

**AMENDED AND RESTATED BYLAWS OF
SPEARFISH CANYON OWNERS' ASSOCIATION, INC.
Approved: July 8, 2006**

**ARTICLE 1
OFFICES**

1. The principal office of the corporation shall be located at 21116 Highway 14A, Lead, South Dakota, 57754, the location of the Spearfish Canyon Fire Protection District. The official mailing address of the corporation shall be PO. Box 480, Lead, South Dakota 57754. The Board of Directors shall have the power and authority to establish and maintain a branch or subordinate office at any other location within or outside of the State of South Dakota.

**ARTICLE 2
MEMBERS**

1. **Membership Classification:**

The corporation shall have two classifications of members, Voting Members and Non-Voting Members, as defined in the Amended and Restated Articles of Incorporation. References throughout these By-laws to "members" shall be deemed to include both voting and non-voting members, except in those cases where the context provides for any voting rights, in which case only voting members shall be deemed to be included.

2. **Annual Meeting:**

The annual meeting of the members shall be held at a place specified by the Board of Directors on the second Saturday of the month of July, in each year, beginning with the year 2006, at 7:00 p.m., or at such other day and time within such month as shall be fixed by the Board of Directors, for the purpose of electing Directors and for the transaction of such other business as may come before the meeting.

3. **Fiscal Year:**

The fiscal year shall be from July 1st to June 30th. Voting members whose dues are paid for the current fiscal year are eligible to vote in person or by absentee ballot at the annual meeting or any special meeting.

4. **Special Meeting:**

Special meetings of the members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Board of Directors.

5. **Place of Meeting:**

The Board of Directors may designate any place within Lawrence County, State of South Dakota, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors.

6. **Notice of Meetings:**

Written notice stating the place, day and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, unless otherwise prescribed by statute, be delivered no less than ten (10) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the President to each member of the record. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his or her address as it appears on the books of the corporation, with postage thereon prepaid.

7. **Closing of Books or Fixing of Record Date:**

For the purpose of determining members entitled to notice of any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the Board of Directors of the corporation may provide that the books shall be closed for a stated period but not to exceed, in any case, thirty (30) days. If the books shall be closed for the purpose of determining members entitled to notice of a meeting of members, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the books, the Board of Directors may fix in advance a date as the record date for any such determination of members, such date in any case to be not more than thirty (30) days, and, in case of a meeting of members, not less than ten days prior to the date on which the particular action, requiring such determination of members, is to be taken. If the books are not closed and no record date is fixed for the determination of members entitled to notice of a meeting of members, the date on which notice of the meeting is mailed shall be the record date for such determination of members. When a determination of members has been made as provided in this section, such determination shall apply to any adjournment thereof.

8. **Voting Record:**

The officer or agent having charge of the books for members of the corporation shall make a complete record of the members entitled to vote at each meeting of members or any adjournment thereof, arranged in alphabetical order, with the address of each. Such record shall

be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting for the purposes thereof.

9. **Quorum:**

Ten Percent (10%) of the votes entitled to be cast upon any matter to be voted on represented in person or by proxy shall constitute a quorum. If less than ten percent (10%) of the members are represented at a meeting, a majority of the members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, providing all items to be acted upon have previously been published, or established on an agenda.

10. **Absentee Ballots:**

A voting member, whose dues are fully paid, may vote in person or by absentee ballot filed with the Secretary of the Corporation before the time of the meeting.

11. **Voting:**

Each member entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of members. One vote may be cast per building site. If there are multiple owners, such owners will designate in writing to the Secretary of the corporation the name of the owner representative authorized to vote. Such designation shall remain in effect until superceded by subsequent written notice, delivered to the Secretary.

**ARTICLE 3
BOARD OF DIRECTORS**

1. **General Powers:**

The affairs of the corporation shall be managed by it Board of Directors.

2. **Number, Tenure and Qualifications:**

A. The number of Directors shall not be more than nine (9) to be elected from the voting membership.

B. Board members may serve three consecutive terms of three years, and may be eligible for election again after one year out of office. If, however, the nominating committee is

unable to recruit qualified candidates sufficient to fill vacancies, a board member otherwise completing his or her second consecutive term may be eligible for re-election.

3. **Regular Meetings:**

Regular meetings of the Board of Directors shall be at least three (3) per fiscal year with notice to be given.

4. **Special Meetings:**

Special meetings of the Board of Directors may be called by the President or any five (5) Directors, but must include at least one (1) of the then current officers of the Board. The persons authorized to call special meetings of the Board of Directors may fix any place within Lawrence County, South Dakota, for holding any special meeting of the Board of Directors, called by them.

