

R625237

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

THIS INDENTURE, made this 20th day of September, 1996, by GORDON H. JOHNSON, a married person, of Sioux Falls, South Dakota and JANIS A. HILDRING, a single person, of Brandon, South Dakota, (hereinafter collectively referred to as "Developer"), with a principal office located at 811 E. 50 Street, North, Sioux Falls, South Dakota 57104;

WHEREAS, Developer is the fee owner of real property described as:

Country Gable Estates. Second Addition, Minnehaha County, South Dakota, (Lots 1-25 inclusive) being a subdivision of a part of the North half of the Southeast quarter of Section 5-101-48

(hereinafter "the Property"),

WHEREAS, Developer intends to develop and improve the Property and offer for sale the lots shown in the plat of the Property, and is desirous of subjecting all of said lots to certain covenants, agreements, easements, restriction, conditions and charges, as hereinafter set out,

NOW, THEREFORE, Developer does hereby impose and charge the Property with the covenants, agreements, easements, restrictions, conditions and charges as hereinafter set forth, hereby specifying that said declarations constitute on all parties and all persons claiming under them, and for the benefit of and limitations upon future Owners of the Property, said restrictions and covenants being designed to keep the Property uniform and to ensure the highest and best use of said property.

**SECTION ONE
BUILDING AND DESIGN COMMITTEE**

A. There shall be created a building and design committee (the "Committee") which shall be responsible for reviewing the plans or all proposed new construction, additions, or modifications. Such committee shall be responsible to ascertain that the plans and subsequent construction meet the minimum building requirements set forth in this declaration. The primary purpose of such Committee shall be to assist Property Owners in achieving compliance with such building restrictions. Such Committee shall allow the greatest possible latitude and flexibility in the design of homes to be built on the lots in the Property and shall not discourage new or innovative design concepts or ideas.

B. The Committee shall consist of three (3) members, Janis A. Hildring, Carole F. Johnson, and Gordon H. Johnson to be selected annually by the Developer, or its successor or designee.

C. Any property owner seeking to construct a new home or other appurtenant structure, or to add to or modify any portion of the exterior of an existing home, shall submit the plans to the

Committee for review. A modification of the home exterior will include decks, hot tubs, patios, pools, and material housing, dog runs, gazebos, arbors associated with landscaping, and other similar construction.

D. No construction, change, modification, or alteration for which plans are to be submitted to the Committee pursuant to Paragraph C, immediately above, shall commence until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Committee as to the harmony of external design and location in relation to surrounding structures and topography, size, estimates of cost, necessary, appropriate, and relevant to maintain property values of nearby properties. In the event the Committee fails to approve or disapprove such design and location plan within thirty (30) days after such plans and specifications have been submitted to it, approval will not be required and full compliance with this section of the declaration will be deemed to have occurred.


E. Without limiting the generality of the factors to be considered by the Committee, the following restrictions shall apply:

- (a) No lot in the Property shall be used for any purpose except for single family residential purposes. No lot in the Property may be subdivided, reduced in size, or replatted to any tract smaller than the whole of the lot as presently platted, except by Developer; provided, however, lot Owners may acquire adjacent lots for purposes of increasing the size of their lot, but any lot so increased in size may never contain more than one detached single family dwelling.
- (b) No building shall be constructed, altered or permitted to remain on any lot in the Property other than a single family dwelling. No structure shall exceed two stories in height above the highest point on the lot that the surface of the earth contact the structure. All building construction must comply with the restrictions and requirements of these covenants, and any county or city ordinances, amendments, or building code requirements of the City of Sioux Falls, Minnehaha County, South Dakota. All external furnaces, air conditions, heat pumps and other items or devices of like or similar nature shall be concealed from the public view by foliage or appropriate screening devices. Construction, once commenced on any lot, must be diligently and steadily pursued until completion. Each dwelling constructed on the Property shall conform to the following requirements:

- (c) No single level structure shall be constructed with a fully enclosed floor area of less than 1,500 square feet, exclusive of carport, garage and open porches. No two level or higher structure shall be constructed with a fully enclosed surface level and second level floor area of less than 1,000 square feet each. For purposes of these restrictions, "surface level" is the first floor level that is entirely above the surface of the earth. Any floor level that is in whole or in part below the surface of and/or


surrounded by earth shall not be considered a "surface level". No tri-level structure shall be constructed having a fully enclosed floor area of less than 2,200 square feet.

(d) No building or any part thereof, including garages or porches, shall be erected on any lot closer than 30 feet to the front property line closer than seven feet to either side lot line, or closer than 30 feet to any rear lot line. Where more than one lot is acquire for a single building site, the side lot line shall refer only to the lot lines bordering the adjoining property Owners.

 (e) All dwellings shall have a fully enclosed double garage or larger, and such other suitable or necessary outbuildings, to service the principal structure. All such outbuildings and garages must be permanently constructed with exterior appearances and design to conform to the principal structure on solid permanent foundations. Only wood, brick, stucco or natural stone shall be used as the siding material on structures located within the Property.

(f) Except as is immediately required for the construction of a particular dwelling, the grade of the lot shall not be altered or changed in any significant fashion.

(g) All roofing material shall be limited to either cedar shakes, cedar shingles, or earhtone concrete tile. All roofing material shall be approved by the Committee. Asphalt shingles, such as those manufactured by "Timberline" or "Hallmark" may be approved for use by the Committee, so long as the Owner has sufficient extra shingles for repair and replacement.

 (h) All driveways and parking bays shall be constructed of concrete or concrete aggregate unless written approval for the use of some other material is given by the Committee.

