

AMENDMENT TO ROCKING HORSE FARM 5TH ADDITION  
DECLARATION OF INITIAL RESIDENTIAL COVENANTS AND RESTRICTIONS

This Amendment to the Rocking Horse Farm 5<sup>th</sup> Addition Declaration of Initial Residential Covenants and Restrictions is made August 27<sup>th</sup>, 2018, by the Declarant who declares:

RECITALS

- A. The Declarant is the owner of all the Lots in Rocking Horse Farm 5<sup>th</sup> Addition.
- B. The undersigned desires to amend and modify the Declaration of Residential Covenants and Restrictions recorded in the office of the Cass County Recorder on March 6, 2018, at 8:30 a.m. as Document No. 1532390 (the "Declaration"), by the terms of this Amendment.

AMENDMENT

- 1. Sections 1.4 and 1.5 of Article I are amended to provide as follows:

1.4 "Common Elements" shall mean the Common Area Lots ("HOA Owned Lots") and any landscaping, drives, mail box clusters, improvements, fences, signage, any other items located on the Common Area Lots and any other areas of the Property owned by or to be maintained by the Association pursuant to this Declaration. In addition, the Association shall be responsible for all mowing and snow removal on each Lot, which cost shall be a Common Expense and assessed as such.

1.5 "Common Expenses" shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including Assessments and items otherwise identified as Common Expenses in the Declaration or By-Laws, and shall also include expenses that reflect maintenance on all pocket parks, entrance signs and signage lots, and trail-access lots that service any Rocking Horse Farm addition.

- 2. Article IV is amended to provide as follows:

**ARTICLE IV.  
RESTRICTIONS ON USE OF PROPERTY**

All Owners and Occupants, and all secured parties, by their acceptance or assertion of an interest in the Property, or by their occupancy of a Lot, covenant and agree that, in addition to any other restrictions which may be imposed by the

Governing Documents, the occupancy, use, operation, alienation and conveyance of the Property shall be subject to the following restrictions:

4.1 General. The Property shall be owned, conveyed, encumbered, leased, used and occupied subject to the Governing Documents and as amended from time to time. All covenants, restrictions and obligations set forth in the Governing Documents are in furtherance of a plan for the Property, and shall run with the Property and be a burden and benefit to all Owners and Occupants and to any other Person acquiring or owning an interest in the Property, their heirs, personal representatives, successors and assigns.

4.2 Subdivision Prohibited. No Lot shall be re-subdivided by an Owner to form a lot smaller than a platted Lot; provided, however, that two or more entire Lots may be combined to form a larger Lot or Lots with the prior written approval of the Declarant, Board and the Owner of the combined larger Lot or Lots shall record the combination with Cass County so that each resulting combined Lot is a single tax parcel. Such combined Lot shall thereafter be defined as the "Lot" for purposes of this Declaration.

4.3 Residential Use. Each Lot shall be used solely and exclusively for residential purpose provided that a home occupation shall be permitted in accordance with the terms of Section 4.4. No Lot may be used for transient, hotel, commercial, business or other non-residential purposes, except as provided in Section 4.4. The number of occupants per Dwelling shall be restricted in accordance with the occupancy restrictions of all applicable governmental laws, ordinances and regulation. Any lease of a Lot (except for occupancy by guests with the consent of the Owner) for a period of less than thirty (30) days, or any occupancy which includes services customarily furnished to hotel guests, shall be presumed to be for transient purposes, except that vacation home trading shall not be considered as for transient purposes, but shall be separately regulated by the Association. No building shall be erected altered, placed or permitted to remain on any Lot except a single Dwelling house designed for the accommodation of one family together with a garage designed to accommodate at least two (2) automobiles, the exterior of which shall be constructed of the same material used, or to be used, on the exterior of the Dwelling house.

4.4 Business Use Restricted. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any Lot except:

- a. An Owner or Occupant residing in a Lot may maintain a home occupation/ office with no on-site client or customer meetings and no on-site employees, consultants or independent contractors on such Lot and handle matters relating to such home occupation/office by electronic communications, telecommunications or correspondence therefrom, provided that (i) such use is otherwise in compliance with all applicable ordinances, codes, statutes, other laws, rules and regulations, (ii) such use

is incidental and secondary to the principal use of the Lot and Improvements thereon for residential purposes and does not change the character thereof, (iii) such use has no adverse effect on the use or enjoyment of any other part of the Property, (iv) such uses do not involve physical alteration of the Lot and or Dwelling visible from the exterior; and (v) such uses do not involve any observable business activity such as signs, advertising displays, regular deliveries, or pedestrian or vehicular traffic to and from the Lot by customers or employees.

b. Declarant may maintain offices, sales facilities and other business facilities on the Property in connection with the exercise of its special declarant rights.

4.5 Dwelling Size and Other Characteristics. The Lots shall meet the following minimum square footage requirements and other characteristics unless waived in writing by Declarant:

a. Dwelling Size Requirements

The residential lots in Rocking Horse Farm 5<sup>th</sup> Addition are restricted to single-family residences only. The designs are limited to single story and 1½ story only; no two story or bi-level designs are allowed. The dwellings may have a basement or be slab on grade. Residential dwellings on these lots shall meet the following minimum square-footage requirements:

1. Single story: 1,200 square feet
2. 1½ story: 1,000 square feet on main floor  
500 square feet on ½ story  
Total square feet 1,500

b. Siting Requirements

Dwellings on the following lots must be designed such that the front door is facing south and the garages are facing east or west:

Lots 6 and 7, Block 2

Lots 5 and 6, Block 3

4.6 Leasing. Leasing of Lots and Dwellings shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) that no Lot shall be leased for transient or hotel purposes, (ii) that no Lot may be subleased, (iii) that all leases shall be in writing, (iv) no lease shall be shorter than thirty (30) days; and (v) that all leases shall provide that they are subject to the Governing Documents, the Rules and Regulations and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. The Association may impose such reasonable Rules and Regulations as may be necessary to implement procedures for the leasing of Lots, consistent with

this Section. The Association shall promulgate separate regulations covering vacation home swaps or trades.

4.7 Delegation of Use. An Owner may delegate, in accordance with the Governing Documents, the Owner's right of use and enjoyment of the Lot to persons living in the Lot pursuant to a legal right of possession; provided that such persons shall be subject to the Governing Documents and the Rules and Regulations. If lessees, or other persons other than the Owner or the Owner's family, have been given the legal right to possess the Owner's Lot, then those persons shall have the right to use any common recreational facilities, parking, storage and other amenities on the Property in lieu of the Owner and the Owner's family.

4.8 Parking and Garages. All garages shall be attached to the Dwelling it serves. Except as otherwise allowed, all garages shall contain only two stalls and shall face the street elevation. The Review Committee may consider allowing 3-stall designs if the garage is a) a tandem style, or b) if the design is such that the garage is in proper scale to the house and is not the focal point of the dwelling. Garages and parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Association. No motor vehicle shall be constructed, reconstructed or repaired within the Property, except for purposes of loading or unloading and then for periods not in excess of four hours. This restriction shall not apply to commercial vehicles involved in construction activities on a Lot or vehicles owned and operated by persons providing services to a Lot or Dwelling (during the time when the services are being rendered). Vehicles not regularly used by Owners, Occupants or their guests shall not be allowed to remain parked on the Lots or other parking areas of the Property. Garages shall not be converted to other uses or used for storage or other purposes which would prevent the parking of two automobiles in a garage. The use of garages, driveways and other parking areas on the Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Association, including without limitation the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property. No vehicles shall be parked on any unpaved area on any Lot.

