

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS TO RUN WITH THE LAND**

In order to establish a general plan for the improvement and orderly development of property in Codington County, South Dakota, described as:

The South Half of the North East Quarter, Section 34, Township 117 North, of Range 52 West of the 5th P.M.;

and

The Southeast Quarter, including property now platted as "Block 1 and Lots 1 thru 9 of Block 2 of Fox Land Estates Addition to the City of Watertown", less the following:

Lot 1 of Block 1 of Fox Addition in the Southeast Quarter, Section 34, T 117 N, R 52 W of the 5th P.M. in the County of Codington;

Block 2 of Fox Addition in the Southeast Quarter, Section 34, Township 117 North, of Range 52 West of the 5th P.M., in the County of Codington;

The East 732 Feet of the South 834.5 Feet;

The West 107 Feet of the East 839 Feet of the North 481 Feet of the South 834.5 Feet; and

Highway Rights-of-Way;

all in Section 34, Township 117 North, of Range 52 West of the 5th P.M.

The above-described property is being purchased on a CONTRACT FOR DEED and a portion has been platted and re-platted into "Plat of: Pheasant Ridge First Addition to the Municipality of Watertown, in the County of Codington, South Dakota"

the Watertown Development Company (hereinafter referred to as WDC or Declarant) does hereby impose the following covenants, restrictions and conditions on the real property hereinbefore described and such covenants, restrictions and conditions shall be binding on the undersigned, Grantees of the undersigned, successors in interest, heirs and assigns or subsequent transferees or anyone who in whatever manner acquires any of the real property described above and the declaration of covenants, conditions and restrictions are as follows.

I. PURPOSE AND APPLICATION

The purpose of these restrictions is to protect the substantial investment of the Declarant as well as purchasers and developers of property, by assuring that the area will be developed and maintained with high standards for quality and aesthetics, to insure proper development and use of said property, to prevent the erection on said property of structures built of improper design or materials, to encourage the erection of attractive improvements as appropriate locations, to prevent haphazard and inharmonious improvements, to secure and maintain proper setbacks from streets and adequate free spaces between structures, and in general to provide adequately for a high type and quality of improvement of said property in accordance with general plan.

Said property shall be held, conveyed, rented, leased, encumbered, used, occupied and improved subject to the conditions, covenants, restrictions and limitations hereinafter set forth, which shall bind all parties having or acquiring any right, title or interest in said property or any part thereof, and shall apply to and bind the heirs, assignees and successors in right, title or interest thereof.

I. DEFINITIONS

A. Declarant

"Declarant" refers to Watertown Development Company (WDC).

B. Site

"Site" shall mean any lot, or portion thereof, or two or more contiguous lots or portions thereof, or a parcel of land upon which a building or buildings and appurtenant structures including landscaping may be erected in conformance with the requirements of these restrictions.

C. Improvements

"Improvements" shall mean and include buildings, underground installations, out-buildings, parking areas, loading areas, driveways, trackage, fences, walls, landscaped areas and/or mass plantings, illumination facilities, poles, signs and any structures of any type or kind.

D. Setback Area

"Setback area" shall mean all that area between the setback line and its respective side, rear, or street property line.

III. REGULATION OF IMPROVEMENTS

A. Site Coverage

No more than sixty percent (60%) of the surface area of any site shall be devoted to the erection and/or placement of structures, unless approved in writing by Declarant. A structure shall include all buildings and other installations having a self supported roof and/or sidewalls.

B. Minimum Setbacks and Placement

Any building or structure shall comply with the City of Watertown's height and placement regulations for I-1 (light industrial) districts as found in Chapter 21.1501 and any accessory buildings permitted shall at a minimum comply with the provisions in Chapter 21.1502.

The setback and placement regulations are minimums only and the final determination shall be made in connection with the "approval of plans" as set forth in paragraph IV hereunder and Declarant may in determining the actual setback and placement regulations consider the type of business, type of building, size and location of the lot, the proximity and relationship of the proposed building to other buildings and any other considerations deemed relevant to the orderly development of the entire area.

