

**DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS
ENCHANTED HILLS**

This Declaration is made this 24th day of May, 1978. by ACME COMPANY a South Dakota corporation, hereafter referred to as "Declarant."

WHEREAS the Declarant is the owner of certain real property, hereafter "The Property" located in Pennington County South Dakota, and more particularly described in Article II hereof, and

WHEREAS the Declarant desires to create thereon a residential community with permanent common areas and community facilities for the use and benefit of said community, and

WHEREAS the Declarant desires to provide for the preservation of the amenities of said community and for the maintenance of said common areas and community facilities, and to this end desires to subject the real property described in Article II hereof to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of said property and the subsequent owners thereof and

WHEREAS the Declarant has deemed it desirable to create an association which shall have the powers and duties of maintaining and administering such common area and community facilities and administering and enforcing the covenants and restrictions set out in this Declaration and collecting and disbursing the charges and assessments hereinafter created, and

WHEREAS the Declarant intends to form the Enchanted Hills Homes Association, Inc., a non-profit corporation without capital stock, under the Laws of the State of South Dakota, for the purposes of carrying out the duties aforesaid,

NOW THEREFORE, the Declarant hereby declares that the real property described in Article II hereof is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, restrictions, easements, charges and liens (hereinafter sometimes referred to as "covenants and restrictions") hereinafter set forth:

ARTICLE I

Section I. Definitions. The following words when used in this Declaration shall have the following meanings:

(a) "Apartment House" shall refer to any structure or structures located on a lot and containing two (2) or more dwellings which are not condominium units as defined in South Dakota Compiled Laws, Section 43-15.

(b) "Association" shall refer to the Enchanted Hills Homes Association, Inc., and its successors or assigns, or; upon merger or consolidation with another corporation or corporations, the corporation surviving such merger or resulting from such consolidation.

(c) "Common Areas" or "Community Facilities" shall refer to all real property owned by the Association for the benefit, use, and enjoyment of its members and the community, together with all improvements located thereon and all personal property incidental thereto which may be owned by the Association.

(d) "Declarant" shall refer to Acme Company and its successors and assigns if such successors and assigns should acquire from Acme Company more than one (1) undeveloped lot for the purpose of development.

(e) " Dwelling" shall refer to any building or portion of a building situate upon The Property and designed and intended for use and occupancy as a residence by a single family.

(f) "Lot" shall refer to a subdivided parcel, which is part of The Property, other than Common Areas or Community Facilities, or to a condominium unit, as defined in South Dakota Compiled Laws, 43-15, which is located within The Property.

(g) "Member" shall refer to every person or persons or entity, which holds membership, in the Association.

(h) "Mortgage" shall refer also to a Deed of Trust or a Deed to Secure Debt and "Mortgagee" shall refer to the holder of record of any such security instrument.

(+) "Owner" shall refer to the record owners, whether one (1) or more persons or parties, of the fee simple title of any lot which is part of or located within The Property. Including contract sellers but excluding (1) those having such interest solely as security for the performance of an obligation, (ii) Declarant and (iii) the Association.

(j) "The Property" shall refer to all real property, described in Article II hereof.

ARTICLE II

Section I. Property Subject To Declaration. The real property which is, and shall be, held, conveyed, hypothecated, or encumbered, sold, leased, rented, used, occupied, and improved subject to this Declaration is located in Pennington County, South Dakota, and is more particularly described in "Exhibit A" attached hereto and by this reference made a part hereof.

ARTICLE III

Section 1. Association Membership. The Association shall have on (1) class of voting membership:

(a) Every person, group of persons or entity who is Owner whose Lot is or becomes subject by covenants of record to assessment by the association shall be a member of the association and shall be so recorded in the books of the association; provided, however, that any person, group of persons or entity who hold an interest in any subdivided parcel designated as a common area or community facility shall not be a member on account of such interest. Members shall be entitled to one (1) vote for each lot of which they are an owner except that any member who is an owner of a lot on which is located an apartment house shall have one (1) vote for each dwelling contained in such apartment house. If more than one (1) person or entity is an owner of any lot, then the association membership voting right appurtenant to such lot shall determine; provided, however, that no fraction of one (1) vote may be cast by any member. In the event and so long as such co-owner of a lot are unable to agree on the manner in which the vote appurtenant to such lot shall be cast, then such vote shall not be regarded as an eligible vote and shall not be counted. The vote of any owner who is a corporation, trust, or partnership may be cast by any officer, trustee, or partner, as the case may be, and unless objection by any other officer, trustee, or partner of such owner is noted at the meeting, the chairman of such meeting shall have no duty to inquire as to the authority of the person casting such vote.