4.9 Animals. No livestock, poultry nor insects shall be raised, bred or kept on any Lot. Common domestic pets shall be permitted, except for aggressive animals or breeds (e.g. pit bulls, Doberman pinscher), provided they are not kept, bred or maintained for commercial purposes and provided further that no more than a total of two (2) animals may be kept on any Lot. Approved pets are allowed on limited Common Areas appurtenant to the Owner's Lot, so long as the pet is kept on a leash and is in the presence and control of the Owner or Owner's guest. Owners shall be required to show proof of liability insurance covering the actions of any pet. Animals may be located outside on an Owner's Lot in the following ways:

- a. A "dog run/kennel" structure may be approved by the Review Committee if it is designed as an integral part of the dwelling and utilizes the same fence as installed by the Declarant along the north side of Blocks 2 & 3 and the east side of Block 1, of Rocking Horse Farm 5<sup>th</sup> Addition.
- b. Utilizing a wireless dog fence.
- c. Utilizing a leash attached to a stake.

4.10 Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Lots. The Property shall be occupied and used in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use and quiet enjoyment of the Property by other Owners and Occupants and their guests.

4.11 Compliance with Law. No use shall be made of the Property which would violate any then existing municipal codes or ordinances, or state or federal laws, nor shall any act or use be permitted which could cause waste to the Property, cause a material increase in insurance rates on the Property, or otherwise cause any unusual liability, health or safety risk, or expense, for the Association or any Owner or Occupant.

4.12 Subsequent Improvements. After initial occupancy of the Dwelling constructed on a Lot, no exterior improvement or construction which has not previously been approved pursuant to Article V shall be commenced, and no building, other structure or improvement to a Lot shall be altered on the exterior (excluding normal staining or repainting of a similar color), nor any substantial landscape work done on any Lot, unless the approvals required by Article V shall have been obtained. Notwithstanding the foregoing, in the event of a casualty to any improvements on a Lot, which improvements were approved pursuant to Article V, the Owner of the Lot shall be entitled to rebuild those improvements, without change from the original approved plans, without again obtaining approval from the Review Committee.

4.13 Building Exterior and Roofing Design and Materials. The exterior and roof of any Dwelling shall be in accordance with the Rocking Horse Farm 5<sup>th</sup> Addition Housing Design Guide and/or any other design guidelines as established by the Review Committee.

4.14 Rubbish, Trash and Garbage. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, rubbish, brush, cuttings and other waste shall be kept only in covered sanitary containers kept in the garage located on each Lot until such time as to make them reasonably necessary for collection. All garbage and trash shall be regularly removed from the Property and shall not be allowed to accumulate thereon. All woodpiles or storage piles shall be

kept screened and concealed from view of other Lots, streets and Common Areas. Garbage and trash shall be placed for pick up as required by the disposal service designated from time to time by the Association to serve all of the Lots and Dwellings. Every Owner is required to contract with waste disposal hauler designated by the Association.

4.15 Outdoor Storage. With exception of operational automobiles (e.g. passenger cars, pick-up trucks, mini-vans and sport utility vehicles), no motor vehicle, watercraft, trailer or piece of recreational equipment, including but not limited to camping trailers, other trailers, motor homes, snowmobiles, all-terrain vehicles, golf carts, lawn mowers, motorcycles, motorbikes, boats and canoes, shall be permanently stored on a Lot outside of a garage or Dwelling. Recreational equipment may be temporarily stored on a Lot outside of a garage or Dwelling for periods of no longer than seven (7) consecutive days, and provided that non-wheeled equipment is located on an appropriate trailer. No commercial vehicle, equipment, parts, or machinery shall be permanently or temporarily stored on a Lot outside of the Dwelling or garage on the Lot. Notwithstanding the foregoing prohibition, guests of an Owner visiting for less than fifteen (15) days in any thirty (30) day period may park other vehicles on unenclosed paved areas of the Lot during that period. Notwithstanding the foregoing, outdoor cooking equipment and patio furniture which are well maintained and attractive (as determined by the Association) may be kept upon a Lot. The storage or collection or rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weed or other noxious natural substance, and the harboring of any source of unreasonable noise or activity which disturbs the peace, comfort or serenity of Lot Owners, is prohibited. Usual trash and garbage shall be kept in sanitary containers in a neat and clean condition and shall be regularly collected as set forth in Section 4.14.

4.16 Easements Reserved at Platting. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat unless vacated by action of the municipal authority, and those added by the municipal authority. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the flow of drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot shall be maintained continuously by the Owner of the Lot except for improvements owned by a public authority or a utility company.

4.17 Soil and Gravel Sale. Except as approved by the Review Committee, no sod, soil, or gravel shall be sold or removed from the Property and all soil or gravel available from any excavation for the construction or alteration of a Dwelling or any appurtenance of any Lot and by whomsoever owned shall be hauled and disposed of at other points within the boundaries of the Property at the discretion of the Review Committee. If the Review Committee declines to use the soil or

gravel or fails to respond within five (5) days to a request by an Owner for direction as to where to place soil or gravel from an excavation, then in such case the Owner shall remove the soil and or gravel from the Property at the Owner's expense.

4.18 Tower Structure, Antenna, Dish and Windmill. No exterior antenna, aerial, tower, wire, line, pole, post, cable, dish or other device for transmitting or receiving radio, television, microwave, laser, electromagnetic or other telecommunications signals (collectively, "Antenna") may be installed that exceed 5 feet in height except that an outside radio or television antenna may be placed upon the roof of a residence, providing such antenna does not extend more than 5 feet above the roof where it is located and provided further that a dish not greater than thirty- six (36) inches in diameter and of a kind approved by the Review Committee may be maintained if located other than upon a roof and if appropriately screened. No exterior windmill of any kind shall be constructed, maintained or permitted to remain on any Lot or any structure on any Lot.

4.19 Underground Utilities. Utilities serving Lots existing from time to time within the Property shall employ underground utility distribution facilities. Poles, wires or the above- ground utility service distributions facilities shall be permitted to exist on a temporary basis during the initial construction of Dwellings on Lots within the Property or during any repair or replacement of the underground utility conduits, cables and facilities.

4.20 Grading. No change in the grading of any Lot shall be undertaken except in conformance with Section 5.1 hereof, and applicable government requirements.

4.21 Trees. The Owners of all Lots shall coordinate the planting of boulevard trees on their lots with the City of Fargo Forestry Department as soon as practical but no later than twelve (12) months after receipt of a certificate of occupancy. Additionally, the owners of all lots shall water, trim, maintain and replace such boulevard trees pursuant to City requirements. The Rocking Horse Farm 5<sup>th</sup> Addition Housing Design Guide shall list approved tree species.

4.22 Driveways. All driveways shall be paved, with asphalt, concrete or pavers within six months of occupancy. No gravel driveways shall be allowed. All driveways and garages shall be maintained in a neat and orderly condition. Garages are to be used for the parking of standard passenger vehicles and pick-up trucks, boats or the storage of similar items of personal property so long as such storage of personal property will not necessitate or result in the parking of any vehicle on streets or regularly on driveways within the Property. Furthermore, garages shall not be converted to living quarters or workshops which will preclude the parking of at least two vehicles within such garage.

4.23 Lawns/Sprinkler. Weather permitting, all lawns on Lots with a completed Dwelling must be sodded or seeded within six months of the date the

City issues a Certificate of Occupancy in accordance with a landscape plan approved by the Review Committee. Each lot must have its own underground sprinkler system.

4.24 Structures. No structure or object of a temporary or permanent character such as, but not limited to, house trailers, vans, tents, shacks, sheds, children's play structures, or temporary or accessory buildings or structures, shall be erected, kept or maintained on the Property, or any part thereof. This restriction shall not apply to temporary structures used by Declarant for construction or sale of property throughout the Property or to Owners, their contractors and employees, during construction of a Dwelling on the Owner's Lot.

