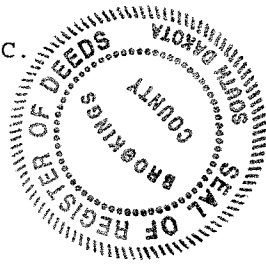


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STATE OF SOUTH DAKOTA COUNTY OF BROOKINGS

FILED THIS NOV 10 2016  
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*Beverly Chapman*  
REGISTER OF DEEDS  
29/8

FIRST AMENDED AND RESTATED  
DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
AMERICANA ADDITION

DAVID F. KNEIP, as successor in interest to FRANK E. DENHOLM and MILDRED T. DENHOLM (hereinafter "Developer") and the undersigned record owners ("Owners"), wish to amend and restate the COVENANTS OF LIMITATIONS AND RESTRICTIONS ("Original Covenants") concerning the real property described as follows:

Lots One (1), Two (2), Three (3) and Four (4) in Block One (1); and

Lots One (1), Two (2), Three (3), Four (4), Seven (7), Eight (8), Nine (9), Ten (10), and Eleven (11) in Block Two (2) of Americana Addition, to the City of Brookings, Brookings County, South Dakota, according to the plat filed November 14, 1995 and recorded in Book 20 of Plats at Page 16,

which Original Covenants are dated April 2, 1999, and were filed for record on April 12, 1999, and recorded in Book 151 of Miscellaneous Records on Pages 270-276 in the Office of the Brookings County Register of Deeds. This Amended and Restated Declaration of Covenants and Restrictions (the "Declaration") shall bind the undersigned and their successors and assigns in the same manner as the ORIGINAL COVENANTS have done. The Declaration shall be deemed to run with the land as provided in South Dakota law, and replace the Original Covenants.

ARTICLE I.

PURPOSE

The purpose of limitations, requirements and restrictions as to occupancy, possession and use of the property is to insure, perpetuate, preserve and protect subject properties for attractive

single-family residential purposes only; to exclude and prevent nuisances, to preclude and prevent unreasonable impairment of the attractiveness and value of the property, and to enhance, preserve and protect the peace and tranquility of a single family residential community, and to thereby assure to each homeowner a sense of pride with the full benefit and enjoyment of his or her home investment with no greater limitations and restrictions on the free and undisturbed use of his or her home site than is necessary to insure the same advantages to the other homeowners in the neighborhood.

## ARTICLE II.

### PROPERTY SUBJECT TO THIS DECLARATION

A. Existing Property. The real property, which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Brookings, Brookings County, South Dakota, more particularly described as follows:

Lots One A (1A), One B (1B), Two A (2A), Three (3) and Four (4) in Block One (1); and

Lots One (1), Two (2), Three (3), Four (4), Seven (7), Eight (8), Nine (9), Ten (10), and Eleven (11) in Block Two (2) of Americana Addition, to the City of Brookings, Brookings County, South Dakota.

The above property shall be referred to as the "Premises".

B. Additions. If within twenty (20) years of the date of this Declaration, the Developer should develop residential lots adjacent to the Premises, such additional lands may be annexed to the Premises and included within the property subject to this Declaration if desired by the Developer, the annexation of any such additional Lots shall be accomplished by the filing for record of a Supplemental Declaration of Covenants and Restrictions with respect to such additional lots. Such Supplemental Declaration shall contain any and all complimentary additions and modifications to this Declaration as may be necessary to reflect a different character of the Premises as modified. In no event, however, shall such Supplemental Declaration revoke, modify, or add to the Covenants established by this Declaration with respect to the lots described above.

## ARTICLE III.

### PROTECTIVE COVENANTS

The ordinances of the City of Brookings plus the codified laws and statutes of the State of South Dakota shall constitute the minimum limitations, requirements and restrictions as to occupancy and use of all properties herein and subject hereto. Additionally, limitations, requirements and restrictions are as follows, to-wit:

A. Single Family Dwelling Structures. (New construction only. Size.)

1. One single family dwelling of new on site construction only shall be permitted per lot.

2. It is the expressed purpose of these covenants of limitations, requirements and restrictions to provide for only one (1) single family dwelling on each lot in the Americana Addition and no transferee or successor thereof shall attempt to replat or subdivide any lot into more lots or in any manner change the Plat by acquiring multiple adjoining lots for such purposes without the expressed consent of the Developer. However, the Developer reserves the right to do so at any time without notice, if deemed necessary, to facilitate the development and marketing of lots within the Premises for single family dwellings.

3. The minimum living area" is herein defined to exclude attachments, basements, garages, porches, roofs, overhang extensions and all storage facilities. No single family dwelling structure shall have less than eighteen hundred (1,800) square feet of living area so defined as aforesaid on any lot in the Premises. Any questions as to the conformant to the minimum space standards or any variances shall be decided by the Architectural Review Committee ("Committee").