ARTICLE IV

Section 1. Members' Right of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the common areas and community facilities and such easement shall be appurtenant to and shall pass with the title to every lot, subject to the following:

(a) The Association shall have the right, in accordance with its Articles of Incorporation and By-laws, to borrow money for the purpose of improving the common areas and community facilities and in aid thereof to mortgage said property. The Association shall not mortgage the common areas or community facilities except by resolution approved by two-thirds majority of the votes of each class of members. In the event of a default in the foreclosure of any such mortgage, the lender shall have the right, after taking possession of such property, to charge admission and other fees as a condition to continued enjoyment by members and their guests of any community facility or any recreational facility with the common areas.

(b) The Association shall have the right to levy reasonable admission charges and other fees on the use by members and their guests of any community facility or any recreational facility situated with the common areas.

(c) The Association shall have the right to take such steps as are reasonably necessary to prevent default in and foreclosure of any mortgage placed on common areas or community facilities.

(d) The Association shall have the right to limit the number of member's guests using the common area and community facilities.

(e) The Association shall have the right to suspend the voting rights and the rights to use of the common areas and community facilities of any member and the family and guests of such (i) for any period during which any assessment made by the Association against the lot of such member remains unpaid and (ii) for any period not to exceed sixty (60) days for any infraction of published rules and regulations of the Association by such member or the family or the guests of such member.

(f) The Association shall have the right to dedicate or transfer all or any part of the common areas or community facilities to any public or municipal agency, authority, or utility for purposes consistent with the purpose of this declaration and subject to such conditions as may be

agreed to by members; provided, however, that not such dedication or transfer shall be effective unless an instrument establishing such dedication or transfer has been signed by two-thirds (2/3) of the members of each class and recorded, and unless written notice of the proposed dedication or transfer is sent to every owner and every first mortgagee of record of a lot at least sixty (60) days prior to the recordation of such instrument. Except as provided in subparagraphs (a) and (i) hereof and in this subparagraph (f), the Association shall not have the right to subdivide or convey all or any part of the common areas or community facilities.

(g) Owners shall have a perpetual easement over any common area or community facility (i) with respect to such portions of their dwelling(s) or apartment house(s) that overhangs said common areas or community facilities, (ii) for support as to a dwelling or apartment house adjacent to common areas or community facilities, and (iii) for reasonably pedestrian ingress and egress to and from their lot or dwelling or apartment house and for reasonable vehicular access thereto.

(h) The Association shall have the right to grant rights-of-way or easements for any public utility purpose to any municipal agency, public utility or to the Declarant for the purpose of the installation or maintenance of such utilities as may be necessary to serve any of the common areas or community facilities or to serve any lot; provide, however, that such easements or rights-of-way shall not be permanently inconsistent with the enjoyment of the common area and community facilities by members.

(i) The Association shall have the right to designate the uses of the common areas and to designate the uses of the common areas and to determine what community facilities are to be made available provided, however, that use of the common areas as a bridle path for the riding of horses and the development of community facilities sufficient to maintain horses and the equipment of horseman, and the use of other parts of the common area as tennis courts and the development of community facilities to accommodate tennis players, such as racquet clubs and the use of other portions of the common area as swimming area and development of community facilities to accommodate swimmers and sunbathers, such as swimming pools and bathhouses, shall not be uses prohibited by the Association unless and until such time as two-thirds (2/3) of the votes of each class of members shall be in favor of the designation of any of the foregoing as prohibitive uses.

Any rights of the Association reserved hereby may be exercised by the Board of Directors of the Association except to the extent to which such rights are directed to be exercised by the members.

Section 2. Delegation of Right of Enjoyment. Any member may delegate his right of enjoyment of the common areas and community facilities to members of his family and his guests and to his tenants who reside within The Property and their family and guests, subject to the provisions of this Declaration and the Articles and By-laws of the Association.

