

Windmere Homeowners Association

Covenants

6.22.2000

www.windmererc.org

Revision History
1st version July 9, 1997
Amended March 1, 1999
Amended March 10, 2000
Amended June 6, 2000

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
WINDMERE SUBDIVISION**

THIS DECLARATION, made on the date hereinafter set forth by Windmere, L.L.C., a South Dakota limited liability company of Rapid City, Pennington County, South Dakota, hereinafter referred to as “Declarant.”

WITNESSETH:

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

Lots 10 through 20 of Block 1, Lots 13 and 14 of Block 2, Lots 6 through 22 of Block 4, Block 5; Park Lot; Right-of-Way for Weathervane Lane, Right-of-Way for Meadow Lane and Right-of-Way for Old Farm Court, and signage easements, Windmere Subdivision, located in the NE ¼ of the NE ¼, Section 10, Township 1 North, Range 8 East, Black Hills Meridian, Pennington County, South Dakota, as shown by the Plat filed in Book 29 of Plats at Page 162.

These covenants, conditions and restrictions shall also apply to those additional areas platted within Windmere Subdivision (as such plats are approved and filed) which Declarant or Declarant’s assigns may designate, at Declarant’s discretion, by the filing of a Declaration thereof which adopts these covenants.

NOW, THEREFORE, Declarant hereby declares that all of the property 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 Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I- DEFINITIONS

Section 1. “Association” shall mean and refer to Windmere Homeowners Association, its successors and assigns.

Section 2. “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 Property, including contract buyers, and including the owners of any condominium unit, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. “Property” 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 Association in Windmere Subdivision.

Section 4. “Common Area” shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners, to wit: the area designated and shown on the plats filed in the Office of the Register of Deeds of Pennington County, South Dakota, as Park Lot which areas of land are intended for use by owners in Windmere Subdivision for recreation and other related activities.

The designated areas are not dedicated hereby for use by the general public, but are dedicated to the common use and enjoyment of the owners in Windmere Subdivision as more fully provided by this Declaration of Covenants, Conditions, and Restrictions.

Section 5. “Lot” shall mean and refer to any plot of land (with the exception of the Common Area) shown upon any recorded subdivision map of the Property or upon any approved Planned Unit Development map on file with appropriate planning authorities.

Section 6. "Declarant" shall mean and refer to Windmere, L.L.C., and its successors and assigns.

ARTICLE II - PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) For the period of the first 24 months from the date of these covenants, the right of the Declarant, and for any period thereafter, the right of the Association to dedicate or transfer all or any part of the Common Area to any public or private agency or entity, authority, or utility for such purposes and subject to such conditions as may be agreed by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Further, each owner of a condominium or townhome unit shall be entitled to membership in accordance herewith.

Section 2. The Association shall have two classes of voting membership.

Class A. Class A members shall be all owners, with the exception of the Declarant and except owners in Block 5 (addressed below), and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Block 5 votes: It is anticipated at the time of recording these covenants that Block 5 will be utilized for townhomes or condominiums. Until such time that more than one residential unit is constructed in Block 5, any owner(s) in Block 5 shall be entitled collectively to one vote. *Thereafter*, votes in Block 5 shall be equal to the number of owners of condominium or townhome units and each owner of a condominium or townhome unit shall be entitled to one vote.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) On January 1, 2022.

So long as there are any Class B members of the Association, the Declarant may replat portions of the property consistent with the development objectives of the Declarant and may provide additional easements for utilities or access.

Section 3. Annexed Areas. Annexed areas, as described in Article IX, Section 4, shall, for purposes of membership and voting rights, be entitled to the same rights and obligations as those set forth in Sections 1 and 2 of this Article. Annexation may extend the time in which Declarant will be entitled to wait at voting, but such extension shall not continue beyond January 1, 2022.

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot (with the exception of lots owned by Declarant and with the exception of the owner(s) in Block 5) 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 established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's 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. Any obligation for delinquent assessments shall constitute a lien on the respective lot and such lien shall not be discharged or extinguished, even though title may have passed to another, until such delinquent assessments are paid in full.

