

Prepared by:
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**REVISED
DECLARATION OF RESERVATIONS AND
RESTRICTIVE COVENANTS AND CONDITIONS
FOR BOULDER FALLS ADDITION**

THIS REVISED DECLARATION is made on this 16 day of July, 2002, by Steven L. Simunek and Carla M. Simunek, husband and wife, hereinafter referred to as "Declarant" and/or "Developer."

WHEREAS, Declarant is the fee owner of certain property in the County of Fall River and State of South Dakota, which is more particularly described as:

Southeast Quarter of Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twenty-two (22), Southwest Quarter of Southwest Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) and South Half of Southeast Quarter of Southwest Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Twenty-three (23), that part of the Northwest Quarter of Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$) lying north of South Dakota Highway 71 and North Half of Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$) less Tract Z and Lots Five (5) through Eighteen (18) of Cascade Valley Development, a replat of Mountain High Subdivision, located in the North Half of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$), according to the plat thereof recorded in Book XVIII of Plats, page 36, in the office of the Fall River County Register of Deeds, all in Section Twenty-Six (26), all of the above described real property being located in Township Seven South (T7S), Range Five East (R5E), Black Hills Meridian (B.H.M.), Fall River County, South Dakota, less any of said property used for golf course purposes.

WHEREAS, the Declarant intends to develop and offer for sale lots

and tracts (including condominium and/or townhouse lots and tracts) to be located within Boulder Falls Addition, to Fall River County, South Dakota, (hereinafter sometimes referred to as the "Development") and is desirous of subjecting all of the land located within this Development to certain covenants, easements, restrictions, conditions, and charges as hereinafter set forth (the "Covenants"); and

WHEREAS, the Declarant hopes to develop land within the Development as a golf course and that certain lots and tracts within the Development to be sold by the Developer will be adjacent to portions of the golf course; and

WHEREAS, owners purchasing lots and tracts lying in proximity to the golf course, will undertake and, pursuant to these restrictive covenants and conditions, assume certain special risks which will be set forth with more particularity in these Covenants; and

WHEREAS, the Developer reserves for themselves, their successors and assigns, easements for public utilities, drainage, storm and sewer, landscaping, and for constructing improvements thereon, which are identified and shown on the plats(s) or replat(s) of Boulder Falls Addition, Fall River County, South Dakota, filed or to be filed by the Declarant, to insure the harmonious and systematic development of the property:

WHEREAS, Declarant had filed an earlier Declaration of Reservations and Restrictive Covenants dated May 9, 2002, and recorded on May 10, 2002, in Book 156 of Miscellaneous Records on pages 315 through 331 in the office of the Fall River County Register of Deeds. This Revised Declaration shall supercede the prior Declaration of May 9th and said prior Declaration is hereby revoked.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are 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 thereafter, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I.
DEFINITIONS**

Section 1. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract

buyers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Declarant in Boulder Falls Addition.

Section 3. "Lot" shall mean and refer to any plot of land shown upon any recorded addition map of the Properties.

Section 4. "Association" shall mean the Boulder Falls Property Owners Association.

Section 5. "Common Area" means all property maintained by the Association, both dedicated and undedicated.

Section 6. "Dedicated Common Area" means all real property owned or which may hereafter be acquired by the Association.

Section 7. "Undedicated Common Area" means all real property not owned by the Association, but maintained by the Association.

Section 8. "Member" shall mean every owner holding membership in the Association.

Section 9. "Declarant" means Steven L. Simunek and Carla M. Simunek, husband and wife, and/or their successors or assigns.

Section 10. "Developer" means Steven L. Simunek and Carla M. Simunek, husband and wife, and/or their successors or assigns.

Section 11. "Golf Course" means any golf course constructed on land owned by the Declarant, their successors or assigns. Nothing contained herein, however, shall be a warranty or a covenant that a golf course will be built.

Section 12. "Contiguous Lands" means any land that has any common border with any land currently owned by the Declarant.

ARTICLE II.