4. On-site construction of a single family dwelling on each lot therefore acquired shall commence within one (1) year and shall be completed within two (2) years from and after the date of acquisition unless approved by the Developer. The homeowner shall otherwise supervise essential and necessary construction in such manner that same shall be reasonably and timely done in a clean and orderly manner; debris and litter of construction shall at all times be minimal. The Owner shall diligently and in good faith timely keep, maintain and cause the premises to be clean, clear and free of all noxious weeds, including but not limited to dandelions or other unwanted vegetation injurious or constituting a potential hazard to other lots. All garbage, junk, refuse and rubble shall not be permitted to accumulate or remain in and upon a lot for more than five (5) days and shall be secured in sanitary dumpsters in appropriate areas concealed from public view. (Surplus burrow fill from excavation shall be delivered to a "clay pit" to be provided by the developer elsewhere within the Americana Addition at the cost and expense of the homeowner and at no cost to the developer.)

5. Additional Structures. Any fence, bath house, gazebo, guest house, patio, pool, or other structure on a lot shall, insofar as reasonably possible, conform in color, construction materials, design, location, shape, and general appearance with the principal single family dwelling on the same lot. Plans for any such structure shall be submitted to the Architectural Review Committee for approval prior to construction or placement of the same.

6. Maintenance by Owners. No owner shall cause or allow the exterior physical appearance of their lot to deteriorate.

Owners shall be responsible for care of their lawns, shrubbery, paint and finish on the exterior of the dwelling of the premises; and Owners shall be responsible for removing all debris and garbage from their lot. In the event of failure by the Owner, thirty (30) days after written notice received from the Committee, to maintain their premises in accordance with this and other provisions of the Declaration, the Developer shall perform any necessary repairs and maintenance and engage any subcontractors or contractors necessary to perform such maintenance. The cost of any maintenance performed by the Developer as allowed by this provision shall be assessed to each lot owner and the Developer shall be allowed to file a Mechanic's Lien against the lot or lots for the actual costs incurred including attorney's fees or pursue any other remedy allowed under South Dakota law unless paid within thirty (30) days of presentment of the billing. Where any such maintenance expense extends to more than one lot, the cost of such shall be ratably apportioned among the lots benefiting from such maintenance.

7. Prohibited Residences. No basement only, camper, garage, mobile home, house trailer, modular or prefabricated structure, out building, shack, shed, trailer (mobile or otherwise) or temporary shelter of any kind shall be permitted or used as a residence, whether temporarily or permanently, on any lot.

8. Landscaping. All lots are subject to and restricted by current Zoning Regulations and Amendments on file in the City of Brookings. All landscaping and grass seeding or sod must be completed within the first fall or spring after the completion of the home. No Box Elder, Cottonwood, Chinese Elm, American Elm, Red Cedar or Poplar trees and any other trees that might become affected by a disease, shall be planted on any lot in the addition. At least one acceptable tree of 6' in height shall be planted either in front yard or rear yard within the first year after completion of the home. Owners are prohibited from making material changes to the grade levels of lots without the approval of the Committee and Developer. Furthermore, no soil may be removed from any lot resulting from any excavation without first obtaining approval of the Developer. It is the responsibility of the owner of the lot and/or the building contractor to provide and install any necessary silt fencing that may be required during any

construction.

9. Recreational Equipment. Recreational equipment, such as swing sets, trampolines, goals, nets or other playground equipment must be kept in the rear yard with the exception of basketball hoops, which must be incorporated into the driveway. Every effort must be exercised to maintain the integrity of the neighborhood. No permanent outdoor clothesline will be allowed. For the overall general appearance of the neighborhood, it is understood that the garage doors fronting the lots would be kept closed on a general basis.

10. Prohibited Activities. No commercial business, home-based business with regular daily traffic, daycare, piano studio, counseling office, merchandising, craft shops or service oriented trades of any kind shall be conducted on any lot or in any residence with the exception of activities of the Developer during construction and potential future sales of lots within the Premises. No semi, heavy or medium duty trucks or passenger vehicles with a capacity exceeding eight (8) passengers shall be allowed to park in the Premises on a consistent basis, whether on a lot or dedicated public right-of-way.

11. Automobiles and Recreational Vehicles. No property, mobile or non-mobile, including boats, campers, carriages, equipment, implements, motorhomes, vehicles, trailers, wagons, or other properties of whatever description, kind, make, and model shall be parked or otherwise left unattended on a driveway, approach or in the dedicated public right-of-way in excess of seventy-two (72) continuous hours or less as may be mandated by the codified ordinances of the City of Brookings applicable thereto.