5. **Notice:**

Notice of any special meeting of the Board of Directors shall be given at least ten (10) days prior to the special meeting, by written notice delivered personally, mailed, emailed or transmitted by facsimile to each director at his or her business address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. If notice be given by facsimile or electronic mail, such notice shall be deemed to be delivered when the facsimile or electronic mail is successfully transmitted. Any Director may waive notice of any meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Business to be transacted at and the purpose of any regular or special meeting must be specified in the notice and only those items may be acted upon.

6. **Quorum:**

Five (5) Directors shall constitute a quorum for the transaction of business at Directors meetings, at least one of which shall be a current officer of the corporation.

7. **Manner of Acting:**

The act of majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. No individual Board member may make any public statement(s) regarding SCOA policies or positions without specific authorization from the Board.

8. **Action Without a Meeting:**

Any action required or permitted to be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by a minimum of five (5) of the Directors, at least one (1) of which must be an officer. Written consent may be obtained by facsimile or electronic mail provided that a paper copy of the consent will be made a part of the corporate records.

9. **Vacancies:**

Any vacancy occurring on the Board of Directors may be filled by an affirmative vote of a minimum of five (5) of the remaining Directors, at least one of which must be an officer of the corporation. Such appointee will hold office until the next membership meeting at which time an election will be held.

10. **Presumption of Assent:**

A Director of the corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

**ARTICLE 4
OFFICERS**

1. **Number:**

The officers of the corporation shall be a President, a Vice President, a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors.

2. **Election and Term of Office:**

The officers of the corporation to be elected by the board of directors shall be elected annually by the board of directors at the first meeting of the board of directors held after each annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently possible. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her

death or until he or she shall resign or shall have been removed in the manner hereinafter provided.

3. **Removal:**

Any officer or agent may be removed for cause by a minimum of five (5) votes of the Board of Directors, including at least one officer, whenever in its judgment the best interests of the corporation will be served thereby. Election or appointment of an officer or agent shall not of itself create contract rights.

4. **Vacancies:**

A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term. A majority vote of at least five (5) of the directors, including at least one (1) officer, is required to fill any vacancy.

5. **The President:**

The President shall be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the corporation. He or she shall, when present, preside at all meetings of the members and of the Board of Directors. He or she may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the Board of Directors, deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

6. **The Vice-President:**

In the absence of the President or in the event of his or her death, inability or refusal to act, the Vice President shall perform the duties of the President and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

7. **The Secretary:**

The Secretary shall:

- A. Keep the minutes of the proceedings of the members and of the Board of Directors in one or more books provided for that purpose;
- B. See that all of the notices are duly given in accordance with the provisions of these Bylaws or as required by law;
- C. Be custodian of the corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized;
- D. Keep a register of the post office address of each member which shall be furnished by such member;
- E. In general, perform all the duties incident to the office and such other duties as from time to time may be assigned by the President or by the Board of Directors.

8. **The Treasurer:**

The Treasurer shall:

- A. Have general charge of the Financial Books of the Corporation;
- B. Keep a register of the post office address of each member which shall be furnished by such member;
- C. Have charge and custody of and be responsible for all funds and securities of the corporation;
- D. Receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V, Section 2 of these Bylaws;
- E. Arrange for periodic independent audits or reviews of the corporation's financial records; and,
- F. In general, perform all duties incident to the office and such other duties as from time to time may be assigned by the President or by the Board of Directors.

9. **Salaries:**

No salaries shall be paid to the officers unless recommended by the Board of Directors and approved by the membership.

10. **Committees:**

These Bylaws will create the Executive Committee composed of the President, Vice President, Secretary, Treasurer and one director appointed by the Board. The Executive Committee shall serve as the Operating Committee.

Other committees shall be appointed by the Board of Directors, and shall be appointed for one year terms. All standing committees shall have at least one member who is a member of the Board of Directors. Committee members shall be eligible for reappointment. There shall be the following standing committees:

A. **Architectural Review Committee.** This committee will consist of at least four (4) members. It shall exercise such general supervision with respect to the maintenance, care, and utilization of all lots within the association, to the end that the natural habitat will be the least disturbed, and that harmony with nature will be best maintained. This committee, with the approval of the Board of Directors may establish and promulgate such guidelines from time to time as may be required and disseminated to the membership.

B. **Environment Committee.** This committee will have a membership of at least five (5) persons. It will be responsible for gathering data relating to the environment. As a responsibility of this committee, there will be developed two separate and distinct functioning groups, involving canyon residents. These groups will be:

(1) **Water Quality/Quantity.** This group, with the approval of the Board of Directors, may establish and promulgate such guidelines from time to time as may be required, to disseminate to the membership. The group should strive to be aware of all activities affecting Spearfish Creek and its tributaries, and to report its findings and recommendations to the Board of Directors.