Any decreases in the minimums shall be the responsibility of the purchaser of property and must be done by variance in accordance with the ordinances of the City of Watertown.

C. Completion of Construction

After commencement of construction of any structure, the owner shall diligently prosecute the work thereon, to the end that the structure shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof. Construction of any improvements shall be substantially completed within one year from the date construction starts unless written extension is granted by Declarant.

D. Excavation

No excavation shall be made except in connection with construction of improvements; and upon completion thereof exposed openings shall be backfilled and compacted, and disturbed ground shall be graded and leveled.

E. Landscaping

1. Every site on which a building shall have been placed be

landscaped according to plans and specifications approved by Declarant as specified herein and maintained thereafter in a sightly and well kept condition.

2. The area between the building walls and the site's property lines, as well as all unpaved and adjoining street right-of-way areas (the area between the property line adjoining any street and the street curb line), shall be used exclusively for the planting and growing of trees, shrubs, lawns, and other ground covering or material as approved by Declarant, except for such portions thereof as may be reasonably required for service access either to the buildings or parking and loading areas constructed on the site.

3. Where pavement occurs between the building and any street frontage property line for the purposes of parking or loading, then the pavement shall be separated by a minimum of twenty-five (25) feet from the said street frontage property line. The area between the pavement and the curb line of the street shall be suitably landscaped with either mounding, approximately 4' in height, a decorative masonry screened wall, or other landscaping treatments that shall effectively screen the paved area from the street.

4. Where paving occurs adjacent to any side property line a minimum of five feet of landscaping shall be provided along that side property line.

5. Landscaping as approved by Declarant shall be installed within sixty (60) days of occupancy or completion of the building, whichever occurs first. If the time occurs during the winter months, then the landscaping shall be completed by June 15th.

6. All unused and non-landscaped land area that is planned for future building expansion or other purpose shall be maintained and kept free of weeds, other unsightly plant growth, rubbish and debris.

F. Barriers

No fence, wall, hedge, mass planting or other barrier shall be allowed to extend beyond the setback lines established herein except upon approval of plans and specifications as set forth herein.

G. Signs

1. No billboard or advertising sign shall be permitted, other than the following:

(a) Those identifying the name, business and products of the person or firm occupying the premises; and

(b) Those offering the premises for sale, lease or rent and having specific, prior written approval by Declarant.

2. Signs and identification on buildings or building sites shall only be of such size, design, content, illumination, color and placement as specifically approved in writing by Declarant. No sign shall be substituted, changed or modified without prior written consent of Declarant.

3. Signs shall conform to minimum setback lines unless specific approval to the contrary is granted in writing by Declarant.

H. Parking and Loading Areas

1. All present and future vehicle parking, including employee, visitor, truck and trailer parking, shall be provided on the site. There shall be no on-street parking. All parking, trucking and loading areas are to be paved to provide dust-free, all weather surfaces. No parking, trucking or loading areas shall be developed within the minimum setback area, unless approved by Declarant. Parking areas developed between a building and any street may be permitted provided that they are separated by landscaping or other Declarant approved means to minimize the visual effect as viewed from the street. Special consideration shall be given by Declarant to corner or unusual shaped lots.

2. Provisions shall be made for sufficient parking and a minimum parking lot requirements shall be as contained in City of Watertown's ordinances 21.1606.

(a) Declarant may require more than the minimum in connection with the approval process set forth in paragraph IV hereunder considering the type of business, type of building, size and location of the lot, the proximity and relationship of the proposed building to other buildings and any other considerations deemed relevant to the orderly development of the entire area.

3. Loading docks generally will not be approved on a street frontage. When approved by Declarant, they shall be generously set back and screened by landscaping or other means, when possible, to minimize the visual effect from the street.