ADDITIONAL PLATTING OF BOULDER FALLS ADDITION

Section 1. Additional Plats. The Declarant shall have the right, without obtaining the consent of the Owners which consent the Owners waive, to bring within the scheme of Boulder Falls Addition, and this declaration, additional real property which will be

described in additional plats or replats to be recorded and to supplement and revise the declarations. Such supplemental plats or replats and additional, supplemental, or revised declarations may contain modifications and complimentary additions to reflect the different character, if any, of the additional property which will become a part of Boulder Falls Addition. This specifically refers to the current property owned by the City of Hot Springs either adjacent to the currently existing golf course or within the boundary of the Material Recovery Facility property, the approximate acreage being 20-30 acres. This does not include property that is not adjacent, contiguous, or on the other side of a major road.

**ARTICLE III.
RESIDENTIAL AREA COVENANTS**

The following Covenants shall apply to the residential areas of Boulder Falls Addition.

Section 1. Use of Lot. Each residential lot shall be used for residential purposes only and not for any business, trade, commercial or industrial purpose whatsoever except that individuals may conduct non-nuisance, inoffensive businesses from their homes, which businesses do not increase traffic into the Addition.

Section 2. Sales Facilities of Declarant. Notwithstanding any provision in Section 1, Declarant, their agent, employees and contractors shall be permitted to maintain during the period of construction and sale of the buildings in the Project upon such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient, or incidental to the construction, sale or rental of Lots and Dwelling Units including, but without limitation, a business office, construction and storage area, signs, model dwelling units, sales offices and parking areas.

Section 3. Construction. The minimum size of any single family dwelling house constructed on the above property shall be 1600 square feet for the main floor. This is for finished living areas only which excludes basements, garages, and open or screened porches. All construction shall be original, in that no previously constructed dwelling or any trailer house or mobile home shall be permitted on any such property. No home shall exceed two stories above ground level. Any residence constructed fronting on the proposed golf course shall only be one story in height. Any residence constructed shall have a fair market value of at least \$150,000.00 for the main structure.

Section 4. Roofing. In order to maintain the high quality of home sites, no dwelling house or structure shall be erected on the property without fire retardant concrete tile shingles or fire retardant shake shingles, dimensional composition shingles, or an approved equal that meets Architectural Standard 80 (thirty year shingle). Any metal roofing shall require prior written approval by Declarant or their successors in interest, in their discretion.

Section 5. Exterior Appearance. The exterior of every building shall be composed of one or a combination of the following: natural wood, hardboard, manufactured siding or other rustic material (approved by the Architectural Control Committee), stone or brick or stucco. All siding materials shall be of an earth tone hue all to be approved by the Architectural Control Committee. A minimum of 30 percent of the front elevation must be in stone, brick, or stucco. No metal siding shall be allowed.

Section 6. Approval by Architectural Committee. No building shall be erected, placed or altered on any lot until the construction, plans and specifications, and the plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and material, harmony of external design with existing structures and as to location with respective topography and finished grade elevation. No fence or wall shall be erected, placed or altered on any lot or nearer to any street than the minimum building set back line unless similarly approved.

Section 7. Townhomes and Condominiums. Townhomes and condominiums shall be constructed of the same materials required by Sections 3, 4 and 5 of this Article. Living quarters for any townhome or condominium unit shall be not less than 1100 square feet. Townhomes and condominiums may only be constructed by the Declarant. The location of townhomes and condominiums will be east of the existing power lines.

Section 8. Architectural Control Committee. The Architectural Control Committee shall consist of three members appointed by Declarant until such time as 20 lots have been sold in the development and, at that time, the Boulder Falls Property Owners Association shall elect one member. At such time as 75 percent of the lots in the entire development have been sold, the Boulder Falls Property Owners Association shall have the right to elect two members. Declarant may at any time refuse to appoint a member to the Architectural Control Committee and, at that time, the Boulder Falls Property Owners Association shall appoint any member that the Declarant fails to appoint.

Section 9. Location of Building. Except as hereinafter provided,

or with the specific consent of the Architectural Control Committee, no dwelling house or structure shall be erected on the property, the front line of which, meaning the front line of the structure or any projection thereof, is nearer the asphalt shoulder of the street on which the dwelling faces than twenty-five feet (25'); and no dwelling shall be erected on the same property the side lines of which is nearer the side line of the property than twenty feet (20'); and no dwelling shall be erected on the same property within thirty-five feet (35') of the rear property line. Except for a pool house for a swimming pool, no unattached or out buildings shall be erected, unless approved by the Architectural Control Committee.