(2) **FIREWISE.** This group, with the approval of the Board of Directors, may establish and promulgate such guidelines from time to time as may be required, and disseminate to the membership. The group should also strive to be aware of all activities affecting the health of the forest in Spearfish Canyon, dissemination of FIREWISE compliance criteria to all members, awareness of U.S. Forest Service activities in or adjacent to the Canyon, and coordination with other environmental committee activities as directed by the Board of Directors.

(3) **Weed Control.** This group, with the approval of the Board of Directors, will be responsible for the coordination of weed control programs of Lawrence County, as may be applicable to Spearfish Canyon. The group will assist homeowners in identifying noxious weeds on their property, and appropriate means of controlling or eradicating such weeds.

(4) **Clean Up.** This group, with the approval of the Board of Directors, shall be responsible for continuing periodic clean up of Canyon roadways and Spearfish Creek. Special efforts may be held in conjunction with other environmental efforts, such as FIREWISE Day.

C. **Nominating Committee.** This committee will consist of at least three (3) members of the Board of Directors. The committee will be responsible for submitting a slate of candidates for vacancies on the Board of Directors. The committee should identify at least one or more nominees for each position to be filled on the Board of Directors. The committee, in identifying nominees, will assure each such nominee will agree to be a candidate and will submit background information for publishing in appropriate documents, including the newsletter and meeting notice, prior to the annual meeting.

D. **Archives Committee.** This committee will consist of at least 2 members. The committee shall be responsible for the permanent compiling, collecting, filing and maintaining the records of the Association

E. Any other committees may be formed based upon special needs identified by the Board of Directors. Committees will operate under policies established by the Board of Directors, and will make no public statements representing the Spearfish Canyon Owners Association, Inc. without specific authorization from the Board of Directors or the membership.

ARTICLE 5 CONTRACTS, DEPOSITS AND BOOKS AND RECORDS

1. **Contracts:**

The Board of Directors may authorize any Director, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

2. **Deposits:**

All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select.

3. **Books and Records:**

The Board of Directors shall direct a designated Director to report to the State of South Dakota.

Reports shall be on forms prescribed and furnished by the Secretary of the State of South Dakota and the information contained therein shall be given as of the date of the execution of the report. Reports shall be executed for the corporation by the President of the Board of Directors.

This corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Board of Directors and committees having any of the authority of the Board of Directors and shall keep at its registered office or principal office a record of the names and addresses of its members.

Any Director of this corporation shall not be liable for any unauthorized distribution of assets if he or she relied and acted in good faith upon the financial statements of the corporation represented to him or her to be correct by a written report by a qualified auditor who failed to reflect the financial condition of the corporation.

**ARTICLE 6
CERTIFICATES FOR MEMBERS**

Certificates representing membership of the corporation shall be determined by the Board of Directors.

**ARTICLE 7
DIVIDENDS**

The Board of Directors may not declare and the corporation may not pay dividends.

**ARTICLE 8
CORPORATE SEAL**

The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the corporation and the state of incorporation and the words "Corporate Seal". The seal shall be stamped or affixed to such documents as may be prescribed by law or custom or by the Board of Directors.

**ARTICLE 9
WAIVER OF NOTICE**

Whenever any notice is required to be given to any member or Director of the corporation under the provisions of these Bylaws or under the provisions of the Articles of Incorporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Facsimile or electronic mail notification shall also be accepted and a paper copy shall satisfy the record for waiver of notice.

**ARTICLE 10
AMENDMENTS**

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board of Directors or by the members at any regular or special meeting.

**ARTICLE 11
DISSOLUTION**

Upon dissolution of this corporation for any reason whatsoever, the Board of Directors shall, by appropriate instruments, transfer all of the assets and liabilities equally to the Spearfish Canyon Fire Protection District.

**ARTICLE 12
SUPPORT AND APPROVAL OF COVENANTS, CONDITIONS AND RESTRICTIONS**

The Covenants, Conditions and Restrictions apply to all lands purchased or leased from Homestake Mining Company. Other private owners and those on U.S. Forest Service leased land, as well as other interested individuals, groups or governmental subdivisions, may indicate their support and approval of the purposes of the association, by joining and paying dues to the association, even though the Covenants, Conditions and Restrictions may not be applicable to them.

The Amended and Restated Bylaws of Spearfish Canyon Owners Association were unanimously adopted at a meeting of the Board of Directors and the Members held on July 8, 2006, at the Fire Hall in Spearfish Canyon, Spearfish South Dakota, as evidenced by the signatures of the duly constituted Directors set forth below.



RICHARD PLUIMER, Secretary



JAMES NELSON, President

