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Lawrence County
Register of Deeds

Shelly Green
Deputy

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by SMOKEY MOUNTAIN RANCH, LLC, a South Dakota limited liability company, hereinafter referred to as declarant.

WITNESSETH

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

Riley Wolff Tract 1, being a part of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, and Lots 1 through 11 in Block 3, a portion of D Street and the Alley Way of Block 3, Crook City, all located in T6N, R4E, B.H.M., Lawrence County, South Dakota, according to the plat filed as Document No. 2005-5724; and

Riley Wolff Tract 3, formerly portions of Lots 1 through 4, Block 4; Lot 1, Block 5; Lots 1 through 12, Block 6; the Southwesterly 30 feet of Lot 4 and all of Lots 5, 8, and 9, Block 12; Lots 1 through 12, Block 13; portions of Lots 7, 8, 9, 10, 11 and 12, Block 7; a portion of D Street 2nd Street, 3rd Street and alley way of Block 12; all of E Street and the alley way of Blocks 6 and 13, Crook City; the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and a portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28; all located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, all in T6N, R4E, B.H.M., Lawrence County, South Dakota, according to the plat filed as Document No. 2006-6480.

NOW, THEREFORE, declarant hereby declares that, except for pre-existing buildings constructed thereon prior to the filing of this Declaration, the property described above (hereinafter "property") 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, at its sole discretion, may annex contiguous property to this property from time to time.

ARTICLE I.

ARCHITECTURAL CONTROL

That no building, fence, wall or other structure, improvement, equipment or any visible thing, including propane tanks, satellite television receivers, mailboxes, air conditioners, and temporary facilities, shall be commenced, erected or maintained in 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, height, materials, color and location of the same shall have been submitted to and approved in writing as to the harmony of external design, color and location in relation to surrounding structures and topography by the declarant and an architectural committee composed of declarant and not more than two (2) representatives appointed by the board of directors of the SMOKEY MOUNTAIN RANCH HOMEOWNER'S ASSOCIATION (association). All colors must be dark browns, grays, blacks, greens or wood-tones such as tan or beige and other dark colors. The height and location of all buildings shall be designed and located to assist in the preservation of views of others. All building sites must be first approved in writing by the architectural committee. No carports are allowed. Outbuildings and garages shall be complimentary in design to the residence and other buildings in this property. No wood shakes are allowed. Homeowners shall build with combustion resistant materials. Approved materials would include cement siding, stucco, brick, stone, log or cedar siding. Outdoor lighting shall be designed to minimize light pollution and scatter in a horizontal direction. No white, bright, light or galvanized trim, gutters, chimneys, TV dishes, flashing, vents, or tanks shall be permitted unless the same are as inconspicuous as possible. In the event said committee fails to approve or disapprove such color or design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and the application will be deemed to have been approved. The committee may adopt such rules and regulations as it may require. The following persons shall constitute the initial architectural committee and shall serve until the association shall appoint their successors or additional members as the case may be:

<u>Name</u>	<u>Address</u>
Roger Riley	P.O. Box 101 Spearfish, SD 57783
Fred A. Wolff	12008 Oak Drive Whitewood, SD 57793

ARTICLE II.
RESTRICTIONS

Section 1. Animals, Peace and Quiet. All animals shall be strictly controlled by their owners to prevent them from becoming a nuisance to the neighbors or harassment of wildlife and other animals. All pets are to remain within the boundaries of the owner's property and avoid becoming an annoyance. Barking dogs must be confined indoors after 9:00 p.m. No dangerous animals are allowed including but not limited to Pit Bulls, Dobermans, and Rotwieller dogs. No more than two (2) outdoor dogs are allowed per lot. Dog kennels must be a minimum of 40 feet from the side property line of the property. Offensive smells from animal waste which offend other lot owners must be removed. Commercial breeding is not allowed. No firearms may be discharged and no hunting is allowed. No owner of a lot shall permit anything to be done or kept on or within their lot which will obstruct or interfere with the rights of other owner's occupancy or of other authorized persons to use and enjoy the property. Use and enjoyment includes unreasonable noise, smells and barking dogs.

Section 2. Screening and Vehicles. No trash, rubbish, junk, unused equipment, building supplies, stockpiles, parts, or refuse may be accumulated on the property except in suitable receptacles screened from public view and protected from disturbances and emptied at least weekly. This restriction applies to contractors during construction. There shall be no dumping or stockpiling of material on any lot. No motor vehicles or equipment except those in average daily use shall be kept on the property unless garaged within a conforming and approved building and every vehicle must have a garage space available for its exclusive use unless it is screened from public view. No commercial vehicle larger than vans or pickups of one ton capacity may be kept on any property unless garaged within a conforming and approved building. Lot owners shall not park more than one personal RV on their lot. Guest RVs are allowed but shall be parked as inconspicuously as possible without infringing on neighbors views. Guests are defined as persons visiting no longer than two (2) weeks at a time and no longer than sixty (60) days during a calendar year. Declarant may choose to extend these periods at its discretion with written approval. Firewood shall be stored in neat ricks or stacks. All properties shall be maintained in a neat and orderly condition according to rules adopted from time to time by the architectural committee.