Section 1.a. Limitation on Assessment Relative to Block 5. It is anticipated at the time of recording these covenants that Block 5 will be utilized for townhomes or condominiums. In either event, there will then be a separate townhome or condominium association established that shall govern and apply only to such units in Block 5. Such townhome or condominium association shall be responsible for, among other things, interior road maintenance, common area maintenance and infrastructure contained within Block 5. Accordingly, until such time as such association is established, Block 5 shall be regarded as one lot and shall only be obligated to pay, by way of assessment to the Windmere Homeowner's Association, an amount equal to the equitable share of assessment allocated by Windmere Homeowner's Association to maintain the Park Lot and an equitable share allocated to maintain the drainage easement in Block 5. After such association is separately established, such association shall then pay one fee, on behalf of all owners within Block 5 who are members of the townhome or condominium association, as its assessment to Windmere Homeowner's Association, an amount equal to the equitable share of assessment allocated to maintain the Park Lot and an equitable share allocated to maintain the drainage easement in Block 5.

Section 2. Purpose of Assessment. 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 improvements and maintenance of the Common Area and of the homes situated upon the Property, including but not limited to:

- (a) All operating expenses of the Association including services furnished;
- (b) The cost of necessary management and administration, including fees paid to any Management Agent by the Association;
- (c) Taxes and assessments levied against the Association or upon any property which it may ultimately come to own or otherwise is required to pay;
- (d) The cost of fire and extended liability insurance on the property and the cost of such other insurance as the Association may procure;

- (e) The cost of furnishing water and garbage and trash collection or other utilities to the property;
- (f) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or a reserve for replacements.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner of a lot granting Class A voting membership rights, the maximum annual assessment shall be Sixty Dollars (\$60.00) per single family detached lot. Thereafter, as to all such owners of lots granting Class A voting membership rights, the following shall apply:

- (a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding one (1) year *provided* that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation or Organization.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost 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 assessment shall have the assent of a majority (51%) of the combined votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty one percent (51%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots of similar type and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a

certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be charged interest at the annual percentage rate specified by law upon unpaid judgments. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V - INSURANCE

Section 1. Casualty Insurance on Insurable Common Area. The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the annual assessments made by the Association.

Section 2. Replacement or Repair of Property. In the event of damage or destruction to any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other annual or special assessment made against such Owner.

Section 3. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may have been damaged or destroyed.

ARTICLE VI - RESIDENTIAL AREA COVENANTS

The following covenants shall apply to the residential areas of Windmere Subdivision

Section 1. Use of Lot. Each residential lot shall be used for residential purposes only and not for any business (except home business defined hereafter), trade, commercial or industrial purpose. "Home business" shall be allowed and is defined as a business conducted from the home primarily by the use of mail, telephone, computer modem, fax or other communication device which requires no equipment which would otherwise be prohibited by these covenants; its customers or clients do not come to the home as a matter of course; no advertising or signage of any kind is visible on the exterior of the home or yard; the home's principal use remains at all times that of a single family residence; and, notwithstanding the compliance by the business of all requirements set forth herein, such business shall in no way interfere with the use and quiet enjoyment of the property by any other resident in the subdivision. If any home on any lot shall be used as a rental, any tenants shall fall within the definition of a "single family" as set out by the ordinances of the City of Rapid City which may be in force from time to time and all such rentals shall be subject to all covenants set forth herein. These covenants shall, in such event, be enforceable against both the owner of the property and any tenant of the property.

Section 2. Sales Facilities of Declarant. Notwithstanding any provision in Section 1, Declarant, its agent, employees and contractors shall be permitted to direct, oversee or maintain during the period of construction and sale of the lots and/or 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 areas, sign, model Dwelling Units, sales offices and parking areas.