Section 3. Rights Not Subject to Suspension. Notwithstanding anything herein contained to the contrary, the rights and easements created in subparagraph (g) of Section 1 of this Article IV or in Articles X and XI hereof shall not be suspended for any reason.

Section 4. The Declarant hereby covenants and warrants that within ___ years of the date of these covenants it shall convey by Warranty Deed to the Association at least twenty (20) acres with access to the lake to be used as a common area.

ARTICLE V

Section 1. Covenants for Assessments. Each person, group of persons or entity who becomes a owner by acceptance of a deed to a lot, whether or not it shall be so expressed in any such deed or other conveyance shall be deemed to covenant and agree to pay to the association; (a) annual assessments and (b) special assessments to be fixed, established and collected from time to time, as hereinafter provided. The annual and special assessments, together with interest thereon and costs of collection, shall be a charge on the lot and shall be a continuing lien upon the lot against which such assessment is made. Each assessment, together with interest thereon and costs of collection, shall be the 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. No portion of the common areas or ~~community facilities~~ shall be subject to assessment by the Association.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose or promoting the recreation, scenic enjoyment, health, welfare, and safety of the residents of The Property and in particular for the improvement and maintenance of the properties and of services and facilities related to the use and enjoyment of the common areas and community facilities and, to the extent herein provided of the dwelling situated on The Property, including but not limited to the payment of:

- (a) All operating expenses of the common areas and community facilities including service furnished and;
- (b) The costs of necessary management and administration, including fees paid to any management agent; and
- (c) Taxes and assessments levied against the Association or upon any property which it may own or which the Association is otherwise required to pay; and
- (d) The cost of fire and extended liability insurance on the common area and community facilities and the cost of such other insurance as the Association may procure; and
- (e) The cost of furnishing water, electricity, heat, gas, garbage, and trash collection or other utilities to the common areas ~~and community facilities~~; and

- (f) The cost of funding all reserves established by the Association, including, when appropriate, a reserve for replacements: and
- (g) The cost of repairs, maintenance and replacements of the common areas and community facilities made by the Association.

Section 3. Annual Assessments. It shall be the duty of the Board of Directors of the Association to determine the amount of the annual assessment for each lot of each assessment year. The annual assessment for any lot for any assessment year shall become due and payable and a lien against the lot on the first day of the calendar year, unless the Board of Directors of the Association shall otherwise provide. The Board of Directors shall make reasonable efforts to determine the amount of the annual assessment against each lot for each assessment year and to give written notice of the assessment for each lot to the owner thereof, together with the dues dates of periodic installments if such assessment is allowed by decision of the Board of Directors to be paid in installments at ~~least~~ **least** thirty (30) days prior to the first day of each assessment year. Assessments may be paid on a monthly, quarterly, semi-annual basis in the discretion of the Board of Directors of the Association.

Section 4. Amount of the Annual Assessment. The Board of Directors of the Association may fix the annual assessment. Said assessment is to be assessed on a per lot basis.

Section 5 Special Assessment. In addition to the annual assessments authorized by this Article V, the Association may from time to time levy a special assessment for the purpose of defraying in whole or in part the cost of any construction or reconstruction or unexpected repair or replacement of a community facility or an improvement located upon the common area, including the necessary fixtures and personal property related thereto: provided, however, that any special assessment shall only be levied by a resolution approved by two-thirds (2/3) of the eligible votes of each class of members.

Section 6. Commencement of Assessments. The initial annual assessment for each lot shall be in the amount of Ten Dollars (\$10.00) per month until such time as the home is constructed at which time the same shall be in the amount of Twenty-five Dollars (\$25.00) per month after the construction of the home and until such time as such amount is adjusted by the homeowner's association in accordance with its authority as set forth herein.

Section 7. Assessment of Declarant. Any provision of this Declaration or of the Articles of Incorporation or By-Laws of the Association notwithstanding, the Declarant shall not be required to pay an annual assessment or a special assessment for any lot in which it has the interest otherwise required for a membership, provided, however, the foregoing limitation shall not apply to any lot containing a completed dwelling held by the Declarant for rental purposes.