I. Storage and Refuse Areas

1. No materials, supplies, equipment, including company owned or operated trucks, or refuse, including trash containers,

shall be stored or kept in any areas on a site except inside a closed building or behind a visual barrier screening such areas from the view of adjoining properties and the street, which barrier shall be at least six (6) feet in height. Such outside storage and barriers shall be permitted on the site only with the prior written approval of Declarant.

2. Any storage and refuse areas screened by visual barriers shall be located on the rear or side portions of the site, and not in the area between structures and the street property line.

3. No junk, scrap, rubbish, trash, litter or refuse shall be deposited or permitted to remain or accumulate on any site or portion thereof which will detract from its neat and orderly appearance. All such rubbish, trash, litter or refuse shall be kept in sanitary containers.

J. Building Materials and Regulations

1. Exterior walls of any structure shall be as approved by Declarant as hereinafter set forth, however, it shall be as follows:

(a) Brick shall be of a size, type, texture, color and placement as shall be approved by Declarant.

(b) Stone shall have a weathered face or shall be polished, fluted, or broken face to be approved by Declarant.

(c) Concrete masonry units shall be those generally described as "Customized Architectural Concrete Masonry Units" or shall be broken faced brick-type units with marble aggregate, in either case to be approved by Declarant. All concrete masonry units shall be coated with a coating approved by Declarant, and there shall be no exposed concrete block on the exterior of any building unless approved by Declarant.

(d) Concrete may be poured in place, tilt-up, or precast, and shall be finished in stone, textured, or coated in a manner to be approved by Declarant and shall have a minimum life expectancy of 10 years.

(e) Similar or superior materials as approved by Declarant.

(f) Metal buildings and siding may be used but must include brick, stone or other suitable material on the lower portion of the front of the building to provide appropriate appearance.

Specific written approval for the type of roofing material to be used upon any structure must be obtained from the Declarant.

2. All electrical and mechanical apparatus equipment, fixtures (other than lighting fixtures), conduit, ducts, vents, flues and pipes mounted or placed on the roof surface, or extending above the roof line of any building or structure, or located on the exterior of any building or structure, shall be concealed from view from the street(s) and from buildings on other sites in an architecturally treated manner approved by Declarant. Where building design and/or street elevations make the foregoing impractical, Declarant may grant specific written approval of other measures which would minimize the visual effects as viewed from the street(s) and buildings on other sites.

3. All on site electrical, telephone and other utility lines shall be underground, and shall not be exposed on the exterior of any structure, unless approved in writing by Declarant.

4. No building or structure of any kind constructed on the site shall exceed the height of 40 feet above the established building grade for the site without prior written approval of Declarant as well as a variance of the ordinances of the City of Watertown.

K. Variances

Where, because of lot size, shape or location, building design or intended use, or other factors in the judgment of Declarant a variance is needed from any of the requirements in this Section (III), Declarant reserves the right to do so in writing. Any variance must be in writing, and when given shall be binding on all parties including existing and future property owners.

IV. APPROVAL OF PLANS

No improvements, as that term is hereinabove defined, shall be erected, placed, altered, maintained or permitted to remain on any land subject to these restrictions nor shall building or other permits be secured until plans and specifications showing plot layout and all exterior elevations, with materials and colors thereof and structural design, signs, parking and loading areas, and landscaping, shall have been submitted to Declarant and approved in writing by Declarant. Such plans and specifications shall be submitted in writing over the signature of the owner of the site or his authorized agent. Approval shall be based, among other things, on adequacy of site dimensions; adequacy of structural design; conformity and harmony of external design with neighboring structures; affect of location and use of improvements on neighboring sites, operations, improvements, and uses; relation of topography, grade and finished ground elevation of the site being improved to that of

neighboring sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of these restrictions. Declarant shall not arbitrarily or unreasonably withhold its approval of such plans and specifications. If Declarant fails either to approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to it, it shall be conclusively presumed that the said plans and specifications have been approved, subject, however, to all restrictions contained herein. The reviewing committee may retain the services of a consultant as it determines necessary for such review. In addition to the foregoing items, the Declarant may consider the type of business, type of building, size and location of the lot, the proximity and relationship of the proposed building to other buildings and any other considerations deemed relevant to the orderly development of the entire area. The Declarant may retain the services of a consultant or consultants as it deems necessary for the review and approval of plans.