4.25 Nuisances. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Property, nor shall any nuisance or odors be permitted to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Property. Noxious or offensive activity shall not be carried on in any Lot, Dwelling, or in any parts of the Common Elements, and each Owner, his family, tenants, guests, invitees, servants, and agents shall refrain from any act or use of a Lot, Dwelling, or of the Common Elements which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the Occupants of other portions of the Property. Any Owner, or his family, tenant, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Property shall be liable to the Association for actual costs of removal thereof or in the amount of fifty dollars (\$50.00), whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his or her Lot or Dwelling are subject.

4.26 Fences. No fences will be allowed around, or along the lot lines of, any homeowner Lot. The Developer shall install a development fence to more clearly define the neighborhood within and along the north 10 feet of Lots 1 and 11, Block 3, Lots 1 and 12 Block 2, as shown on the plat of Rocking Horse Farm 5<sup>th</sup> Addition. The same development fence will be placed within the utility easement as shown on the plat of Rocking Horse Farm 5<sup>th</sup> Addition on the rear 10 feet of Lots 18 through 24, Block 1, Rocking Horse Farm 5<sup>th</sup> Addition. Developer hereby reserves an easement on behalf of the Association for such fence, as well as an easement for ingress and egress to maintain such fence. Such fence shall be a Common Element as defined in Section 1.4 herein, and shall be maintained by the Association.

4.27 Additions, Improvements, and Painting. No Owner shall have the right to construct any Improvements of any type or nature whatsoever on his or her Lot, including without limitation, any hedges, spas, Jacuzzis or landscaping, without the prior written consent of the Review Committee. Owners may, upon approval by the Review Committee, attach a small private or semi-private patio



area on the back elevation. Such patios must be an integral part of the dwelling and go through the Rocking Horse Farm 5<sup>th</sup> Addition Housing Design Guide process.

4.28 Outside Lighting. The location, size, color and design of all lighting fixtures or similar equipment used outside of a Dwelling must be approved by the Review Committee. All outside lighting shall be designed so that the fixture does not direct light outside of the Lot.

4.29 Swimming Pools. No in-ground or above-ground swimming pool, except small, movable children's wading pools, shall be placed or constructed on any Lot, except that hot tubs and/or therapy pools may be placed on or in private patios upon approval of the Review Committee.

4.30 Traffic Regulations. All vehicular traffic on the roads and or streets shall be subject to the provisions of the laws of the State of North Dakota, the County, and the City concerning operation of motor vehicles on public streets. No unlicensed four wheelers, mini-bikes, go-karts, motorized skate boards, whether gas or battery powered, shall be allowed on the roads and or streets. The Board is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits and including modifications of those in force on public streets within the Property. The Board shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. Only drivers licensed to operate motor vehicles by the State of North Dakota or by any other state in the United States may operate any type of motor vehicle, including golf carts, within the Property. All vehicles of any kind and nature which are operated on the Streets in the Property shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all residents of the Property.

4.31 Basketball Goals and Backboards. No basketball goal or backboard shall be attached to a Dwelling or other building. Basketball goals and backboards attached to a freestanding pole may be installed on a Lot provided the location, design and appearance of the basketball goal and backboard is approved in writing by the Review Committee.

4.32 Solar Panel/Heating Device. No solar panel or solar heating device may be attached to any Dwelling or other building or installed on any Lot unless the location, design and appearance of the panel or device is approved in writing by the Review Committee.

3. Article V is amended to provide as follows:

## ARTICLE V. ARCHITECTURAL CONTROL

5.1 Restrictions on Design/Construction. One of the purposes of this Declaration is to ensure that those parts of the Lots which are visible from the exterior be kept architecturally attractive in appearance. Therefore, the following restrictions and requirements shall apply to alterations on the Property.

a. Review Committee. The purpose of the Review Committee is to review and regulate the external design, appearance, use, location and maintenance of the Property and of improvements thereon in such a manner so as to preserve and enhance values of Rocking Horse Farm 5<sup>th</sup> Addition and the adjoining Rocking Horse Farm neighborhood. The provisions of this requirement and review are in addition to those established by the City of Fargo Land Development Code. No Improvements to a Lot shall be erected, placed, altered, expanded, or occupied on any Lot, nor shall site grading, landscaping, or preparation of a Lot occur, until the building plans and specifications and site plan showing the location of such Improvements, or alteration or expansion thereof, and/or the landscaping plan, have been approved by the design review committee (the "Review Committee"). The Review Committee shall be composed of two (2) members, all of whom shall be initially appointed by the Declarant. The members of the Review Committee may be changed at any time and from time to time by Declarant, who shall notify the Association in writing of each such change. In the event of the death or resignation of any member of the Review Committee, the remaining member or members shall have full authority to act as the Review Committee, unless and until Declarant appoints an individual to replace the deceased or resigning member of the Review Committee. Notwithstanding the foregoing, at such time as Dwellings and landscaping have been completed on each of the Lots, the members of the Review Committee shall be appointed and may be changed from time to time by the Board. The Review Committee shall establish guidelines (the Rocking Horse Farm 5<sup>th</sup> Addition Housing Design Guide) for exterior building and roof design and materials which shall be provided to Owners and their builders.

b. Objectives. The objectives of the Review Committee shall include, among others, the following:

- (1) To promote long-term community quality by encouraging construction on the Lots of only single-family homes of appropriate architectural style and exterior design;
- (2) To protect and preserve the character and nature of the Property, including its landscape, pleasing views and natural characteristics;

- (3) To promote the use of only quality exterior materials and finishes, of a color and applied in a manner that enhance the appeal and compatibility of the residential community within the Property;
- (4) To promote the erection of houses and garages appropriately located on the Lots, to foster and preserve a harmonious appearance and function, to avoid a monotonous appearance, and to preserve the quality of views from other Lots;
- (5) To promote compatibility of landscaping on Lots in order to achieve a harmonious viewscape of the Lots and to preserve and enhance the aesthetic quality of the Property.

c. Review Process. Design review by the Review Committee shall include but not be limited to (i) site grading and landscaping plans; (ii) location of all buildings; (iii) height and mass of buildings in relation to other houses on Lots and the general topography of the Property; (iv) driveway access; and (v) exterior finish materials. Prior to commencement of construction or site grading on any Lot, the Owner of the Lot shall submit to the Review Committee: (a) a site plan of the Lot showing Lot lines and setback lines, proposed first floor and basement elevations, proposed finish grade at each corner of the building, proposed location of retaining walls, proposed location of each building, and the location, length and width of all driveways, sidewalks and patios, (in addition, with regard to private or semi-private patios, the description of any proposed hot tub or therapy pool must be included); (b) a site grading and tree plan, which shall identify all tree removal and protection measures and all installation of silt fences; (c) two (2) sets of construction plans for the building(s), including interior floor plans, all exterior elevations, and an identification of the character, quality, and color, and if available, the manufacturer, of all exterior materials and furnishings; and (d) a completed Rocking Horse Farm Design and Review Form. Within fourteen (14) days after said plans and specifications have been submitted to it, the Review Committee or its designated representative shall indicate in writing whether the design and location is approved, disapproved, or approved subject to one or more conditions. In the event that the Review Committee does not disapprove or approve subject to one or more conditions within fourteen (14) days, the plans and specifications shall be deemed accepted.

d. Landscaping. Generally, landscape plans shall contemplate turf, shrubs, trees, and flower gardens, to be maintained by the owner of the Lot. Landscape plans providing for non-maintained areas may be permitted only in areas of heavy tree cover. Landscape plans which include plantings

of native grasses, wildflowers and/or other plantings intended to create a low-maintenance landscape of natural appearance, may be permitted only when the same will be professionally designed, installed, and maintained to maturity and where the same are appropriate to the neighboring landscape. Prior to the commencement of any grading, tree removal or other landscape alteration beyond any such activity within the approved building area for a Dwelling, and in any event not later than the earlier to occur of the date of first occupancy, or ninety (90) days after completion of construction of the Dwelling on a Lot, the Owner of the Lot shall submit for review by the Review Committee two sets of a proposed landscape plan for the Lot, identifying all plantings, maintained yard areas, flower or vegetable gardens, areas of proposed non-maintained natural ground cover, and proposed tree clearing for landscape or view purposes. If, within twenty (20) days after its receipt of the proposed landscape plan, the Review Committee or its designated representative neither disapproves such landscape plan nor approves the same subject to one or more conditions, approval of the landscape plan will be deemed granted, further evidence thereof will not be required, and this covenant shall be deemed to have been fully performed. The Review Committee, in reviewing and approving landscape plans for Lots, shall have as one of its objectives to ensure that the landscaping on all of the Lots is harmonious with the landscaping on the other Lots.