Section 8. Reserve for Replacement. The Association may establish and maintain a reserve fund for replacement by the allocation and payment periodically to such reserve fund of an amount to be designated from time to time by the Board of Directors of the Association. Such fund shall be conclusively deemed to be a common expense of the Association. Such fund shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America. The reserve for replacements may be expended only for the purpose of effecting the replacement of the common areas ~~and community facilities~~, and improvements thereon and for operating contingencies of a non-recurring nature. The proportionate interest of any number in my reserve for replacements shall be considered an appurtenance of his lot and shall not be separately withdrawn, assigned, or transferred or otherwise separated from the lot to which it appertains and shall be deemed to be transferred with such lot.

Section 9. Assessment Certificates. The Board of Directors shall prepare and-maintain a roster of the lots and the assessments currently applicable thereto and shall make such roster available for the inspection of members upon request. The Association shall, upon demand, at any reasonable time furnish to any owner liable for any assessment a certificate in writing signed by an officer or other authorized agent of the Association, stating whether such assessment is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein, stated to have been paid. A charge not to exceed Ten Dollars (\$10.00) may be levied in advance by the Association for each certificate so delivered.

ARTICLE VI

Section 1. Non-Payment of Assessment. Any assessment or part thereof levied pursuant to these covenants which is not paid on the date when due or any payments on any assessment allowed to be paid in installments which are not paid on the date when payable shall be delinquent and the entire unpaid balance of such assessment including all installments thereof shall, together with interest thereon and costs of collection as hereinafter provided, become due and a continuing lien upon the lot against which such assessment is levied which shall bind such lot in the hands of the owner, his heirs, devisees, personal representatives, and assigns. The obligation of such owner to pay such assessment, however, shall also remain his personal joint and several obligations for the statutory period.

If the assessment is not paid within thirty (30) days after the due date thereof or within thirty (30) days after the installment payment dates established by the Board of Directors, the delinquent amount shall bear interest at the rate of eight percent (8%) per annum and the Association may bring an action at law against the owner personally obligated to pay the same or may foreclose the lien against the lot in the manner provided by law. In either event, the Association shall recover from such owner or out of the proceeds of foreclosure accrued interest and costs of collection, including but not limited to, reasonable attorney fees. No owner may wave or otherwise escape liability for the assessments provided for in this Association by non-use of his lot or dwelling.

Section 2. Subordination to First Mortgages. 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 assessment; provided, however, that sale or transfer pursuant to a decree of foreclosure or any proceeding or transfer in lieu of foreclosure pursuant to such mortgage shall not relieve such lot or owner from liability for any assessments becoming due after such sale or transfer nor from the lien thereof.

ARTICLE VII

Section 1. Exterior Maintenance of Dwellings. In addition to maintenance of the common areas and community facilities, as aforesaid, the Association may, in the interest of the general welfare of the community and of all owners provide periodic exterior maintenance upon lots, or dwellings thereon, including but not limited to, periodic painting of exterior building surfaces and trim, repair and maintenance of gutters, downspouts and roofs, care of shrubs, lawn walks, driveways, and other exterior improvements, either upon the written request of the owner thereof or as and when deemed necessary by the Board of Directors or the Architect; provided, however, no such action other than upon the written request of such owner shall be taken without prior resolution of the Board of Directors for the Association or of the Architect, and reasonable notice to the owner of any lot or dwelling proposed to be maintained.

Section 2. Assessment of Costs. The cost of any exterior maintenance performed pursuant to Section 1 of this Article VII shall be assessed against the lot upon which such maintenance is done and, when so assessed, a statement for the amount thereof shall be rendered to the owner of said lot at which time the assessment shall become due and payable. Such assessment shall be a continuing lien against the lot and an obligation of the owner and may be enforced as provided in Article VI of this Declaration.

Section 3. Access at Reasonable Times. For the purposes solely of performing the exterior maintenance required or authorized by this Article VII the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner of a lot to enter upon such lot or the exterior of the dwelling thereon and to perform such maintenance upon such lot or dwelling at any reasonable daylight hour.

ARTICLE VIII

Section 1. Architectural Control. The architectural control as set out in this Article shall be provided by Architect Bill Thomas of Rapid City, South Dakota. Should Architect Bill Thomas choose not to serve or fail to serve for any reason, a new architect may be selected by a majority of the members. The Board, in selecting such an architect, shall review all available architects in the Rapid City, South Dakota, area. The affirmative vote of a majority of the members of the Association shall be required in order to elect a new architect or to adopt or promulgate any rule or regulation or to make any finding, determination, ruling, or order or to issue any permit, consent, authorization, approval, or the like pursuant to the authority contained in this declaration.