Section 10. Completion of Construction. Any building commenced on any lot shall be prosecuted diligently to completion and shall be completed within one year from the commencement of the construction unless such completion is prohibited by inclement weather or disaster.

Section 11. Appearance and Improvement of Lot. All improvements on each lot must be maintained by lot owner in a state of good repair, neat and well kept. It is the responsibility of each lot owner that the lot is mowed and raked as necessary and to see that any lawns, landscaping or gardens are maintained in a neat and orderly condition. Firewood or other combustible material must be stacked neatly against the rear of the house or garage, or in such other places as are not visible from neighboring residences or from the street.

Section 12. Landscaping. All natural surface areas disturbed by construction shall be returned promptly and as neatly as possible to their natural state. Landscaping shall be completed around each home within 360 days after completion of the home and shall at all times be maintained in good condition and repair. A minimum of three medium-sized trees shall be planted. However, if the lot already has a minimum of three trees the requirement will be waived. The Architectural Control Committee may adopt additional rules and regulations with regard to preservation of natural resources, grasses, trees and wildlife within the Addition as it may consider appropriate.

Section 13. On Street Parking. On street parking is restricted to emergencies, deliveries and guests. No automobile shall be parked or left on any portion of a lot other than inside a garage and shall not be visible unless it is in operating condition with current license plates. The outdoor repair of automobiles is prohibited upon any portion of the property as well as any other activities which may be or become an annoyance or nuisance to the

neighborhood.

Section 14. Pets. No animals, livestock, or poultry of any kind shall be raised, fed or kept on any lot except dogs, cats or other domestic household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. All pets must be confined upon the owner's property. No barking or vicious dogs are to be kept on the property. No dog kennels or other pet facilities may be built on the property without approval of the Architectural Control Committee.

Section 15. Signs. No sign of any kind shall be displayed to the public view on any lot except a sign advertising the property for sale or signs used by a builder or owner to advertise the property during the construction and sales period.

Section 16. Trees. No dead trees, either standing or cut, are to be allowed on any lot (unless neatly stacked as firewood).

Section 17. Fences. All fences must be approved in writing by the Architectural Control Committee. There shall be no chain link, barb wire, or fort type fences on any lot. There shall be no front yard fencing.

Section 18. Towers and Antennas. There shall be no satellite dishes (small 18" dishes of the Direct TV type are approved), towers or antennas located on any lot unless specifically approved the Architectural Control Committee.

Section 19. Trash. None of the property shall be used or maintained as a dumping ground for old cars, rubbish or trash. All garbage or other waste shall be kept in sanitary containers and other equipment for the disposal of garbage and shall be kept in a clean, sanitary, and fire safe condition.

**ARTICLE IV.
NEGATIVE AND AFFIRMATIVE COVENANTS**

Section 1. Negative Covenants. The following activities are negative covenants and shall not be permitted on any lot in the Addition:

- a. Modular homes, mobile homes, tents, shacks, barns, temporary buildings, manufactured houses, structures of a temporary character, free-standing sheds, storage buildings, treehouses, playhouses, and non-attached

garages, unless the unattached garage is built of the same materials as the residence and must be only one-story in height, and not used for a living quarters.

- b. Recreation vehicles (RV's) unless garaged.
- c. Animals, livestock, or poultry of any kind, raised, bred, or kept on any lot, except that dogs or cats may be kept provided that they are kept, bred or maintained for no reason other than as household pets for the owner of the lot and the total number of dogs and/or cats kept on any lot shall not exceed two (2), without the prior approval of the Boulder Falls Property Owners Association.
- d. Business enterprises, including self-employed businesses, where the public is invited. No profession or home industry shall be conducted in or on any lot without the specific approval of the Declarant.
- e. The operation of motorized road and recreational vehicles, except for golf carts when used for going to or returning from a golf course.
- f. Illegal, noxious, or offensive trade or activity, as defined by law, and anything done which may become an annoyance or a nuisance as defined by law.
- g. Window or wall heating units and window air conditioning units.
- h. Wind turbines or solar panels.
- i. Mining activities and private water wells or septic or sanitary sewers or systems upon, except upon written authorization by Declarant.
- j. Spot lights, flood lights, or other lighting that interferes with the enjoyment of adjoining or neighboring lots.
- k. Above-grade swimming pools.
- l. Moving or relocating existing houses or garages.