5.2 Variance. The Review Committee may, in its sole discretion, grant to an Owner a variance from certain requirements of Article 4 and Section 5.1 of this Declaration (a "Variance"), subject and pursuant to the terms and conditions of this Article 5. No variance granted by the Review Committee relieves the Owner from compliance with any ordinance or regulation of the City. No warranty or representation is made that a variance granted by the Review Committee will comply with City ordinances. Each Owner is required to obtain all necessary City approvals prior to proceeding with the work associated with any variance granted by the Review Committee. Variances are intended to provide a means of departure from the literal provisions of this Declaration where strict adherence would cause undue hardship to an Owner because of conditions or circumstances unique to an individual Lot. The Review Committee shall not have the right to grant a Variance if it is reasonably foreseeable that the use or enjoyment of any other Lot would be materially adversely affected as a result of such Variance. The lack of any such material adverse effect shall be considered by the Review Committee in its decision, but shall not obligate the Review Committee to grant the Variance. The grant of any Variance by the Review Committee shall have no precedential effect. The Review Committee need not grant any Variance that would have a similar effect or result with respect to any Variance previously granted by the Review Committee. Furthermore, any Owner who has received a Variance with respect to any particular requirement under this Declaration may not rely upon such Variance for any other requirement, nor shall such Owner be automatically entitled to any further Variance from the same requirement. The power vested in the Review Committee by this Section 5 is purely discretionary. The Review Committee's

determination concerning the grant of a Variance shall be conclusive and, if the Review Committee disapproves a Variance, it need not state a reason for such disapproval. No Owner shall have any recourse against the Review Committee for any disapproval of a Variance or for any approval of a Variance in accordance with Section 5.

5.3 Architectural Liability. The Review Committee shall be concerned about exterior aesthetic characteristics only and does not assert any structural expertise. In the course of its duties, the Review Committee may request certain design modifications in the interest of producing overall Lot improvements more complementary to or compatible with the Property. It is the sole duty and responsibility of the Owner to employ an architect, builder, or other person to design the requested modifications in a safe and architecturally sound manner. Each Owner of any interest in the Property, his or her heirs, successors and assigns, as a condition of his ownership, waives any right to damages which result from architectural designs as requested by the Review Committee. The Review Committee shall not be responsible in any manner whatsoever for any work done pursuant to the requested changes of said plans and specifications. The Review Committee shall exercise its best judgment as to aesthetic characteristics of architectural design and its judgment shall be final.

5.4 Building Inspectors and Standards. The Review Committee shall have the power and right to employ inspectors to ensure that proper building standards are maintained. The inspector or inspectors as designated from time to time by the Review Committee shall operate pursuant to prescribed rules and Procedures approved by the Review Committee. The Review Committee shall have the power to adopt minimum construction building standards, and may amend the same from time to time, and until such standards are adopted, the building code for the City of Fargo shall control.

5.5 Remedies for Violations. The Board may undertake any measures, legal, equitable or administrative, to enforce compliance with this Section and shall be entitled to recover from the Owner causing or permitting the violation all attorneys' fees and costs of enforcement incurred by the Association, whether or not a legal action is started. In lieu of seeking actual damages the Association may recover as liquidated damages and not as a penalty the sum of \$50.00 for every day the violation continues. By acceptance of an interest in the Property each Owner agrees with the Association that the amount so fixed herein as liquidated damages is a reasonable forecast of just compensation for the harm that will be caused to the Association by the Owner's violation. All monetary damages, including liquidated damages, and all attorneys' fees and costs of the Association shall be a lien against the Owner's Lot and a personal obligation of the Owner.

5.6 Hold Harmless, Liability. No approval of plans and specifications and no publication of standards by the Review Committee shall be construed as representing or implying that such plans, specifications, or standards will, if

followed, result in properly designed improvements. Neither the Declarant, the Review Committee, nor any Review Committee member thereof shall be liable to any Owner or to any third party, and the Owner shall hold harmless and indemnify the Association, and its officers, directors, and members of the Review Committee for any damages, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of plans, drawings and specifications, submitted, revised, or approved pursuant to the terms of this Section, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications including any defects in construction undertaken pursuant to such plans (c) the development of any property within the Project, (d) any loss or damages to any person arising out of the approval, or disapproval of any plans or specifications, (e) any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, and specifications. Specifically, but not by way of limitation, it is understood that plans and specifications are not approved for engineering design, and by approving such plans and specifications neither Declarant, the Board, the Review Committee, nor any Board or Review Committee member thereof, assumes liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications.

5.7 Costs and Fees. All fees or costs associated with preparing an application for the design review process under Article V shall be paid by the Owner of the Lot in question, and may be assessed as a Limited Allocation Assessment under Section 8.4.a.

4. Article VI is amended to provide as follows:

## **ARTICLE VI ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS**

Membership in the Association and the allocation to each Lot of a portion of the votes in the Association and a portion of the Common Expenses of the Association shall be governed by the following provisions:

6.1 Membership. Each Owner shall be a member of the Association by virtue of Lot ownership, and the membership shall be transferred with the conveyance of the Owner's interest in the Lot. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one Person is an Owner of a Lot, all such Persons shall be members of the Association, but multiple ownership of a Lot shall not increase the voting rights allocated to such Lot nor authorize the division of the voting rights.

6.2 Voting and Common Expenses. Voting rights and Common Expense obligations are allocated equally among the Lots, subject to Section 8.4.

6.3 Appurtenant Rights and Obligations. The ownership of a Lot shall include the voting rights and Common Expense obligations described in Section 6.2. Said rights, obligations and interests, and the title to the Lots, shall not be separated or conveyed separately, and any conveyance, encumbrance, judicial sale or other transfer of any allocated interest in a Lot, separate from the title to the Lot shall be void. The allocation of the rights, obligations and interests described in this Section may not be changed, except in accordance with the Governing Documents.

6.4 Authority to Vote. The Owner, or some natural person designated to act as proxy on behalf of the Owner, and who need not be an Owner, may cast the vote allocated to such Lot at meetings of the Association. However, if there are multiple Owners of a Lot, only the Owner or other Person designated pursuant to the provisions of the By-Laws may cast such vote.

6.5 Assumption of Risk. Each Owner, by accepting a deed for any Lot, whether or not so expressed in such deed, for such Owner and the heirs, personal representatives, successors and assigns of such Owner shall be and is deemed to assume all risk associated with any ponds, playgrounds, or trails owned and operated by the Fargo Park District adjoining the Property, and by accepting such deed releases, waives and holds harmless the Declarant, the Association, the Board and the Review Committee, their governors, managers, officers, agents, employees and independent contractors, of and from any and all loss, damage or injury, including death, that may now or hereafter result from the use of the ponds, playgrounds, or trails, and any accompanying incidental activity on the ponds, playgrounds, or trails, and from and against any and all claims, actions, demands, liabilities, losses, damages and expenses of any kind, including without limitation, attorney's fees, arising therefrom.

