, nor the Declarant shall be liable to any Owner or other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications.

**Section 34. Utility Easements.** Easements for installation, maintenance, repair and removal of utilities and drainage facilities over, under and across the property are reserved. Full rights of ingress and egress shall be had by Declarant and any bona fide utility company at

all times over the easement areas for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility.

**Section 35. Mineral Reservations.** Boke Ranch has reserved the following:

1. All minerals, whether organic or inorganic, in whatever form or character, including, but not limited to gold, silver, uranium, coal, oil, gas and other metals and hydrocarbons; geothermal resources; sand; gravel and clay (all collectively referred to as “Minerals”) in, on and under the Property together with the right to explore, develop, mine and remove Minerals by any and all exploration and mining methods, including surface and under-ground mining methods, all of which may involve Boke Ranch’s use or occupancy of the surface of the Property. Boke Ranch shall compensate Grantee, its successors and assigns, for any injury or actual and direct damage to the surface and to any improvements on the Property arising out of the exercise of the reserved rights, based on the fair market value of the surface and the improvements. If the parties are unable to agree on the fair market value of the surface and any improvements and the amount of damage, either Boke Ranch or Grantee may demand appraisal. Each of Boke Ranch and Grantee shall designate a licensed South Dakota appraiser experienced in appraising like property. The two appraisers shall select a third similarly licensed and experienced appraiser. Each appraiser shall determine an amount of compensation. For all purposes, the amount of compensation payable to Grantee shall be the average of the two amounts determined by the appraisers which are the closest to each other.
2. Right of ingress and egress across, over, into and through the Property as required by Boke Ranch in the exercise of Boke Ranch’s reserved rights in the Property.

## ARTICLE IV.

### REPAIR, RESTORATION

In the event an Owner of any Lot in the properties shall fail to maintain the premises and the improvements located thereon in a manner satisfactory to the design review committee, the association, after approval by two-thirds ( 2/3 ) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain or bring into compliance the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such repair, maintenance, restoration or compliance shall be added to and become part of the assessment to which such Lot and Owner is subject.

## ARTICLE V.

### COVENANTS FOR ASSESSMENT

**Section 1. 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.

**Section 2. 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.

**Section 3 . 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.

**Section 4. 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.

**Section 5. General Assessments.**

**Section 5.1.** The Board may set the general assessment on a Class A Lot at a base rate not to exceed \$250 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.

**Section 5.2.** After January 1, 2004, 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.

**Section 5.3.** 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.

**Section 6. 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.

**Section 7. 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.

**Section 8. 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.

**Section 9. 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).

**Section 10. Declarant's Reserved Rights For Non-Assessment; Special 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 Special 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.

## **ARTICLE VI.**

### **COMMON AREA**

**Section 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:

**Section 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;

**Section 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;

**Section 1.3.** The right of the Board to suspend the right of an Owner to use any facilities or improvements within the Common Area:

**Section 1.3.1.** For any period during which any fee, charge or assessment against such Owner's Lot remains delinquent; and

**Section 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;

**Section 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,

**Section 1.5.** If formation of or inclusion within a Special or Improvement 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.

**Section 2. 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.

### WAIVER OF LIABILITY

**Section 1. Waiver of Liability.** By the acceptance of their deed, all Owners, heirs and assigns waive all claims against Declarant, the Association, its Board, officers and design review committee except as provided herein.

**Section 2. Condition for Liability.** The determinations and actions of the Declarant, the Association, its officers, Board, and design review committee must be first contested in a court of competent jurisdiction and the same shall be permitted opportunity to correct any errors in compliance with final judgment as to the same before liability can attach.

**Section 3. Exceptions to Waiver of Liability.** If the declarations, the Association, its officers, Board or design review committee deliberately refuse to correct to

rectify any act or omission after a court order adverse to the Association, its officers, Board or design review committee, then the Owner may sue it or them for actual damages, including reasonable attorney fees.

## **ARTICLE VIII.**

### **GENERAL PROVISIONS**

**Section 1. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 2. Governance of Association.** The operation of the Association shall be governed by the Bylaws.

**Section 3. Administration.** These restrictive covenants will be administered by the association 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):

**Section 3.1.** All of the provisions in this Declaration of Restrictive Covenants, the Articles of Incorporation, and the By-Laws of the Association;

**Section 3.2.** Regulations, maintenance and improvements of all roads and water supply systems within the Development except as otherwise governed by the City of Spearfish;

**Section 3.3.** Reasonable rules and regulations, with which Owners, their families, guests and visitors shall comply;

**Section 3.4.** Penalties for violations of rules, regulations and failure to pay assessments;

**Section 3.5.** Constructions, improvements, and maintenance to any Association property necessary;

**Section 3.6.** Contract with third parties for necessary services;

**Section 3.7.** Purchase or lease of any equipment necessary for construction, maintenance, or improvements; and,

**Section 3.8.** Determine and implement the amount, pay period, payment schedule, and levy of assessments pursuant to these covenants.

**Section 4. 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.

**Section 5. 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.

**Section 6. 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.

**Section 7. Enforcement.**

**Section 7.1.** 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.

**Section 7.2.** 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 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.

**Section 7.3.** 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.

**Section 7.4.** 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.

**Section 8. 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.

**Section 9. 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.

**Section 10. 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.

**Section 11. 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 Association, 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.

**Section 12. Rights of First Mortgagee.**

**Section 12.1** 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.**

**Section 12.2** 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.**

**Section 12.3.** 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.**

**Section 12.4.** 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.**

### **Section 13. Rights of Declarant.**

**Section 13.1.** All other provisions of this Declaration notwithstanding, the Association, its Board of Directors, the Members, and any Special 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.

**Section 13.2.** 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 these Covenants; and, (B) without the prior consent of the Association or any Owner, to conform these Covenants to governing ordinances of the City of Spearfish, Lawrence County, South Dakota.

**Section 13.3. 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