Section 3. Housing Structures. Except as to Block 5, all housing structures shall either be new permanent wood frame construction or new multi-section manufactured homes and which otherwise conform to Pennington County ordinances.

a. New Manufactured Housing. All such homes shall, regardless of the year of construction, have siding material, pitched roofs and shingles, all of which must be acceptable to the Architectural Control Committee. No previously used or constructed dwelling, trailer house or mobile home shall be permitted to be placed on any Lot within the residential areas. No basement, trailer, vehicle or structure of any kind except a completed dwelling house shall be occupied or used for residential purposes at any time. In the event any Owner elects in the future to sell his Lot without a previously approved and compliant manufactured home thereon at the time of sale, said Owner's successor or assign shall be required to place only a new manufactured home or new permanent wood frame construction house (consistent with paragraph b. below) upon the Lot and shall be subject to all requirements and restrictions set forth herein. "New" manufactured housing shall be defined to mean any manufactured home constructed within 18 months preceding the month in which the home is placed on the Lot.

b. Wood Frame Construction. Any Lot Owner may construct a permanent wood frame single family residence on a lot but shall obtain approval of the plans for such residence from the Architectural Control Committee prior to obtaining a building permit. All such single-family residences shall have siding material, pitched roofs and shingles, all of which must be acceptable to the Architectural Control Committee. No previously used or constructed dwelling, trailer house or mobile home shall be permitted to be placed on any Lot within the residential areas. No basement, trailer, vehicle or structure of any kind except a completed dwelling house shall be occupied or used for residential purposes at any time. All such homes shall not be greater than one story above the main floor in height. The minimum square footage of the footprint for a wood frame house shall not be less than 850 square feet, exclusive of the garage, and in all cases shall be subject to the approval of the Architectural Control Committee. All construction shall be in accordance with and shall comply with all ordinances of Pennington County relative to the construction of single family residences.

Section 4. Exterior Appearance (all structures); Foundations (all structures); Skirting (Manufactured Homes). The exterior of every building shall be composed of one or a combination of the following: natural wood, hardboard, plywood, vinyl, steel, masonry, stone, brick or other material approved by the Architectural Control Committee. All exterior surfaces shall be painted or stained a color pre-approved by the Committee. All exterior paint or stain colors shall be of natural earth or subdued tones and shall be subject to the approval of the Architectural Control Committee. The exterior of any garage or storage or other outbuilding, attached or detached, shall match in design, construction and color with the home, the design of which shall also be approved by the Architectural Control Committee.

Any exposed portion of any foundation, whether it be one of a manufactured home or a site built home placed permanently on the same shall be constructed from either poured concrete or masonry block. No other material will be allowed unless a request is submitted to and previously approved by the Architectural Control Committee. All foundation or perimeter paints and their colors shall be subject to the approval of the Architectural Control Committee prior to installation.

Section 5. Approval by Architectural Control Committee. Except as to Block 5, no building shall be erected, placed or altered on any lot until the construction, plan 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 materials, harmony of external design and color with existing structures and as to location with respective topography and finished grade elevations. Except as to Block 5, no structure, fence (other than fences constructed by Declarant), wall, pathway, driveway, patio, patio cover or enclosure, deck,

tree house, swimming pool, pool house, tennis court, dog house, antenna, satellite dishes, flag pole, basketball backboards, solar heating or cooling panels, devise or equipment, or other external item or improvement, above or below the surface of the ground, shall be constructed, placed, erected, planted, altered or otherwise maintained or permitted to remain on any lot, nor shall any grading, excavation or tree removal be commenced without the express approval of the Declarant or the Architectural Control Committee. The approvals required herein are in addition to any other approvals referred to elsewhere in these covenants. All approvals for Block 5 construction, addition, alteration or for any other matter set forth in this Section 5, shall be initially controlled by Declarant.