6.6 Liability. Neither the Declarant, the Board, the Review Committee, nor any Board or Review Committee member thereof shall be liable to any Owner or to any third party for any damages, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any property within the Project, (d) if the Declarant, the Review Committee or such Review Committee member has acted in good faith on the basis of such information as may be possessed by them. Specifically, but not by way of limitation, it is understood that plans and specifications are not approved for engineering design, and by approving such plans and specifications neither Declarant, the Review Committee, nor any Review Committee member thereof, assumes liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications.

5. Article VII is amended to provide as follows:

## **ARTICLE VII ADMINISTRATION**

The administration and operation of the Association and the Property, including but not limited to the acts required of the Association, shall be governed by the following provisions:

7.1 General. The operation and administration of the Association and the Property shall be governed by the Governing Documents and the Rules and Regulations. The Association shall, subject to the rights of the Owners set forth in the Governing Documents, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents and the statute under which the Association is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the Governing Documents. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary. The Association shall have the power to:

- a) Adopt, amend and revoke Rules and Regulations not inconsistent with the Articles of Incorporation, Bylaws and Declaration, as follows:
  - (i) regulating the use of the Common Elements; (ii) regulating the use of the Lots, and conduct of Lot Occupants, which may jeopardize the health, safety or welfare of other Occupants, which involves noise or other disturbing activity, or which may Damage the Common Elements or other Lots; (iii) regulating or prohibiting animals; (iv) regulating changes in the appearance of the Common Elements and conduct which may Damage the Planned Community; (v) regulating the exterior appearance of the Planned Community, including, for example, balconies, decks, and patios, and signs and other displays; (vi) implementing the Articles of Incorporation, Declaration and By-Laws, and exercising the powers granted by this section; and (vii) otherwise facilitating the operation of the Planned Community;
- b) Adopt and amend budgets for revenues, expenditures and reserves, and levy and collect assessments for common expenses from Lot owners, which expenses shall include general administrative costs and director's fees payments to board members;
- c) Hire and discharge managing agents and other employees, agents, and independent contractors;
- d) Institute, defend, or intervene in litigation or administrative proceedings (i) in its own name on behalf of itself or two or more Owners on matters affecting the Common Elements or other matters



affecting the Planned Community or, (ii) with the consent of the owners of the affected Lots on matters affecting only those Lots;

- e) Make contracts and incur liabilities;
- f) Regulate the use, maintenance, repair, replacement and modification of the Common Elements and the Lots;
- g) Cause improvements to be made as a part of the Common Elements;
- h) Acquire, hold, encumber, and convey in its own name any right, title, or interest in real estate or personal property;
- i) Grant public utility easements through, over or under the Common Elements, and, subject to approval by resolution of Lot Owners other than Declarant or its affiliates at a meeting duly called, grant other public or private easements, leases and licenses through, over or under the Common Elements;
- j) Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Lot Owners;
- k) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, By-Laws, and Rules and Regulations of the Association;
- l) Impose reasonable charges for the review, preparation and recordation of amendments to the Declaration, statements of unpaid assessments, or furnishing copies of Association records;
- m) Provide for the indemnification of its officers and directors, and maintain directors' and officers' liability insurance;
- n) Whenever the Association is permitted or required by this Declaration to enter any Lot for the purpose of correction, repair, cleaning, clearing, mowing, or in the event of an emergency, or any other required or permitted activity, such entrance shall not be deemed a trespass;
- o) Provide for reasonable procedures governing the conduct of meetings and election of directors;
- p) Exercise any other powers conferred by law, or by the Declaration, Articles of Incorporation or By-Laws; and

- q) Exercise any other powers necessary and proper for the governance and operation of the Association.

7.2 Operational Purposes. The Association shall operate and manage the Property for the purposes of (a) administering and enforcing the covenants, design guidelines, restrictions, easements, charges and liens set forth in the Governing Documents and the Rules and Regulations, (b) maintaining, repairing and replacing those portions of the Property for which it is responsible and (c) preserving the value, and the architectural uniformity and character, of the Property.

7.3 Binding Effect of Actions. All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Governing Documents shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all persons owning a security interest.

7.4 By-Laws. The Association shall have By-Laws. The By-Laws shall govern the operation and administration of the Association, and shall be binding on all Owners and Occupants.

7.5 Management. The Board may delegate to a manager or managing agent the management duties imposed upon the Association's officers and directors by the Governing Documents. However, such delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents and by law.

7.6 Rules and Regulations. The Board shall have exclusive authority to approve and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property; provided that the Rules and Regulations shall not be inconsistent with the Governing Documents. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance and not in limitation, of the authority granted by this Section. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.

7.7 Association Assets, Surplus Funds. All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents. Surplus funds remaining after payment of or provision for Common Expenses and reserves shall be credited against future assessments or added to reserves, as determined by the Board.

6. Article VIII is amended to provide as follows:

## **ARTICLE VIII ASSESSMENTS**

8.1 General. Assessments shall be determined and assessed against the Lots by the Board, in its discretion; subject to the requirements and procedures set forth in this Article 8, and the requirements of the By-Laws. Assessments shall include annual Assessments under Section 8.2, and may include special Assessments under Section 8.3 and limited allocation Assessments under Section 8.4. Annual and special Assessments shall be allocated among the Lots equally, in accordance with the allocation formula set forth in Section 6.2. Limited allocation Assessments under Section 8.4 shall be allocated to Lots as set forth in that Section.

8.2 Annual Assessments. Annual Assessments shall be established and levied by the Board, subject to the limitations set forth hereafter. Each annual Assessment shall cover all of the anticipated Common Expenses of the Association for that year which are to be shared equally by all Lots in accordance with the allocation set forth in Section 6.2. Annual Assessments shall be payable in equal installments (not more frequently than monthly) on the first day of each particular period. Annual Assessments shall provide, among other things, for an adequate reserve fund for the maintenance, repair and replacement of the Common Elements and those parts of the Lots for which the Association is responsible.

8.3 Special Assessments. In addition to annual Assessments, and subject to the limitations set forth hereafter, the Board may levy in any assessment year a special Assessment against all Lots equally in accordance with the allocation set forth in Section 6.2. Special assessments shall be used for the purpose of defraying in whole or in part the cost of any unforeseen and unbudgeted Common Expense.

8.4 Limited Allocation Assessments. In addition to annual Assessments and Special Assessments, the Board may, at its discretion, levy and allocate Limited Allocation Assessments among only certain Lots in accordance with the following requirements and procedures:

- a. Any Assessment or portion thereof benefiting fewer than all of the Lots may be assessed exclusively against the Lot or Lots benefited.
- b. Reasonable attorneys' fees and other costs incurred by the Association in connection with (i) the collection of Assessments and (ii) the enforcement of the Governing Documents, or the Rules and Regulations,

against an Owner or Occupant or their guests, may be assessed against the Owner's Lot.

c. Late charges, fines and interest may be assessed as provided in this Declaration or the Bylaws.

d. Assessments levied to pay a judgment against the Association may be levied only against the Lots existing at the time the judgment was entered, in proportion to their Common Expense liabilities.

e. If any damage to the Common Elements or a Lot is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the costs of repairing the damage exclusively against the Owner's Lot to the extent not covered by insurance.

f. If any Assessment or installment of an Assessment becomes more than thirty (30) days past due, then the Association may, upon ten (10) days written notice to the Owner, declare the entire amount of the Assessment immediately due and payable in full.

g. If Common Expense liabilities are reallocated for any purpose, assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

Assessments levied under Sections 8.4 a. through g. may, at the Board's discretion, be assessed as a part of, or in addition to, other Assessments levied under Article 8.