Section 2. Affirmative Covenants. In addition to the prohibited activities described above, owners of lots within the development shall do and perform the following affirmative covenants:

- a. Properly dispose of refuse and rubbish. No lot shall be used or maintained as dumping ground for garbage, rubbish or refuse, or storage area for any trash, garbage or other waste. Any such trash, garbage or other waste shall be kept within sanitary containers and shall be stored either under ground or within garages or within a screen device for that purpose, as approved by either Declarant or the Association. No abandoned, junked, or non-used vehicles or trailers shall be kept or stored on any lot within the Addition.
- b. Property display signs. No sign of any kind shall be displayed to the public view on any lot, except one sign of not more than six (6) square feet advertising a residence for sale or signs used by the Declarant or contractor to advertise the property during the construction and sales period. Exception: permanent identification signs, markers, or monuments may be constructed by the Declarant at the perimeter of the Addition, and signs of a temporary nature may be placed by the developer to advertise the Development during the development and sale of the property.
- c. Properly construct pools. In ground pools are permitted. In ground swimming pools may not be constructed in the thirty-five foot (35') rear yard set back or any lot adjacent to the golf course except that the Architectural Control Committee may consider a variance from this restriction providing that any variance does not affect the sight lines of the neighboring lot and does not affect safety concerns. Each request for a deviation shall be considered individually and on its own merits. Plans and specifications for a swimming pool must be submitted to the Architectural Control Committee for its review and approval in writing prior to commencement of construction. Swimming pools shall not be constructed in side yards.

**ARTICLE V.
GOLF CLUB ACTIVITIES**

Section 1. General. The Golf Club Facilities are not Common Areas and are not subject to this Declaration, and no provision of this Declaration gives, or shall be deemed to give, any Owner or occupant of any Lot the right to use the Golf Club Facilities. Rights to use the Golf Club Facilities will be granted only to those persons, and on these terms and conditions, as may be determined from time-to-time by the Golf Club Owner. By way of

example, but not limitation, the Golf Club Owner shall have the right to approve users and determine eligibility for use, to reserve use rights, to transfer any or all of the Golf Club Facilities or operation thereof to anyone and on any terms, to limit availability of use privileges, and to require the payment of a purchase price, a membership contribution, an initiation fee, a membership deposit, dues, and/or use charges. Each Owner and occupant of any Lot hereby acknowledges that no right to the use or enjoyment of the Golf Club Facilities arises from ownership or occupancy of a Lot but arises, if at all, only from a membership agreement or other similar agreement with the Golf Club Owner. The Golf Club Owner shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Golf Club Facilities including, but limited to, eligibility for and duration of use rights, categories of use, extent of use privileges, and number of users. The Golf Club Owner shall also have the right, in its sole and absolute discretion and without notice, to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

Section 2. Reservation. Declarant hereby reserves unto themselves and their successors and assigns, together with the right to grant and transfer the same to the Owner of the Golf Club, a non-exclusive easement over those portions of the Properties adjacent to the Golf Club's Facilities for the flight of golf balls, and for the maintenance and encroachment of golf course irrigation systems, water mains, water pumps and golf cart paths.