Section 2. Improvements and Alterations. Except for original construction by the Declarant, and except for purposes of proper maintenance and repairs, or as otherwise provided in this Declaration, no building, fence, wall, or other improvements or structure shall be commenced, erected, placed, moved, or maintained upon The Property, nor shall any exterior addition to or change in any improvement located on The Property be made until the complete plans and specification showing the precise and exact nature, kind, shape, height, setback, materials, color, and location of the same shall have been submitted in duplicate to and approved in writing as to harmony of external design, color, and location in relation to surrounding structures and topography and conformity with the design concept for The Property by the Architect.

Section 3. Approvals of Improvements and Alterations. Upon approval by the Architect of any plans and specifications submitted pursuant to the provisions of this Declaration, a copy of such plans and specifications, as approved, in writing, shall be returned to the applicant submitting the same. In the event the Architect fails to approve or disapprove any plans and specifications which may be submitted, to it within sixty (60) days after submission, then approval will not be required and this Article VIII shall be deemed to have been fully complied with.

Section 4. Limitations. Construction or alterations in accordance with plans and specifications approved by the Architect pursuant to the provisions of this Article VIII shall be commenced within six (6) months following the date upon which the same are approved by the Architect (whether by affirmative action or by forbearance from action, as provided in Section 3 of this Article VIII, and shall be substantially completed within twelve (12) months following the date of commencement, or within such longer period as the Architect shall specify. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architect shall be conclusively deemed to have lapsed and compliance with the provisions of this Article VIII shall again be required. There shall be no deviations from plans and specifications approved by the Architect without the prior consent in writing of the Architect. Approval for use on any lot of any particular plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use upon any other lot or lots.

Section 5. Certificates of Compliance. Upon the completion of the construction or alteration of any building, fence, wall or other improvements or structure in accordance with plans and specifications approved by the Architect in accordance with the provisions of this Article VIII, the Architect shall, at the request of the owner thereof, issue a certificate of compliance which shall be prima facie evidence that the building, fence, wall, or other improvements or structure referenced in such certificate has been approved by the Architect and constructed or installed in full compliance with the provisions of this Article VIII and with such other provisions and requirements of this Declaration as may be applicable.

Section 6. Rules and Regulations. The Architect may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish such statements of policy, standards, or guidelines and establish such criteria relative to architectural styles or details, or other matters, as it may consider necessary and appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article VIII or any other provision or requirement of this Declaration. The Architect may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article VIII. The decision of the Architect shall be final except that any owner who is aggrieved by an action or forbearance from action by the Architect may appeal the decision of the Architect to the members or the Board of Directors. Upon request, such owner shall be entitled to a special meeting of the members of the Board of Directors for that purpose.

Section 7. Enforcements; Right to Correct Violations. In the event any building, fence, wall, or other improvements or structure shall be commenced, erected, placed, moved or maintained upon any lot, otherwise than in accordance with the provisions and requirements of this Article VIII, then the same shall be considered to have been undertaken in violation of this Article VIII and without the approval of the Architect required herein. Upon written notice from the Architect, such buildings, fence, wall, or other structure or improvements shall be promptly removed. In the event the same is not removed, or the violation is not otherwise terminated, within fifteen (15) days after notice of such violation exists, then the Association shall have the right, through its agents and employees to remove or otherwise terminate such violation and the costs thereof shall be assessed against the lot upon which such violation occurred. A statement for the amount thereof shall be rendered to the owner of said lot at which time the assessment shall become due and payable and a continuing lien upon said lot, and an obligation of the owner, and may be enforced as provided in Article VI of this Declaration. The Association shall have the further right, through its agents, employees or committees, to enter upon and inspect any lot at any reasonable daylight hour for the purpose of ascertaining whether any violation of the provisions of this Article VIII, or any of the other provisions or requirements of this Declaration, exists on such lot; provided, however, that no such entry and inspection shall be taken without a resolution of the Architect or the Board of Directors and after reasonable notice to the owner of such lot. Neither the Association nor any such agent or employee shall

be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Article IX

Section 1. Prohibited Uses and Nuisances. Except for the activities of the Declarant during original construction or except with the prior written approval of the Board of Directors:

(a) No noxious or offensive trade or activity shall, be carried on upon any lot or within any dwelling located on The Property nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood, the community or members. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, or other sound device (except such devices as may be used exclusively for security purposes) shall be located, installed, or maintained upon the exterior of any dwelling or upon the exterior of any other improvements which may be constructed upon The Property.