8.5 Liability of Owners for Assessments. The obligation of an Owner to pay Assessments shall commence at the later of (a) the time at which the Owner acquires title to the Lot, or (b) the due date of the first Assessment levied by the Board. The Owner at the time an Assessment is payable with respect to the Lot shall be personally liable for the share of the Common Expenses assessed against such Lot. Such liability shall be joint and several where there are multiple Owners of the Lot. The liability is absolute and unconditional. No Owner is exempt from liability for payment of Assessments by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Lot, by the waiver of any other rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents. The Association may invoke the charges, sanctions and remedies set forth in this Declaration, in addition to any remedies provided elsewhere in the Governing Documents, the Rules and Regulations, or by law, for the purpose of enforcing its rights hereunder.

8.6 Assessment Lien. The Association has a lien on a Lot for any Assessment levied against that Lot from the time the Assessment becomes due.

If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association are liens, and are enforceable as Assessments, under this Article 8. Recording of the Declaration constitutes record notice and perfection of any lien under this Section 6, and no further recordation of any notice of or claim for the lien is required. The release of the lien shall not release the Owner from personal liability unless agreed to in writing by the Association.

8.7 Foreclosure of Lien, Remedies. A lien for Assessments may be foreclosed against a Lot in the manner provided for the foreclosure of mortgages by action or under a power of sale in the State of North Dakota. The Association or its authorized representative shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Lot so acquired. The Owner and any other Person claiming an interest in the Lot, by the acceptance or assertion of any interest in the Lot, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition to its other remedies, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any Assessment or charge against the Lot. In any action whether at law or in equity the Association shall be entitled to recover its costs and expenses in bringing such action including, if allowed, its reasonable attorney's fees and costs.

8.8 Lien Priority, Foreclosure. A lien for Assessments is prior to all other liens and encumbrances on a Lot except (a) liens and encumbrances recorded before the Declaration, (b) any first mortgage on the Lot, and (c) liens for real estate taxes and other governmental Assessments or charges against the Lot. Notwithstanding the foregoing, if a first mortgage on a Lot is foreclosed and no Owner redeems during the Owner's period of redemption provided by law, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Lot subject to unpaid Assessments levied for Common Expenses which became due, without acceleration, during the six (6) months immediately preceding the first day following the end of the Owner's period of redemption.

8.9 Voluntary Conveyances; Statement of Assessments. In a voluntary conveyance of a Lot the buyer shall not be personally liable for any unpaid Assessments and other charges made by the Association against the seller or the seller's Lot prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. However, the lien of such Assessments shall remain against the Lot until released. Any seller or buyer shall be entitled to a statement, in recordable form, from the Association setting forth the amount of the unpaid Assessments against the Lot, including all Assessments payable in the Association's current fiscal year, which statement shall be binding on the Association, seller and buyer.



## ROCKING HORSE FARM 5TH ADDITION

### DECLARATION OF INITIAL RESIDENTIAL COVENANTS AND RESTRICTIONS

THIS DECLARATION is hereby made this <sup>26</sup>26 of February, 2018 by Jetland Properties, LLC, a North Dakota Limited Liability Company, hereinafter called the ("DECLARANT").

#### BACKGROUND

Declarant is the Owner of real property known as ROCKING HORSE FARM 5<sup>th</sup> ADDITION, which consists of residential lots. This Declaration is intended to and does provide for restrictions and covenants regarding lots within ROCKING HORSE FARM 5<sup>th</sup> ADDITION that will be owned and maintained by the Rocking Horse Farm 5<sup>th</sup> Addition Homeowners Association, and will be amended to provide for the preservation of the values and amenities of the residential lots (the "Property"). The legal description of the Property is as follows:

**See attached Exhibit "A"**

Declarant will convey the Property subject to certain protective covenants, conditions, restrictions, reservations, easements, liens and charges as hereinafter set forth.

#### DECLARATION

The following provisions are set forth to guide the initial development and provide a format for the ongoing welfare of the Property. It is the objective of these provisions and amendments thereto to set forth minimum standards and restrictions to create an environment that emphasizes the general appearance and aesthetics of the neighborhood. Specifically, these provisions intend to emphasize a continuity of exterior appearance through landscaping, lighting, signage, building facades and other exterior features.

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, reservations, easements, liens and charges, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and certain adjacent real property. These covenants, conditions, restrictions, reservations, easements, liens and charges shall run with the land and shall be binding on all parties having or acquiring any right title or interest in the Property herein described or any part thereof, and shall inure to the benefit of each Owner thereof and also the owners of certain adjacent property.

#### ARTICLE I. DEFINITIONS

1.1 "Association" shall mean Rocking Horse Farm 5<sup>th</sup> Addition Homeowner's Association, a nonprofit corporation which has been created pursuant to North Dakota Century Code Chapter 10-33, whose members consist of all Owners as defined. The Association shall also be known as the "HOA".

1.2 "Board" shall mean the Board of Directors of the Association as provided for in the By-Laws.

1.3 "By-Laws" shall mean the By-Laws governing the operation of the Association, as amended from time to time.

1.4 "Common Elements" shall mean the Common Area Lots ("HOA Owned Lots") and any landscaping, drives, mail box clusters, improvements, fences, any other items located on the Common Area Lots and any other areas of the Property owned by or to be maintained by the Association pursuant to this Declaration.

1.5 "Common Expenses" shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including Assessments and items otherwise identified as Common Expenses in the Declaration or By-Laws.

1.6 "Declaration" shall mean the covenants, conditions and restrictions and all other provisions herein set forth in the entire document, as may from time to time be amended.

1.7 "Declarant" shall also be known as the "Developer", and shall mean and refer to Jetland Properties, LLC and its successors or assigns.

1.8 "Dwelling" shall mean a part of a building consisting of one or more floors, designed and intended for occupancy as a single family residence, and located within the boundaries of a Lot. The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Lot on which the Dwelling is located.

1.9 "Governing Documents" shall mean this Declaration, the Articles of Incorporation and By-Laws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.

1.10 "Lot" shall mean any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, and shown on the Plat, including all improvements thereon. HOA Owned Lots ("Common Area Lots") shall refer to Lots 1 and 25, Block 1.

1.11 "Member" shall mean all persons who are members of the Association by virtue of being Owners as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.

1.12 "Occupant" shall mean any person or persons, other than an Owner, in possession of or residing in a Lot.

1.13 "Owner" shall mean a Person who owns a Lot, but excluding contract for deed vendors, mortgagees and other Secured Party as defined herein. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate. The words "Owner" and "Lot Owner" may be used interchangeably in the Governing Documents. All Owners shall be members of the Association.



1.14 "Planned Community" shall mean the community known as Rocking Horse Farm 5<sup>th</sup>, situated on the Property and subject to this Declaration.

1.15 "Plat" shall mean the recorded plat depicting the Property, including any amended or supplemental Plat recorded from time to time.

1.16 "Property" shall refer to all real property defined as the Property on page 1 hereof, and shall specifically include all Lots. Any Restriction herein created as to the Property shall also expressly apply to all Lots within the Property.

1.17 "Review Committee" shall mean the Rocking Horse Farm Architectural Review Committee as described herein or in amendments hereto. The purpose of the Review Committee is to review all plans and specifications for buildings, signs, fences, landscaping and any and all other improvements of any kind to the Property for the period herein provided.

1.18 "Rules and Regulations" shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 7.1(a).

## **ARTICLE II. DESCRIPTION OF LOTS, BOUNDARIES AND RELATED EASEMENTS**

2.1 Lots. There are Forty-Eight (48) Lots subject to this Declaration. All Lots (except for Common Area Lots) are restricted exclusively to residential use. Each Lot constitutes a separate parcel of real estate. No additional Lots may be created by the subdivision or conversion of Lots. The Lot identifiers and locations of the Lots are as shown on the Plat, which is incorporated herein by reference, and a schedule of Lots is set forth on Exhibit A attached hereto. The Lot identifier for a Lot shall be its lot and block numbers and the subdivision name.