Section 6. Architectural Control Committee. The Architectural Control Committee (hereafter sometimes referred to as "ACC") will be composed of not less than two (2) nor more than five (5) individual members appointed by Declarant until authority is transferred to the homeowner's association. Thereafter the Board of Directors of the Association shall appoint the Architectural Control Committee. The terms of the committee members shall be for a period of three (3) years, with the initial members' terms staggered so that one member's term shall expire each calendar year. Until authority is transferred to the homeowner's association, eligibility shall be limited to owners and members constituting the Declarant. In the event of death or resignation or ineligibility of any member of the committee, the remaining members shall have full authority to designate a temporary successor until a successor is appointed by the Board of Directors for the Association. The majority of the committee may designate a representative to act for it. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant at any time. The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee or its designated representative fails to approve or disapprove plans submitted to it within thirty (30) days after such submission, or in any event no suit to enjoin the construction or home placement has been commenced prior to the completion of the construction, approval will not be required and the related covenants shall be deemed to have been fully complied with.

Section 7. Location and number of Structures (except in Block 5). No dwelling, garage or accessory building shall be located on a lot except in accordance with the Windmere PUD Conditional Use Permit and all setback requirements stated therein shall apply. For purposes of this covenant, eaves, steps and open porches shall not be construed to permit any portion of a building on a lot to encroach upon another lot. No Lot shall contain more than one single-family residence and one garage of dimensions not to exceed dimensions that are allowed by Pennington County. No storage buildings or other outbuildings of any kind shall be allowed without approval, before installation, of the ACC. In lieu of a garage, a Lot may contain a carport, the design and construction of which shall be subject to the approval of the Architectural Control Committee. The design and construction plan of any garage or carport shall be consistent with the design of the home on the lot and shall otherwise be subject to the approval of the ACC.

Section 7.a. Block 5. It is anticipated at the time of recording these covenants that Block 5 will be utilized for townhomes or condominiums. Accordingly, in such event, said building(s) shall be in accordance with Windmere PUD Conditional Use Permit requirements.

Section 8. Completion of Construction. Any building commenced on any lot, whether it is the placement of the home or the construction of a garage or carport, shall be prosecuted diligently to completion and shall be completed within six (6) months from the commencement of the construction unless such completion is prohibited by inclement weather or disaster.

Section 9. Appearance and Improvements of Lot. All improvements on each lot must be maintained by the lot owner so as to remain in a state of good repair, neat and well-kept in appearance. It is the responsibility of each lot owner to see that his lot is mowed and raked as necessary, regardless if any improvements have been placed on said lot. It is the responsibility of each lot owner 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 or within a portion of the house or garage in such fashion to as to not be visible from neighboring residences or from the street. All lots shall be kept free of rubbish, debris, merchandise and building material; however, building material shall be allowed when construction is started on the garage or placement of the home is underway and the materials are intended for use on that home or garage.

Section 10. Landscaping; Gardens (except Block 5). 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 six (6) months after completion of placement of that home and shall at all times be maintained in good condition and repair. All Lots shall meet minimum landscape requirements as determined and approved by the ACC. Trees shall not be planted in the dedicated street right of way. All minimum landscaping requirements shall be completed within six (6) months of completion of the placement of the home on the lot. The Architectural Control Committee may adopt additional rules and regulations with regard to preservation of natural resources, grasses, trees and wildlife within the subdivision as it may consider appropriate.

Vegetable gardens not to exceed 200 square feet and rock gardens shall be permitted only if maintained in the designated rear yard of any lot, behind the residential structure on the lot.

Section 10.a. Block 5. It is anticipated at the time of recording these covenants that Block 5 will be utilized for townhomes or condominiums. Accordingly, in such event, all landscaping shall be in accordance with Windmere PUD Conditional Use Permit requirements and/or minimum standards as determined by the Declarant.