(b) The maintenance, keeping, boarding and/or raising of animas, livestock, or poultry of any kind, regardless of number shall be and is hereby prohibited on any lot or within any dwelling located on The Property, except that this shall not prohibited the keeping of dogs, cats, or caged birds as domestic pets provided they are not kept, bred, or maintained for commercial purposes and, provided further, that such domestic pets are not a source of annoyance or nuisance to the community or members. Pets shall be attended at all times and shall be registered, licensed, and inoculated as may from time to time be required by law.

(c) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted on any lot.

(d) No junk vehicle, trailer, camper, camp truck, motor home, house trailer, boat, or other machinery of equipment of any kind or character, except for such equipment or machinery as may be reasonable., customary and usual in connection with the use and maintenance of any dwelling or other improvements located on The Property and except for such equipment or machinery as the Association may require in connection with the maintenance and operation of the common areas and community facilities, shall be kept on The Property; unless the same at all times when located on The Property and not in operation is contained entirely within a garage or other outbuilding and entirely out of public view; nor shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of its Board of Directors, provide and maintain a suitable area designated for the parking of such vehicles or equipment or

for the undertaking of such repairs or may waive this prohibition upon the written application of a member.

(e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained upon any lot. Garbage, trash, and other refuse shall be placed in covered containers of a type and size approved by the Architect.

(f) No lot shall be divided or subdivided and no portion of any lot other than the entire lot shall be transferred or conveyed for any purposes. No portion of any dwelling other than the entire dwelling shall be leased. The provisions of this subsection shall not apply to the Declarant and further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association.

(g) No lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil, or other hydrocarbons, minerals, gravel, or earth.

(h) In order to facilitate the free movement of passing vehicles, no automobiles belonging to owners shall be parked on the paved portion of any joint driveway or streets, public or private, or upon any portion of the common areas or community facilities not designated for such purpose, except during bona fide temporary emergencies.

(i) No sound trees measuring in excess of six (6) inches in diameter at a point two (2) feet above the ground shall be removed from any lot without written approval of the Board of Directors of the Association. The Board of Directors may from time to time adopt and promulgate such restrictions and --regulations unreadable

(j) (see original- unreadable)

(k) No structure, planting, or other material which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channel, other than sidewalks, shall be placed or permitted to remain upon any lot.

(l) Garage doors and the doors of any other storage room or the like shall be maintained in a closed position whenever possible.

(m) No dwell or other improvements which are located upon The Property shall be permitted to fall into disrepair and all such dwellings and other improvements, including lawn and other landscaped areas, shall be maintained in good condition.

(n) There shall be no violation of any rules for the use of the common areas or community facilities or other rules and regulations consistent with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the Association and the Board of Directors is hereby authorized to adopt such rules.

Section 2. Right of Association to Remove or Correct Violations of this Article.

The Association may, in the interest of the general welfare of all members, enter upon any lot or the exterior of any dwelling at any reasonable daylight hour for the purpose of inspecting, removing or correcting any violations or breach of any attempted violation of any of the covenants and restrictions contained in this Article IX, r for the purpose of abating anything herein as a prohibited use or nuisance; provided however, that no such action shall be taken without a resolution of the Board of Directors of Directors of the Association and after reasonable notice to the owner of such lot or dwelling. No such entry or inspection shall be considered a trespass or otherwise be considered a wrongful act.

ARTICLE X

Section 1. Residential Use. All dwellings shall be used for private residential purpose exclusively, except that a professional office may be maintained in a dwelling by the person actually residing in the dwelling provided that such maintenance and use is in strict conformity with the provisions of any relevant zoning law or regulation.

Section 2. "Professional Office". As used herein, the term "professional office" shall mean a room or rooms used for office purposes by not more than two (2) members of any recognized licensed profession, including doctors, dentists, lawyers, and architects, but not including medical or dental laboratories. Nothing contained in this Article X or elsewhere in this Declaration, shall be construed to prohibit the Declarant from the use of any lot or dwelling for promotional or display purposes.