2.2 Lot Boundaries. The front, rear and side boundaries of each Lot shall be the boundary lines of the platted lot upon which the Dwelling is located or intended to be located as shown on the Plat. The Lots shall have no upper or lower boundaries. Subject to this Article II all spaces, walls, and other improvements within the boundaries of a Lot are a part of the Lot.

2.3 Utility, Drainage and Maintenance Easements. Each Lot shall be subject to and shall be the beneficiary of perpetual appurtenant easements for all services and utilities, including drainage utilities, servicing the Lots and for maintenance, repair and replacement as may be described in future amendments of this Declaration, and as may be added by the City. The location of improvements on each lot shall not interfere with said easements.

2.5 Declarant's Easements. Declarant shall have and be the beneficiary of easements for construction and sales activities as described in Sections 11.1 and 11.2.

2.6 Recorded Easements. The Property shall be subject to such other easements as may be recorded against it or otherwise shown on the Plat.

2.7 Easements are Appurtenant. All easements and similar rights burdening or benefiting a Lot or any other part of the Property shall run with the land, and shall be permanent, subject only to termination in accordance with the terms of the easement. Any recorded easement benefiting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by this Declaration.

2.8 Impairment Prohibited. No person shall materially restrict or impair any easement benefiting or burdening the Property, subject to the Declaration and the right of the Association to establish and enforce reasonable Rules and Regulations governing the use of the Property.

2.9 Benefit of Easements. All easements benefiting a Lot shall benefit the Owners and Occupants of the Lot, and their families and guests. However, an Owner who has delegated the right to occupy the Lot to an Occupant or Occupants, whether by a lease or otherwise, does not have the use and other easements rights in the Property during such delegated occupancy, except as a guest of an Owner or Occupant or in connection with the inspection of the Lot or recovery of possession of the Lot from the Occupant pursuant to law.

2.10 Additional Property. At any time within ten (10) years from the date hereof, Declarant may, by instrument duly executed by them and recorded, add additional land to the Property.

### **ARTICLE III. COMMON ELEMENTS AND OTHER PROPERTY**

3.1 Common Elements. The Common Elements and their characteristics are as follows:

a. Except as otherwise expressly provided in the Governing Documents, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.

b. Common Expenses for the maintenance, repair, replacement, management and operation of the Common Elements shall be assessed and collected from the Owners in accordance with Article VIII.

3.2 Common Area Lots. The Common Area Lots (HOA Owned Lots) are subject to the following restrictions and covenants:

a. The Developer shall assume all responsibility for the ownership and maintenance on all HOA Owned Lots until such time as those lots are granted and conveyed to the HOA. Until such time as said conveyance occurs, any powers granted to the City, including any subrogated rights, in this Declaration may be enforced against the Developer or Developer's successors in interest (i.e. mortgagee, buyers in due course).

b. The HOA owns Lots 1 and 25, Block 1, and is empowered to assess the members of the HOA for all costs associated with the ownership, maintenance

and upkeep of these lots including payment of property taxes and special assessments on these lots.

c. The Developer, Lot Owners and the HOA hereby subrogate to the City of Fargo any and all powers provided by any covenants, conditions and restrictions that have been, or will be, granted to the HOA to assess against the Lots other than the Common Area Lots any costs of ownership, maintenance and upkeep for the HOA Owned Lots including without limitation *ad valorem* taxes, installments of special assessments or costs of abatement of nuisance.

d. The above subrogation provision is for the benefit of the City of Fargo, only, and nothing herein shall be interpreted to require the City of Fargo to be responsible for any of the obligations of ownership of the HOA Owned Lots. The City of Fargo has no obligations regarding ownership, upkeep, maintenance or the payment of any taxes or special assessments for such lots.

e. The Lot Owners and the HOA agree that none of the foregoing powers or rights granted to the City of Fargo may be modified, cancelled or terminated without approval of the board of city commissioners of the City of Fargo and any amendment to this Declaration that abrogates any right granted therein to the City without such approval shall be void and of no force or effect.

#### **ARTICLE IV. RESTRICTIONS ON USE OF PROPERTY**

All Owners and Occupants, and all secured parties, by their acceptance or assertion of an interest in the Property, or by their occupancy of a Lot, covenant and agree that, in addition to any other restrictions which may be imposed by the Governing Documents, the occupancy, use, operation, alienation and conveyance of the Property shall be subject to the following restrictions:

4.1 General. The Property shall be owned, conveyed, encumbered, leased, used and occupied subject to the Governing Documents and as amended from time to time. All covenants, restrictions and obligations set forth in the Governing Documents are in furtherance of a plan for the Property, and shall run with the Property and be a burden and benefit to all Owners and Occupants and to any other Person acquiring or owning an interest in the Property, their heirs, personal representatives, successors and assigns.

4.2 Subdivision Prohibited. No Lot shall be re-subdivided by an Owner to form a lot smaller than a platted Lot; provided, however, that two or more entire Lots may be combined to form a larger Lot or Lots with the prior written approval of the Declarant, Board and the Owner of the combined larger Lot or Lots shall record the combination with Cass County so that each resulting combined Lot is a single tax parcel. Such combined Lot shall thereafter be defined as the "Lot" for purposes of this Declaration.

4.3 Residential Use. Each Lot shall be used solely and exclusively for residential purpose.

**ARTICLE V.  
ARCHITECTURAL CONTROL**

[reserved for future use]

**ARTICLE VI  
ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS**

Membership in the Association and the allocation to each Lot of a portion of the votes in the Association and a portion of the Common Expenses of the Association shall be governed by the following provisions:

6.1 Membership. Each Owner shall be a member of the Association by virtue of Lot ownership, and the membership shall be transferred with the conveyance of the Owner's interest in the Lot. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one Person is an Owner of a Lot, all such Persons shall be members of the Association, but multiple ownership of a Lot shall not increase the voting rights allocated to such Lot nor authorize the division of the voting rights.

**ARTICLE VII  
ADMINISTRATION**

The administration and operation of the Association and the Property, including but not limited to the acts required of the Association, shall be governed by the following provisions:

7.1 General. The operation and administration of the Association and the Property shall be governed by the Governing Documents and the Rules and Regulations. The Association shall, subject to the rights of the Owners set forth in the Governing Documents, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents and the statute under which the Association is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the Governing Documents. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary.

**ARTICLE VIII  
ASSESSMENTS**

8.1 General. Assessments shall be determined and assessed against the Lots by the Board, in its discretion; subject to the requirements and procedures set forth in this Article 8, and the requirements of the By-Laws.

## ARTICLE IX EASEMENTS

9.1 Utility Easements. The Property shall be subject to non-exclusive, appurtenant easements in favor of all public utility companies and other utility providers for the installation, use, maintenance, repair and replacement of all utilities, such as natural gas, electricity, cable TV and other electronic communications, water, sanitary sewer, storm sewer and drainage systems, septic systems, wells, and similar services, and metering and control devices, which exist or are constructed as part of the Property of the Property or which are referred to in the Plat or otherwise described in this Declaration or any other duly recorded instrument. Each Lot, and the rights of the Owners and Occupants thereof, shall also be subject to a non-exclusive, appurtenant easement in favor of the other Lots for all such utilities and services; provided, that the utilities and services shall be installed, used, maintained and repaired so as not to interfere with the use and quiet enjoyment of the Lots by the Owners and Occupants, nor affect the structural or architectural integrity of the Lots or Dwellings. Easements for the installation and maintenance of utilities and drainage facilities for the Property have been reserved as shown on the duly recorded plat of Rocking Horse Farm 5<sup>th</sup> Addition. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the flow of drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot shall be maintained continuously by the Owner of the Lot except for improvements owned by a public authority or a utility company. No improvement or planting shall be constructed or recreated which may damage or which may change the rate or direction of flow of water across the Property in any way that would have a material adverse effect upon Lots within the Property. The easement area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot except for those improvements for which a public authority or utility company may be responsible and except for those areas of the Property from time to time containing Common Elements which shall be maintained by the Association at the expense of the Association. Common Elements shall be subject to control and maintenance the Association and easements have been created for such area.