Section 3. Golf Course Liabilities. Declarant is considering developing a golf club facility for golfing and related uses. Nothing contained herein, however, shall be a warranty or a covenant that a golf course will be built. By accepting the deed to a Lot, each Owner, for himself and his invitees, personal representatives, assigns, and heirs (collectively, the "Owner's Related Parties") hereby acknowledges, accepts and assumes the risk of any of the items set forth in subsections a. through g. below (collectively the "Golf Course Hazards"). Each Owner of a Lot (and the Owner's Related Parties) assumes the risk of any property damage, personal injury, creation or maintenance of a trespass or nuisance created by or arising in connection with the Golf Course Hazards (collectively the "Assumed Risks"); and releases, waives, discharges, covenants not to sue, indemnifies and agrees to hold harmless Declarant (and their partners and affiliates), the Association, the Board of the Association, the sponsor, developer, architect, designer, and contractor for the Golf Club Facilities, the members or authorized users and guests of the Golf Club Facilities, the Owner of the Golf Club Facilities, and each of

their respective officers, directors, shareholders, affiliates, successors and assigns (collectively, the "Released Parties"), and each of them, from any and all liability to the Owner or Owner's Related Parties for any losses, costs (including without limitation, attorneys' fees), claims, demands, suits, judgments or other obligations arising out of or connected with any of the Assumed Risks. Notwithstanding the foregoing, however, in no event shall this Section 2 relieve any golfer from any claims or liability under South Dakota law for any Golf Course Hazard caused by such golfer. The Golf Course Hazards shall include the following.

- a. Errant Golf Balls. Owners of Lots, particularly Lots abutting the Golf Course, acknowledge the inherent risk of errant golf balls and assume and accept such risk. Owners acknowledge and accept the risk that golfers may attempt to retrieve errant golf balls from Lots and each Owner agrees to release and waive any claims Owners may have as a result of such retrieval.
- b. View Impairment/Privacy. Owners of Lots, including Owners of Lots abutting the Golf Club Facilities, have no guarantee that their view over and across the Golf Club Facilities will be forever preserved without impairment or that the view from the Golf Club Facilities will not be impaired. The developer or owner of the Golf Club Facilities has no obligation to prune or not prune trees or other landscaping and such owner has reserved the right, at its sole discretion, to add, change or reconfigure the golf course and other related facilities, including any trees, landscapes, tees, bunkers, fairways and greens.
- c. Pesticides and Fertilizers. Pesticides, fertilizers and other chemicals will be utilized in connection with the operation of the Golf Course and related landscaping and the Owners of Lots acknowledge, accept the use and assume the risk of such pesticides, fertilizers and chemicals.
- d. Over-spray. Owners of Lots, particularly Owners of Lots abutting the Golf Course, may experience "over-spray" from the Golf Course irrigation system, and such Owners acknowledge, accept and assume the risk of such "over-spray".
- e. Noise and Light: Tournaments. Owners of Lots, particularly Owners of Lots in proximity to the clubhouse of the Golf Club Facilities may be exposed to lights,

noise or activities resulting from use of the golf course for tournaments, from use of the clubhouse for dining and entertainment and use of the parking lot, and such Owners acknowledge, accept and assume the risk of such light, noise or activities. Declarant shall also have the right to sponsor and conduct golf tournaments at the Golf Club Facilities and in connection therewith to erect temporary tents and other structures necessary or convenient to stage and operate such tournaments, and such Owners acknowledge, accept and assume the risk of any noise, inconvenience or other impact of any such golf tournaments.

- f. No access. The Owner of each Lot abutting any portion of the Golf Club Facilities, by accepting a deed to his Lot or Condominium, acknowledges that the Owner of the Golf Club Facilities does not permit access to any portion of the Golf Club Facilities directly from any other Lot. Such access is permitted only through the clubhouse and such other entry points as the Owner of the Golf Club Facilities may from time to time specifically designate. Accordingly, each Owner of a Lot abutting any portion of the Golf Club Facilities agrees not to access the Golf Club Facilities directly from his Lot and shall not permit any of his family, guests, invitees or any other person to do so. The Association shall have the right to enforce this access restriction directly against any Owner who violates it by any and all means authorized in this Declaration.
- g. Maintenance. The Golf Club Facilities require daily maintenance, including mowing, irrigation and grooming, during early morning and evening hours, including without limitation the use of tractors, blowers, pumps, compressors and utility vehicles. Owners of Lots, particularly Owners of Lots in proximity to the Golf Course, will be exposed to the noise and other effects of such maintenance, and such Owners acknowledge, accept and assume the risk of such noise and other effects.

ARTICLE VI.

BOULDER FALLS PROPERTY OWNERS ASSOCIATION

Section 1. Property Owners Association. There is hereby created an association to be known as Boulder Falls Property Owners Association.