12. No billboards and/or signs of any kind shall be permitted on the lots, except those acceptable and commonly allowed by ordinances in the sale of lots as single family homesites or homes thereon. However, the Developer may elect and does hereby reserve the right to be exempt from such limitations during the full time essential and necessary for the complete development, marketing and sale of all lots in the Americana Addition now platted or to be platted.

13. Mailboxes. The style, size and appearance is

determined by the Committee and the post office department. Permanent mailboxes will be uniform in style and placed in a location at the discretion of the United States Postal Service. Mailboxes shall not be changed or altered without the express written consent of the Committee. It is mandatory that each home will be required to have their mailbox located on their lot.

14. Animals and Pets.

- a. No animals, fish, fowl, insects or reptile or such species of any kind shall be concealed, harbored, kept or permitted in, on, under or upon any lot, or residence within the Americana Addition except household pets, limited to a total of two (2) cats, dogs, or combination thereof, confined to the residence or controlled by kennel in the rear yard of a lot out of sight of adjoining neighbors. Small birds, not exceeding two (2), and fish properly cared for in appropriate aquariums or cages may be kept within a single family dwelling.
- b. No animal, fish, fowl, insects, reptiles or such species of any kind shall be permitted to be kept, raised, retained for commercial use, or breeding purposes.
- c. Permitted household pets shall not be allowed to run at large, defecate, dig, scratch or otherwise disturb the enjoyment, peace and quiet of private or public properties. Household pets shall at all times be controlled and restrained in such manner by leash or otherwise, to the extent such are not an annoyance or nuisance to other persons of the neighborhood.

B. Outdoor Lighting. Any outdoor lighting must not intrude on or interfere with the quiet enjoyment of neighboring property. Exterior lighting shall not be unreasonably bright. Homeowners should take care when installing exterior lighting to minimum light pollution onto neighboring property or the street. Light pollution will be considered a nuisance.

ARTICLE IV.

ARCHITECTURAL REVIEW COMMITTEE

A. The Architectural Review Committee shall be composed of two (2) or more representatives appointed by the Developer, and shall include the Developer until such time as Developer no longer wants to be included.

1. The purpose of the Committee shall be to review and approve plans, specifications and construction of single family residences on lots in the Americana Addition, and to achieve, enhance, promote and protect architectural construction of homes that are compatible, consistent with and otherwise harmonious with the neighborhood aesthetics, cultural and environmental values in an effort to preserve home site investments or transferees and successors thereof.

- a. Plans and specifications showing the nature, kind, shape, color, size, materials, and location on the lot of the proposed construction shall be submitted to the Committee for approval as to the quality, design, and harmony of external design with existing homes and structures not less than thirty (30) days in advance of construction. In addition, a site plan showing the placement of the structure(s) on the lot and elevations and dimensions of all structures must be submitted for approval to the Committee.
- b. The Committee shall within fifteen (15) business days from receipt of due notice and the plans and specifications as provided in previous subparagraph 1(a) above approve or decline such in writing and if modifications are subject to negotiations or resubmitted, the Committee shall then have five (5) additional business days to approve or disapprove such revised proposals from and after receipt of the revised plans and specifications applicable thereto. No response or failure of the Committee to timely object or respond shall constitute acceptance and approval.



B. Neither the Committee nor the Developer shall be responsible in any way for any defects in any plans or specifications approved by the Committee, nor for any structural defects or work done in accordance with such plans and specifications approved by the Committee.

#### ARTICLE V.

#### MISCELLANEOUS PROVISIONS

A. "The Developer or Developers Designated Successor" reserves the right to amend, change, modify rescind and revise, with or without prior notice, any or all part of this Declaration with a majority vote of the qualified Owners of lots in the Premises.

B. Acceptance of title record transfer to lots in the Americana Addition by deed or otherwise shall constitute an acceptance of all the conditions, limitations, requirements, restrictions and terms hereof and the occupancy and use of the above described property herein shall be subject thereto.

C. In the event any agreement, condition, covenant, limitation, provision, requirement and/or restriction herein set forth, or any part hereof is invalid or void for any reason, then such shall in no way adversely affect the remaining parts and portions hereof.

D. Blanket Easement. Americana Addition or its Developer and all utility companies hereby reserve a perpetual blanket easement upon, over, across and under the development and each lot and residence, for ingress and egress for the purposes of installation, replacing, repairing and maintaining all utilities, including, without limitation, water, sewer, gas, telephone, electricity and television cable and for other purposes as shown on any recorded plat or replat of the development. By virtue of this easement, it shall be permissible for any governmental body, public utility, private utility, telephone or television cable company supplying services to the development to install, erect, replace, repair and maintain any and all equipment necessary or appropriate for providing services within the development and upon each lot or residence located in the development and with the approval of the City of Brookings.