9.2 Drainage; Detention. All Lot owners acknowledge that certain drainage ditches, detention ponds or retention ponds may be constructed on or near the Property. By accepting conveyance of a Lot all Lot owners assume the risk of hazards, foreseen and unforeseen, associated with such drainage ditches or retention ponds, including without limitation, risks associated with them as they relate to the safety of adults and children. All Lot owners for themselves, their children, guests, invitees, trespassers, successors, assigns, agents, employees and the like, hold the Developer harmless from and against any damage, claim, suit, injury, cost or expense (including attorney's fees), as pertains to injury to person or damage to property, arising out of or in any way related to any such ditches or ponds. Lot owners acknowledge and accept that such ditches and ponds are for the purpose of holding storm water during rainfall periods to allow for a controlled impact on and handling by the storm sewer system. Accordingly, the water levels of such ditches and ponds may fluctuate from time to time and may, at times, cover portions of an Owner's Lot. All Owners acknowledge and accept that the City shall require easements following recording of the plat for storm sewer purposes. Lot

owners may not drain or discharge sump pump lines or other drainage unto Park District Property.

## **ARTICLE X MORTGAGES**

10.1 The breach of any restriction or obligation shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any Lot or Lots or portions of Lots in the Property, but these Restrictions shall be binding upon and effective against any mortgagee or trustee or owner, whose title or whose grantor's title is or was acquired by foreclosure, trustee sale, or otherwise.

## **ARTICLE XI SPECIAL DECLARANT RIGHTS**

Declarant hereby reserves exclusive and unconditional authority without Board or Association approval required to exercise the following special declarant rights for as long as it owns a Lot, or for such shorter period as may be specifically indicated:

11.1 Complete Improvements. To complete all the Lots and other improvements indicated on the Plat, or otherwise included in Declarant's Property plans or allowed by the Declaration; to make alterations in the Lots and Common Elements to accommodate the exercise of any special declarant rights; to maintain temporary storage piles of dirt as needed to complete Property work and or Lot improvements; and to store dirt on Lots on which there is not a completed Dwelling. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary (except as set forth in Section 3.2), so long as Declarant shall own any Lot in the Property, it shall be expressly permissible for Declarant and its contractors, subcontractors, agents, employees, successors, and assigns to carry on such activities as may be reasonably required, convenient, or incidental to the improvement of Lots, Dwellings and Common Elements, including, without limitation, the installation of construction trailers and storage of materials or equipment on any property owned by Declarant or the Common Elements, and the use of Common Elements for access to construction sites in the Property.

11.2 Declarant's Right to Conduct Sales and Other Activities. Notwithstanding any other provision in this Declaration to the contrary (except as set forth in Section 3.2), Declarant, its agents, employee and officers, including without limitation, any management and marketing agents, are irrevocably empowered to sell Lots on any terms to any purchasers, for so long as Declarant owns any Lots in the Property. Also, for so long as Declarant owns any Property in the Property, Declarant, its agents, employees and officers, any management and marketing agents employed by Declarant, shall have the right to transact any business necessary to consummate sales of property throughout the Property, including but not limited to, the right to maintain office(s) on the Property in location(s) to be selected by Declarant; to have employees in such offices, to construct and maintain sales agency offices, and such other structures or appurtenances which are necessary or desirable for the Property and sale of property throughout the Property, including, without limitation, sales models (which may be Dwellings) and parking lots; to post and display a sign or signs on any Lots owned by Declarant or on the Common

Elements; and to use the Common Elements, and to show Lots. Sales office signs and all other structures and appurtenances pertaining to the sale or Property of property within the Property shall not be considered Common Elements and shall remain the property of the Declarant.

11.3 Signs. To erect and maintain signs and other sales displays offering the Lots for sale or lease, in or on any Lot owned by Declarant and on the Common Elements not designated as roadway.

11.4 Easements. To have and use easements, for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Common Elements for the purpose of exercising its special declarant rights.

11.5 Control of Association. To control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board until the earliest of: (a) voluntary surrender of control by Declarant, or (b) an Association meeting which shall be held within sixty (60) days after Seventy-Five percent (75%) of the total number of Lots authorized to be included in the Property have been issued certificates of occupancy.

11.6 Consent to Certain Amendments. Until such time as Declarant no longer owns any Lot for initial sale, Declarant's written consent shall be required for any amendment to the Governing Documents or Rules and Regulations which directly or indirectly affects Declarant's rights under the Governing Documents.

## **ARTICLE XII AMENDMENTS**

12.1 Amendments. This Declaration may be amended by Declarant at any time until Declarant no longer owns any of the Lots; provided, however, the Declarant may not amend this Declaration to add or expand any easement or restriction on any Lot, the fee title to which has been previously transferred by Declarant, unless the then Owner of such Lot consents in writing to the amendment. After Declarant has divested itself of all Lots, this Declaration may be amended by an instrument signed by the owners of not less than 75% of the Lots, and any such amendment shall not be effective until recorded against the Lots at the Office of the Recorder for Cass County, North Dakota. In addition, at any time until Declarant no longer owns any of the Lots, Declarant remove any Lots owned by Declarant from the scope of this Declaration, by instrument recorded in the Office of the Recorder for Cass County, North Dakota. Should any of the Lots be re-platted by Declarant after the date this Declaration is recorded, any Lots resulting from the re-plat shall be automatically released and removed from this Declaration. Notwithstanding anything contained in this Section 12.1, none of the powers or rights granted to the City of Fargo under Section 3.2, may be modified, cancelled or terminated without approval of the board of city commissioners of the City of Fargo and any amendment to this Declaration that abrogates any right granted therein to the City without such approval shall be void and of no force or effect.

**ARTICLE XIII  
MISCELLANEOUS**

13.1 Severability. If any term, covenant, or provision of this instrument or any exhibit attached hereto is held to be invalid or unenforceable for any reason whatsoever, such determination shall not be deemed to alter, affect or impair in any manner whatsoever any other portion of this Declaration or exhibits attached hereto.

13.2 Construction. Where applicable the masculine gender of any word used herein shall mean the feminine or neutral gender, or vice versa, and the singular of any word used herein shall mean the plural, or vice versa.

13.3 Tender of Claims. In the event that any incident occurs which could reasonably give rise to a demand by the Association against Declarant for indemnification, the Association shall promptly tender the defense of the action to its insurance carrier, and give Declarant written notice of such tender, the specific nature of the action and an opportunity to defend against the action.

13.4 Notices. Unless specifically provided otherwise in the Governing Documents, all notices required to be given by or to the Association, the Board, the Association officers or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail, or transmitted by facsimile or electronic mail, copy followed by mailed notice as above required.

13.5 Conflicts Among Documents. In the event of any conflict among the provisions of the Declaration, the By-Laws or the Rules and Regulations approved by the Association, the Declaration shall control, and as between the By-Laws and the Rules and Regulations, the By-Laws shall control.

13.6 Duration of Covenants. The covenants, conditions, restrictions, easements, liens and charges contained in this Declaration shall be perpetual, subject only to termination as provided in this Declaration.

[the next page is the signature page]





who executed the foregoing Declaration of Initial Covenants and Restrictions, and acknowledged that they executed the same as their free act and deed and for the purposes therein expressed.

Seal:

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Notary Public

F:\250\33\rocking horse 5<sup>th</sup> addition declaration city final