Section 2. Membership. Membership in the Association shall be

appurtenant to and may not be separated from ownership of a lot or townhouse or condominium.

Section 3. Class. The Association shall have two (2) classes of membership.

Class A. Class A members shall be all owners except Declarant. Each Class A member shall be entitled to one vote for each lot/condominium unit owned. If more than one person holds a fee to any lot/condominium unit, all such persons shall be members but they shall cast but a single vote for each lot or condominium unit owned.

Class B. Class B members shall be the Declarant and their assigns. Each Class B member shall be entitled to ten (10) votes for each lot/condominium unit either owned or planned. Class B membership will expire and converts to Class A membership within five (5) years or on or before July 2, 2007. At that time, the Declarant will have no more or no less association liability than any other association member per lot owned. In return, dues will be paid and all rules followed as all Class A members are required.

Section 4. Duties. The Association shall operate and supervise the common areas for the benefit of the members. Members, their families and guests shall be subject to reasonable rules and regulations for the use of the common area promulgated by the Association.

Section 5. Members Rights. Every owner shall, upon the purchase of his lot/condominium unit, automatically become a member of the Association. Membership shall continue until the member no longer holds property in Boulder Falls Addition, or until the member assigns his membership to a new contract purchaser or mortgagee.

Section 6. Penalties. The Association may provide penalties for violation of its duly adopted rules and regulations and for failure to pay assessments due and payable to the Association, including loss of privileges in the common areas and loss of voting rights in the Association.

Section 7. Improvements. The Association shall have the right to permit construction of such buildings as may be necessary for proper protection and maintenance of equipment and utilities, subject to the control, direction and supervision of the Architectural Control Committee with respect to its authority as herein set out.

Section 8. Dedication. The Association shall have the right to dedicate such property as it sees fit to any public agency subject to conditions agreed upon by the members by two-thirds votes of each class of members, who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 9. Rules. The Association will have the right to permit use of common areas to guests or members or others upon terms established by the Board.

Section 10. Borrowing Money. Upon a two-thirds vote of the members, the Association may borrow money to improve the Common Areas and mortgage the Common Areas, or portions thereof, as security. The rights of Owners and the Association in the common Areas shall be subordinated to the lien of any such mortgage.

Section 11. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the property nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. In the event said committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this provision shall be deemed to have been fully complied with.

Section 12. Assessments. The Association shall have the right to levy annual assessments upon its members pursuant to the Covenants for assessment hereinafter set forth.

Section 13. Exterior Maintenance. In the event an owner of any Lot subject to these declarations shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds vote of the Board of Directors, shall have the rights, through its agents and employees, to enter upon said parcel and to repair and maintain the Lot and the exterior of the buildings and any other improvement erected thereon. The cost of such exterior maintenance shall be added to, and become a part of, the assessment to which such Lot is subject.

Section 14. Board of Directors. The Association Board of Directors shall consist of five (5) members elected at the annual meeting of the Association. Members shall serve 3-year terms. When the first

Board is elected one member shall be elected for a 1-year term, two for 2-year terms and 2 for 3-year terms. Thereafter, all Board members elected shall be for 3-year terms. If a vacancy occurs on the Board, the remaining Board members shall fill the vacancy until the next annual election.

**ARTICLE VII.
COVENANT FOR ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot/condominium unit owned within the property hereby covenants, and each owner of any lot/condominium unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be equal in an amount for each lot/condominium unit and to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien upon the land against which each such assessment is made in the same manner and to the same extent as a mortgage lien filed against the property. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation of the delinquent assessments shall not pass to a member's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and for the improvement and maintenance of the Common Areas.