Section 11. On Street Parking (except Block 5). On street parking is restricted to emergencies, deliveries and guests. Guest vehicles may be parked on streets no longer than 48 hours. No overnight parking on streets is otherwise permitted. No boat, truck, trailer, camper or RV (recreational vehicle) (cumulatively referred to as "vehicles") shall be parked or stored on any lot or portion thereof unless the same is screened by a six-foot (6') high fence, the design and materials of which have been pre-approved by the Architectural Control Committee. No automobile shall be parked or left on any portion of a lot other than inside a garage or on a driveway. Any inoperable vehicles or vehicles without current license shall be stored only inside a garage or screened fenced area as referred to above. With the exception of ordinary and routine maintenance, the outdoor repair of automobiles, boats, motorcycles or recreational vehicles is prohibited upon any portion of the property as well as any other activities that may be or become an annoyance or nuisance to the neighborhood.

Section 11.a. Block 5 Parking. On street parking is restricted to emergencies, deliveries and guests. Guest vehicles may be parked on streets no longer than 48 hours. No overnight parking on streets is otherwise permitted. No boat, truck, trailer, camper or RV (recreational vehicle) (cumulatively referred to as "vehicles") shall be parked or stored on any lot or portion thereof unless the same is screened by a six-foot (6') high fence. No automobile shall be parked or left on any portion of a lot other than inside a garage or on a driveway. Any inoperable vehicles or vehicles without current license shall be stored only inside a garage or screened fenced area as referred to above. With the exception of ordinary and routine maintenance, the outdoor repair of automobiles, boats, motorcycles or recreational vehicles is prohibited upon any portion of the property as well as any other activities that may be or become an annoyance or nuisance to the neighborhood.

Section 12. Pets. No animals, livestock or poultry of any kind shall be raised, fed or kept on any lot except dogs, cats or other 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. Pets kept outside must be in an enclosure or on a leash. Number of pets shall be limited to three (3) per household.

Section 13. Annoyance. No obnoxious or offensive activity shall be carried upon or on any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No firearms shall be discharged within the subdivision.

Section 14. Signs. No sign, poster, or banners of any kind shall be displayed to the public view on any lot except a sign advertising the property for sale or rent or signs used by a builder or owner to advertise the property during the construction and sales period. Notwithstanding the foregoing, Declarant shall be allowed to post or place such signs as Declarant deems appropriate, in Declarant's sole discretion, to facilitate the sale of lots in the subdivision.

Section 15. Exterior Lighting. Except as to Block 5, each lot owner will be required to install one (1) automatically controlled exterior post light as designated by the Architectural Control Committee.

Section 16. Fences. Except as to Block 5, no fence, wall or similar type of barrier of any kind shall be constructed, erected or maintained on any lot for any purpose whatsoever except those which are pre-approved by the Architectural Control Committee.

Section 17. Mailboxes. Unless supplied by the U.S. Postal Service, no other mailboxes will be permitted on any lot or common area within the development, except as to Block 5, other than those approved by the ACC.

Section 18. Towers and Antennas. There shall be no towers, satellite dishes or antennas located on any lot, except those in Block 5 (in which event, the same shall be in compliance with the Windmere PUD Conditional Use Permit requirements and/or minimum standards as determined by the Declarant) unless specifically approved by 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 similar 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. All garbage containers or receptacles and any rubbish must be kept out of sight (i.e. in a garage or suitable privacy containment area) so as not to be viewed from the front or side yards except on days the same are picked up or are being delivered to an appropriate landfill.

Section 20. Driveways. Except as to Block 5, all driveways shall be constructed of concrete.

ARTICLE VII - EXTERIOR MAINTENANCE

In the event an owner of any lot in the Property 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 (2/3) vote of the Board of Directors, shall have the right, through its agents and employees to enter upon said parcel and to repair, maintain and restore the lot, any landscaping and the exterior of any buildings or any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

ARTICLE VIII - EASEMENTS

Section 1. Roadway Easement. The Declarant, for all property fronting on the roadways, as shown on the final recorded plat, has created easements that apply to the boundaries of all dedicated roadways. These easements over the front eight feet (8') of each lot, fronting on a dedicated roadway, as shown on plats recorded in the land records of Pennington County, South Dakota, are reserved for:

- (a) The construction, location, installation, maintenance and repair of utilities which shall be a benefit to any person living in or owning property in this development; placement of these utilities within the easement shall be determined by both the utility involved and the Architectural Control Committee. Conservation of space within the easement shall be of utmost priority;
- (b) Ingress or egress to any adjacent lot or common area from the dedicated roadway;
- (c) Surface or subsurface drainage of water, snow, or ice whether naturally occurring or artificially created;
- (d) The construction, location, installation, maintenance and repair of artificial lighting facilities to provide for street, walkway or security lighting;
- (e) The construction, maintenance and repair of all dedicated roadways and temporary storage of materials and equipment used for the construction, maintenance and repair of dedicated roadways;
- (f) Temporary storage of plowed snow, ice or other naturally occurring materials removed from the roadway during maintenance and repair; and

- (g) Passage over for non-vehicular traffic on sidewalks, bikeways, walkways, footpaths or other designated to and from adjacent lots or common areas.

The easement described herein shall run with the land, and shall be for the benefit and use of each adjacent lot owner, his heirs and assigns, all property owners in Windmere, their heirs and assigns, and the County of Pennington, and/or City of Rapid City, or other political entity having zoning or other governmental jurisdiction, their administrators, successors and assigns; shall be perpetual in duration, and shall be located as more fully described on the plats recorded in the land records of Pennington County, South Dakota.

Section 2. Drainage Easements. The Declarant, for the benefit of all property within the subdivision has created easements that apply to the areas dedicated to drainage as shown by the recorded plat(s). These are reserved for surface or subsurface drainage of water, snow, or ice whether naturally occurring or artificially created as well as for the construction, maintenance and repair of all dedicated drainage easements or facilities. The easement described herein shall run with the land, and shall be for the benefit and use of each adjacent lot owner, his heirs and assigns, all property owners in Windmere, their heirs and assigns, and the County of Pennington, and/or City of Rapid City, or other political entity having zoning or other governmental jurisdiction, their administrators, successors and assigns; shall be perpetual in duration, and shall be located as more fully described on the plats recorded in the land records of Pennington County, South Dakota.

Section 3. Public Utilities. Easements for public utilities over and across the lots shall be those shown upon the recorded plat and any additions or annexations thereto.

ARTICLE IX

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 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 the original Declaration and this Amendment shall run with and bind the land, for a term of twenty-five (25) years from the date this Amended Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty five (25) year period by an instrument approved by a vote of not less than seventy-five percent (75%) of the total votes of Class A and Class B Association members, and thereafter by an instrument approved by not less than a sixty-six and two-thirds percent (66 2/3%) vote of such Class A and Class B member votes. Any amendment must be recorded.

Section 4. Staged Developments. Additional land may be annexed by the Declarant without the consent of members at any time on or before January 1, 2022, provided that the City or County determines that the annexation is in accord with the general plan heretofore approved by them, and in such event, upon declaration by Declarant, these covenants shall then become applicable to such annexed property.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this _____ day of June, 2000.

DECLARANT
Windmere, L.L.C.
A South Dakota Limited Liability Company

By: _____
Phillip S. Olsen, Pres.

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

On this the _____ day of _____, 2000, before me, the undersigned officer, personally appeared Phillip S. Olsen, who acknowledged himself to be the President of Windmere, L.L.C., a South Dakota limited liability company, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as President.

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

Notary Public – South Dakota
My Commission Expires: _____

(SEAL)

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 22 day of June, 2000.

DECLARANT
Windmere, L.L.C.
A South Dakota Limited Liability Company
By: _____
Phillip S. Olsen, Pres.

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

On this the 22ND day of JUNE, 2000, before me, the undersigned officer, personally appeared Phillip S. Olsen, who acknowledged himself to be the President of Windmere, L.L.C., a South Dakota limited liability company, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as President.

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

Notary Public – South Dakota
My Commission Expires: 5-16-05



DOCUMENT PREPARED BY:
Name WINDMERE, LLC
Address P.O. BOX 3382
SIOUX FALLS, SD 57104
Tele # 605 481 9263