Neither Declarant nor its successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any owner or lessee of land affected by this Declaration, by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans for approval hereunder agrees, by submission of such plans, and every owner or lessee of any of said property agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against Declarant to recover any such damages.

If no objection to the design or construction has been raised within one year of the date of completion of the structure, it will be deemed to have satisfied the requirements of this paragraph.

V. REGULATIONS OF USES

A. Permitted Uses

The following shall be permitted uses subject to the right of the Declarant in the "approval process" set forth herein to disallow any specific use:

- (1) automobile, truck and machinery sales
- (2) blacksmith and welding shops
- (3) lumberyards
- (4) contractor's offices, shops and yards
- (5) dry cleaning and laundry establishments with no limit of employees
- (6) mail order houses

- (7) metal working shop, tinsmith or plumbing shop with no limit of employees
- (8) milk or soft drink bottling plant with no limit of employees
- (9) oil stations and auto cleaning establishments
- (10) public and private utilities uses
- (11) radio and television studios, transmitting and receiving stations and towers
- (12) restaurants
- (13) truck terminals and freight warehouses
- (14) wholesale distributing companies, all commodities except live animals, explosives and junk.

Declarant believes subject to the "approval process" that the following uses are permissible:

- (1) light manufacturing and industrial operations
- (2) research and development facilities
- (3) warehouse

however, the ordinances of the City of Watertown require Planning Commission approval for uses which are not specifically set forth in City of Watertown's ordinances 21.1202 and such Planning Commission approval is to be given for uses which are "not detrimental to other uses and are in the general character of other uses in the I-1 district". The purchasers are required to satisfy themselves with regard to City of Watertown approval.

Permitted uses shall have building design so that the operation and uses to which the building is intended do not cause or produce any of the following effects, discernible at any property line or affecting any adjacent property.

- 1. Noise, sound or vibrations that are objectionable due to intermittence, beat, frequency or shrillness.
- 2. Obnoxious odors.
- 3. Dust, dirt, fly ash, smoke or pollutants.
- 4. Noxious, toxic or corrosive fumes or gases.
- 5. Unusual fire or explosion hazard.
- 6. Sewage effluent that is obnoxious in nature or difficult to treat, as to either quantity or quality.

Declarant shall be the sole judge of whether uses are permitted in accordance with its "approval process" set forth in paragraph IV hereunder.

B. Prohibited Uses

The following uses shall not be permitted on any property subject to these restrictions unless such uses qualify under the procedure set forth herein after under the heading "Procedure for Reclassification":

1. Agricultural uses as outlined under A-1 agricultural district notwithstanding these are permitted uses in 21.1202.
2. Highway and street maintenance shops and yards.
3. Residential.
4. Mobile home parks or trailer courts, either temporary or permanent.
5. Labor camps.
6. Junk yards and vehicle or equipment disassembly, provided, however, that the foregoing does not prohibit vehicle maintenance operations done primarily within a building.
7. Drilling for and/or removal of oil, gas or other hydrocarbon substances.
8. Commercial excavation of building or construction materials or quarrying of any material.
9. Distillation of bones.
10. Dumping, disposal, incineration or reduction of garbage, sewage, offal, dead animals, or refuse.
11. Fat rendering.
12. Stockyard or slaughter of animals.
13. Refining of petroleum or of its products.
14. Smelting of iron, tin, zinc or other ores.
15. Hog raising, cattle fattening, chicken farming or comparable uses.
16. Auctions or retail sales to the general public unless approved in writing by Declarant.
17. Any other uses of like kinds or character as set forth above or any other use determined by the Declarant to be incompatible with other uses in the land described hereinbefore.