Section 3. Assessments. The Board of Directors of the Association shall fix monthly assessments. The beginning monthly assessment shall be Ten Dollars (\$10) per Lot and shall commence to be paid by each Lot Owner on the first day of the first month following occupancy of the residence built on said Lot or, if a house is not immediately constructed, the payment shall commence on the first day of the first month following the one year anniversary of the conveyance of the real property to the owner thereof as determined by the date of the deed not the date of the recording. The monthly assessment may not be increased more than ten percent (10%) for any consecutive 12 month period without a two-thirds vote of the Property Owners Association. Until Developer/Declarant becomes a Class A member or on or before July 2, 2007, whichever occurs first, Declarant shall not be liable for any assessment. So long

as assessments are less than Fifteen Dollars (\$15.00) per month per lot, the Association may elect to bill for an entire year's assessment during the month of January in each calendar year, and the homeowner shall be responsible for paying the entire year's assessment prior to the last day of February in that year.

Section 4. Special Assessments for Capital Improvements. In addition to the monthly assessments, a special assessment for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessments shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Until Declarant becomes a Class A member or on or before July 2, 2007, whichever occurs first, Declarant shall not be responsible for any special assessment.

Section 5. Developer/Declarant Exempt. Until Developer/Declarant becomes a Class A member or on or before July 2, 2007, whichever occurs first, the Developer/Declarant shall not be responsible for any assessment of any kind or character.

Section 6. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at twelve percent (12%) simple interest per annum. The Board of Directors may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the same manner as foreclosure of a mortgage lien under the laws of South Dakota. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the line of any first mortgage made to an institutional lender for not more than ninety-five percent (95%) of the appraised value of the Lot with improvements. Sale or transfer of any Lot shall not affect the assessed lien. However, the sale or transfer of any Lot/condominium unit pursuant to mortgage foreclosure of any proceeding in lieu thereof, shall extinguish the line of such assessments as to payments which become due prior to such sales or transfer. No sale or transfer shall relieve such Lot/condominium unit for liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Term. These Covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of five (5) years from the date these Covenants are recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a two-thirds majority of the then Owners of the lots within the Addition has been recorded with the Fall River County Register of Deeds Office agreeing to change said Covenants in whole or in part.

Section 2. Enforcement. These covenants, conditions and restrictions are for the mutual benefits of all Owners within the Addition. Consequently, the Declarant or any Owner may bring an action at law or in equity to enforce these covenants, conditions and restrictions against any person or persons violating or attempting to violate any of the terms or conditions of this document, or any amendment hereto, whether to prohibit violation or to recover money damages.


Section 3. Notices. Any notice required to be sent to any Owner under the provisions of this document shall be deemed to have been properly given when mailed postage prepaid to the last known mailing address of the Owner or hand delivered to an individual residing on said Lot providing said individual is over the age of fourteen (14) years.

Section 4. Severability. The invalidity in whole or in part of any covenant, restriction, section, addition, or any other provision of this Declaration, shall not affect the validity of the remaining portions thereof.

Section 5. Subdivision laws and Ordinances. If any governmental subdivision's laws or ordinances are imposed upon the development that conflict with the restrictive covenants, then in that case, if the restrictive covenants are more restrictive in its application to the property owners, the restrictive covenants will apply. If the governmental subdivision laws are more restrictive in its application to the property owners, then the subdivision laws shall apply to the property owners and supercede the restrictive covenants.

IN WITNESS WHEREOF, the Developer has executed this Declaration the day and year first written above.

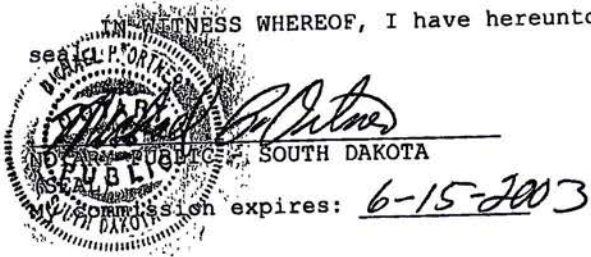

Carla M. Simunek


Steven L. Simunek

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF FALL RIVER)

On this the 16 day of July, 2002, before me, the undersigned notary public, personally appeared Steven L. Simunek and Carla M. Simunek, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official



Page 18 of 18

STATE OF SOUTH DAKOTA, County of Fall River, ss.
Filed for record this 18th day of July A.D., 20 02, at 11:35 o'clock
A M., and recorded in book 157 of Miscellaneous, page 50 thru 67
Fee Number 027317 PAGE 67
Key Number: 5557 Anita Cope
Register of Deeds