Section 3. Signs. Except for property identification or directional signs which must be first approved by the association, 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 eight (8) square feet for the limited purpose of advertising the land for sale or lease by an owner or his agent or by a builder which must be removed the day of the closing of the sale. No other signs, billboards, or other advertising devices shall be used on any lot except for identification of a residence, road, or no hunting/trespassing. All signs must be approved in writing by association.

Section 4. Construction. After the proposed construction plans have been approved by the architectural committee, construction shall be promptly commenced. Construction of the exterior and landscaping shall be completed within nine (9) months after construction is commenced.

Section 5. Dwelling. All buildings shall be set on a permanent foundation. Mobile, single, or double-wide homes are not permitted. Pre-fabricated homes must be approved by the association.

Section 6. Fences. No fences shall be constructed except after approval by the association. Each lot owner will be responsible for ongoing maintenance including periodic painting of their fence.

Section 7. Fire Protection Plan. All lot owners shall maintain an area of defensible space by a process of continuous thinning of trees and brush as recommended by the South Dakota Department of Agriculture - Wild Fire Safety Guidelines. All lot owners must install 1,850 gallon storage tank on the property for fire protection and domestic water storage.

Section 8. Residential Use. Any lot used for anything other than single family residential purposes must receive written permission from the association.

Section 9. Utilities. All utility lines shall be placed underground. All lot owners are required to pay a \$500.00 water connection fee to the association for water and shall furnish their own water meter. The lot owners understand and agree that their water meters shall be read monthly by a representative of the association and lot owners shall be assessed a water usage fee by the association which fee will be commensurate with the fee assessed by the City of Whitewood on waters users living outside the Whitewood city limits.

Further, upon availability of municipal water service to the subdivision, all lots within said subdivision shall be automatically converted from existing well water to municipal water service.

Section 10. Weed Control. The owner of each lot shall control and eliminate weeds and noxious plants on their property. Such weed control and weed control products shall be in accordance with appropriate County, State and Federal laws, ordinances, statues and regulations.

Section 11. Further Subdivision Prohibited. Lots may not be further subdivided.

Section 12. Miscellaneous. (a) No mercury or large flood lights are allowed on the property; (b) outdoor propane tanks shall not be visible on the property; (c) no garbage shall be placed on the curb for pickup earlier than the night before the scheduled pickup; and (d) lot owners shall keep all culverts located on their property free of debris.

ARTICLE III.

REPAIR, RESTORATION

In the event any owner in the properties shall fail to maintain the premises and the improvements located thereon in a manner satisfactory to the architectural 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 property 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 is subject. The association may determine to submit the determination to a court of competent jurisdiction for declaratory judgment, specific performance or injunctive relief, the costs of which, if granted or confirmed in favor of the association, may be assessed against the owner and property.

ARTICLE IV.

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 architectural committee except as provided herein.

Section 2. Condition for Liability. The determinations and actions of the declarant, the association, its officers, board, and architectural committee must be first contested in a court of competent jurisdiction and the same shall be permitted opportunity to correct the same in compliance with a final judgment before monetary liability can begin to accrue or attach.

Section 3. Exceptions to Waiver of Liability. If the declarations, the association, its officers, board or architectural committee deliberately refuse to correct or rectify any act or omission after a court order adverse to the association, its officers, board or architectural committee, then the member may sue it or them for actual damages, including reasonable attorney fees.

ARTICLE V.

GENERAL PROVISIONS

Section 1. Enforcement. The association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this declaration. Failure by the association or by 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.

Section 2. 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 3. Amendment. The covenants and restrictions of this declaration shall run with the land, for a term of twenty (20) years from the date this declaration is recorded, after which time they shall automatically be extended for successive periods of ten (10) years. This declaration may be amended at any time by the undersigned or by an instrument signed by not less than seventy-five percent (75%) of the lot owners. Any amendment must be recorded.

IN WITNESS WHEREOF, the undersigned, being the declarant herein, has set its hand and seal this 19th day of April, 2007.

SMOKEY MOUNTAIN RANCH, LLC

By: Roger Riley
Roger Riley, for Homes in the Hills, L.L.C.
Its Manager Smokey Mountain Ranch, LLC

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF LAWRENCE)

On this, the 19th day of April, 2007, before me, the undersigned officer, personally appeared Roger Riley as member for Homes in the Hills, L.L.C., who acknowledged itself to be the manager of Smokey Mountain Ranch, LLC, a limited liability company, and that it, as such manager, being authorized to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company by itself as manager.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Keri Podoll, deputy treasurer
Notary Public

My commission expires: ~~MY TERM EXPIRES~~
JANUARY 1, 2009