VI. ENFORCEMENT

A. Abatement and Suit

Declarant or any owner or lessee to any portion of the property described hereinbefore may enforce these covenants, restrictions and conditions in any manner now or hereinafter allowed by law under the South Dakota Compiled Laws.

The result of every action or omission whereby any restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an owner in the case of a grant deed being annexed hereto, or lessee in the case of a leased annexed hereto, either public or private, shall be applicable against every such result and may be exercised by Declarant.

In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provisions hereof, the losing party or parties shall pay the attorney's fees of the prevailing party or parties, in such amount as may be fixed by the court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

B. Inspection

Declarant may from time to time at any reasonable hour or hours, enter and inspect any property subject to these restrictions to ascertain compliance therewith.

C. Failure to Enforce Not a Waiver of Rights

With the exception of the time limit for action by the Declarant contained in Section IV hereof, the failure of Declarant or any property owner to enforce any restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction.

VII. MODIFICATION, REPEAL, EXTINGUISHMENT AND TERM

This Declaration of Covenants, Conditions and Restrictions shall be in effect for fifty years from the date hereof and shall run with the land and may be extended, amended or repealed only upon the signatures of the owners of 75 percent of the property hereinbefore described. To be effective, such extension, amendment or repeal must be duly recorded in the office of the Register of Deeds of Codington County, South Dakota.

VIII. ASSIGNABILITY OF DECLARANT'S RIGHTS AND DUTIES

Any and all of the rights, powers and reservations of Declarant herein contained may be assigned to any person, corporation or association which will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned, and upon any such person, corporation or association's evidencing its consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignment, have the same rights and powers to be subject to the same obligations and duties as are given to and assumed by Declarant herein. The term "Declarant" as used herein, includes all such assignees and their heirs, successors, and assigns.

IX. CONSTRUCTIVE NOTE AND ACCEPTANCE

Every person who now or hereafter owns or acquires any right, title, estate or interest in or to any portion of said property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.

X. RIGHTS OF MORTGAGEES

All restrictions and other provisions herein contained shall be deemed subject and subordinate to all mortgages and deeds of trust now or hereafter executed upon land subject to these restrictions, and none of said restrictions shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust; provided, however, that if any portion of said property is sold under a foreclosure of any mortgage or under the provisions of any deed of trust, any purchaser at such sale, and his successors and assigns, shall hold any and all property so purchased subject to all of the restrictions and other provisions of this Declaration.

XI. PARAGRAPH HEADINGS

Paragraph headings are inserted for convenience only and are not intended to be part of this Declaration or in any way to define, limit or describe the scope or intent of the particular paragraph to which they refer.

XII. EFFECT OF INVALIDATION

If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Covenants, Conditions and Restrictions to Run with the Land on this 21st day of August, 1998.

WATERTOWN DEVELOPMENT COMPANY

By *Gary Williams*
Gary Williams
Its President

ATTEST:

Patrick Howey
Patrick Howey
Its Secretary

STATE OF SOUTH DAKOTA, COUNTY OF CODINGTON-SS
FILED THIS 21st DAY OF August 1998 AT 1:00 O'CLOCK P.M.
Book 4K Page 270 - *Robert J. Wagner*
282 REGISTER OF DEEDS DEPUTY

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF CODINGTON)

On the 21st day of August, 1998, before me, the undersigned officer, personally appeared Gary Williams and Patrick Howey, known to me to be the President and Secretary of the Watertown Development Company that executed the within instrument, and also known to me to be the persons who executed it on behalf of the Watertown Development Company and further acknowledged to me that such company executed the within instrument pursuant to its By-Laws or a Resolution of its Board of Directors.

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

Robert J. Wagner
Robert J. Wagner
Notary Public - South Dakota
My Commission Expires: 5-1-2004

This instrument prepared by: Robert J. Wagner, Attorney at Law,
P.O. Box 153, Watertown, SD 57201; 605-886-4451.