(i) Heat pumps, propane tanks, solar devices, chimney flues, hot tub pumps, swimming pools pumps and filtration systems, satellite dishes, and similarly exposed mechanical equipment, shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety concerns.

(j) Siding shall be of wood, brick, stucco, or combinations thereof and, in the case of wood or stucco shall be stained or painted in colors approved by the Committee in writing.

(k) All utilities, no matter where and how installed, shall be installed beneath the surface of the earth.

- (1) In spite of the foregoing provisions, the Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this declaration, and no member of the Committee shall have any liability, responsibility, or obligation, whatsoever, for any decision or lack thereof, in the carrying out of duties as a member of such Committee. Such Committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this declaration shall rest with the homeowner. Each homeowner agrees to save, defend, and hold harmless the Committee and each of its members on account of any activities of the Committee relating to such Owner's property or buildings to be constructed on his or her property.
- F. The following activities and structures are hereby prohibited in the Property:
- (a) Modular homes, mobile homes, tents, shacks, barns, temporary buildings, manufactured houses or structure of a temporary character.
 - (b) Satellite dishes except those dark in color and which are no closer than 20 feet to any lot line, and which are in rear of the yard of the house and well screened by plantings or other screening devices.
 - (c) Chain link type fencing.
 - (d) Animals, livestock or poultry of any kind raised, bred or kept on any lot, except that dogs or cats may be kept provided that they are kept, bred or maintained for no reason other than as household pets. No horses shall be kept or stabled on any of the lots.
 - (e) Business enterprises, including self-employed businesses where the public is invited. Additionally, the operation of road and recreational vehicles, in particular but not restricted to snowmobiles and motorcycles shall not be permitted on any of the lots subject to these covenants and restrictions. Operation of any such vehicle on roadways in or adjacent to the Property shall be only with a noise reduction device and within the limitations prescribed by Sioux Falls City ordinance and South Dakota law.
 - (f) Nuisances. No noxious or offensive trade or activity, as defined by law, shall be carried on upon a lot in the Property, nor shall anything be done which may become an annoyance or nuisance, as defined by law.

In addition to said prohibited activities,

- (a) Owners of vacant lots must keep and maintain those lots in a neat and clean appearance. Each lot shall be regularly mowed as necessary to keep the length of grass and weeds growing thereon at six inches or less, and weeds shall be sprayed or removed at least annually. Upon failure to comply with this covenant, and after three days notice is given, Developer may perform such maintenance as is necessary and bill and assess the lot Owner, as provided herein, for all expense incurred.
- (b) No lot shall be used or maintained as dumping ground for rubbish or a storage area for any trash, garbage or other waste. Any such trash, garbage or other waste shall be kept within sanitary containers, and shall be stored either underground or within garages, or within a screened device for that purpose.
- (c) No sign of any kind shall be displayed to the public view on any lot except one sign of not more than six square feet advertising a residence for sale or rent, or signs used by Developer or a Contractor to advertise the property during the construction and sales period. Exception: Permanent entrance signs, designated by Developer to be located on any entrance streets at the perimeter of the area, which entrance streets at the perimeter of the area, which entrance pillars or archways or signs are intended to be attractive and beneficial to the area, and any signs of a temporary nature placed by Developer to advertise the development during the development and sale.
- (d) No soil shall be removed from the Addition resulting from any excavation without first obtaining the approval of the Committee as hereinbefore defined in paragraph B-1 above, which has the first right to use the soil as it sees fit. There shall be no material change in grade levels as they now exist without approval of the Committee. This means no hauling in of fill dirt or moving excess dirt to another lot.
- (e) **Trees and Landscaping.** Recognizing that the trees and landscaping in the Property are a significant positive influence and that it is important to preserve this influence the following covenants are instituted:
 - (i) Each lot Owner, within one year after taking title to Owner's lot, shall plant on said Owner's lot a minimum of (a) six shade trees, in addition to the trees presently located on said lot; if said Owner's lot is 15,000 square feet or under in size, or (b) nine shade trees in addition to the trees presently located on said lot if Owner's lot is greater than 15,000 square feet in size. trees planted pursuant to this paragraph shall be a 2 inch caliper or larger. Excluded trees are: Box Elder, Cottonwood, Chinese Elm and Poplar. These trees shall not be permitted on any lot in this addition.

(ii) Each lot Owner shall within two years after building on his lot undertake additional landscaping in planting beds on his lot to include not less than 640 square feet of ornamental shrubs or perennials. Plants in each bed must be spaced in such a way so that each bed shall be 90% covered over a three year period. At least 50% of the total planting bed area or 320 square feet, whichever is greater, must be visible from a street in or adjacent to the property.

G. All else herein notwithstanding, any lot may be used for a model home or for a temporary structure during the development or sales period by Developer, or for a real estate office with the customary development signs during the development period of Developer.

H. If the Owners of any of the lots to which these covenants apply, or their heirs, assigns or successors in interest shall violate any of the covenants herein set out, it shall be lawful for any other person or corporation possessing an interest in real property in the Property to prosecute any proceedings at law or in equity against the person or persons violating any such covenants, either to prevent him doing so or recover damages for such violation, or both.

I. Invalidation of any one or more of these covenants by judgment or court order or any other reason shall in no wise affect any of the other provisions, which shall remain in full for and effect.

SECTION TWO GENERAL PROVISIONS

A. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the then Owners of the lots with the Addition has been recorded in Minnehaha County, South Dakota, Register of Deeds office agreeing to change said covenants in whole or in part.

B. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

C. Invalidation of any one of these covenants by judgment or court order shall be no wise effect any of the other provisions which shall remain in full force and effect.