ARTICLE XI

Section 1. Party Walls. Except in the case of condominium units as defined in South Dakota Consolidated Laws, Section 43-14, each wall which is built as part of the original construction of any dwelling on The Property and placed on the dividing line between lots shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto to the extent consistent with provisions of this Article XI.

Section 2. Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire of Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article XI, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this Article XI shall be appurtenant to the land and shall pass to such owner's successors in title.

ARTICLE XII

Section 1. Joint Driveways. Any driveway which is built or installed as part of the original construction upon The Property and which is situated on the dividing line between lots or partly on one lot and partly on another lot or other lots, shall constitute a joint driveway for the equal and common use and benefit of the owners of any lots or other portions of The Property which it is reasonably designed to serve, and to the extent not inconsistent with the provisions of this Article XII, the general rules of law regarding joint driveways and of liability for property damage due to negligent or willful acts or omissions regarding the same shall apply thereto.

Section 2. Repair and Maintenance. The cost of reasonable repair and maintenance of any joint driveways shall be shared by the owners who make use of the same in equal shares.

Section 3. Damage or Destruction. In the event any joint driveway is destroyed or damaged, any owner who has used the same may restore it, and if the other owners thereafter make use of the same, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Easement. There shall be a perpetual and nonexclusive easement, in, through, and over any such joint driveway reserved to the owners of any lot or lots upon which the same has been built or installed or which the same has reasonably been designed to serve and no person shall in any way interfere with the free and unobstructed use hereof by said owner.

Section 5. Right to Contribute Runs with Land. The right of any owner to contribution from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors in title.

ARTICLE XIII

ZONING

The provisions of this Declaration shall not be construed to permit any action or use which is prohibited by the Zoning Regulations of Pennington County, South Dakota, or by any other applicable law, rule, or regulation of any governmental authority. In the event of any conflict between any of the provisions of this Declaration and such Zoning Regulations or any such law or regulation, then the most restrictive of such provisions shall control.

ARTICLE XIV (see original- unreadable)

ARTICLE XV

Section 1. Insurance Proceeds for Losses to Common Areas or Community Facilities.

Insurance proceeds for losses to common areas or community facilities shall be paid to the Association. Such proceeds shall be applied by the Board of Directors to repair or restore the common area or community facilities damage; provided however, that by a resolution approved by two-thirds (2/3) of the eligible votes of each class of members such proceeds may be used for any other purpose stated in such resolution.

Section 2. Condemnation Proceeds for a Taking of Common Areas or Community Facilities. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of all or part of the common areas or the community facilities shall be paid to the Association. Proceeds shall be paid by the Board of Directors to each owner of a lot in the proportion which the annual assessment paid or payable by such owner in the assessment year in which the taking occurs bears to the total annual assessments paid or payable on all lots in such assessment year; provided, however, if in the opinion of a majority of the Board of Directors such a disposition would be inequitable, the Board shall propose to a meeting of Members one or more plans of application and disposition of such proceeds. By a resolution approved by fifty-one (51) percent of the eligible votes of each class of members, members may direct that such condemnation proceeds shall be applied or disbursed according to a plan proposed by the Board or in any other manner designated in such resolution. If no such plan receives fifty-one (51) percent of the eligible votes of each class of members, then the proceeds may be applied and distributed in the manner determine by the Board of Directors, whose determination shall be binding upon all members. The Board of Directors shall deduct from any payment of condemnation proceeds to owners any delinquent assessment(s) owed the Association by any owner of a lot.

ARTICLE XVI

Section 1. Rights of First Mortgagees. Other provisions of this Declaration notwithstanding the Association, the Board of Directors of the Association and the members shall not without prior written approval of all first mortgagees of record of lost:

- (a) Abandon the regime of covenants and restrictions established by this Declaration, or
- (b) Partition, subdivide, sell or otherwise dispose of common areas and community facilities, except as may be provided in Sections 1(a) and (i) Article IV hereof; or
- (c) Change the method of determining annual assessments established by Article V of this Declaration: or
- (d) Resolve to use insurance proceeds for losses to common areas ~~or~~ community facilities for any purpose other than the repair or restoration of such common areas or community facilities.

No first mortgagee or record of any lot shall:

- (a) 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 proceeding or transfer in lieu of foreclosure; provided however that such mortgagee is liable for all assessments which become due after such foreclosure or proceeding or transfer in lieu of foreclosure; or
- (b) Be affected by any amendment to this Declaration unless prior to such amendment all such first mortgagees of record have been given sixty (60) days advance written notice of the proposed amendment and at least two-thirds (2/3) of such mortgagees have given their written approval to such amendment.

Section 2. Notices of Default. Upon written request therefore, 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 thirty (30) days by the owner of a lot in which such mortgagee has a security interest.

Section 3. Examination of Records. 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 therefore annual reports and financial data prepared by the Association.

ARTICLE XVII

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any owner, their respective legal representatives, heirs, successors, and assigns for a term of fifty (50) years from the date of recordation of this declaration after which the said covenants shall be automatically extended for successive periods of ten (10) years each. This Declaration may be amended, except where permanent easements or other permanent rights or interests are created, by an instrument signed by owners of record of seventy-five (75) percent of the lots and placed of record where this Declaration is recorded. No such amendment shall be effective unless written notices or the proposed amendment is sent to every owner and every first mortgagee of record of a lot at least sixty (60) days but not more than one hundred eight (180) days prior to the recordation of such instrument. No such amendment shall be effective with respect to any permanent easements or their permanent rights or interests relating to the common area ~~or community facilities~~ herein created. No such amendment shall be effective with respect to any permanent easements or other permanent rights or interests relating to the common areas ~~or community facilities~~ herein created. No change of circumstances or conditions shall operate to amend any of the provisions of this Declaration, which may be amended only in the manner hereinabove provided for. None of the provisions of this Declaration shall be construed as a condition subsequent or as creating a possibility of reverter.

Section 2. Incorporation by Reference on Resale. In the event any owner sells or otherwise transfers his lot, any deed purporting to affect such transfer shall contain a provision incorporating by reference the covenants and restrictions set forth in this Declaration.

Section 3. Notices. Any notice required to be given to any member or owner of a lot to any first mortgagee of record of a lot pursuant to the provisions of this Declaration shall be deemed to have been give when mailed by certified mail postpaid, to such member or owner or mortgagee at his address as it appears in the records of the Association at the time of such mailing.

Section 4. Enforcement. These covenants and restrictions may be enforced by the Association or any member or owner. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity (i) against any person or persons violating or attempting to violate any covenants or restrictions, either to restrain or enjoin violation or to recover damages (ii) against any lot to enforce any lien or covenant or restriction by this Declaration, or (iii) both. The failure or forbearance by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or by recovery of damages. The remedies provided for in this Declaration shall be cumulative and not exclusive.

Section 5. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any common areas or community facilities by any public or municipal agency, authority, or utility.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment, decree, or order shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

Section 7. Captions and Gender. The captions of this Declaration are intended for convenience only and shall not be used to interpret or define the provisions hereof. Wherever the context so requires, all references to the singular shall include the plural and all references to the masculine gender shall include the feminine and, in both instances, vice versa.

IN WITNESS WHEREOF, ACME COMPANY, a South Dakota corporation, has on the 24th day of May, 1978, caused this Declaration to be executed by Sheldon Reese, its President, and its corporate seal affixed thereto.

ACME COMPANY

Sheldon Reese, President

Kenneth R. Shabino

EXHIBIT A

Plat of Lots One (1) through Twelve (12) and Lots Thirty-six (36) through Fifty-one (51) and Lot Fifty-six (56). Enchanted Hills Subdivision, being a portion of Tract A of the Medicine Ridge Subdivision, being a portion of Tract A of the Medicine Ridge Subdivision, located in the Southwest Quarter of the Northeast Quarter (SW1/4NE1/4) and the Northwest Quarter of the Southeast Quarter (NW1/4SE1/4), Section Twenty-three (23), Township One (1) North, Range Seven (7) East of the Black Hills Meridian, Pennington County, South Dakota.

Lots Thirteen (13) through Thirty-five (35) and Lots Fifty-two (52) through Fifty-five (55), Enchanted Hills Subdivision No. 2, located in tract A and Tract A-1, Medicine Ridge Subdivision, in the East Half (E1/2) , Section Twenty-three (23), Township One (1) North, Range Seven (7) East of the Black Hills Meridian, Pennington County, South Dakota.