



1575542

Page: 1 of 17
10/29/2019 2:06 PM
REST \$65.00

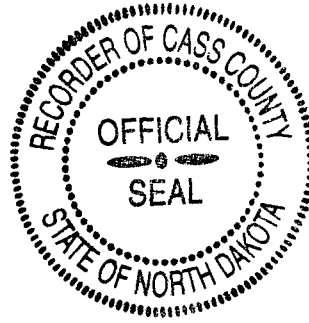
CUB CREEK DEVELOPMENTS

RECORDER'S OFFICE, CASS COUNTY, ND
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
DEBORAH A. MOELLER, COUNTY RECORDER

10/29/2019 2:06 PM

by Teresa A. Kirby Deputy

1575542



(reserved for recording data)

**CUB CREEK FIRST ADDITION TO THE CITY OF HORACE
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
RESERVATIONS, EASEMENTS, LIENS
AND CHARGES**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS, LIENS AND CHARGES (hereinafter, "First Amended Declaration") is dated October ____, 2019, and is adopted and approved by Cub Creek Development LLC as Developer.

RECITATIONS:

A. This is the Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges for Cub Creek First Addition to the City of Horace. This will hereinafter be referred to as the "Declaration."

B. Cub Creek Development LLC is the Developer pursuant to the terms of this Declaration.

NOW, THEREFORE, Developer declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the Declarations, Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges set forth in this Declaration.



ARTICLE I.

DEFINITIONS

The following words, when used in the Declaration (unless the context shall prohibit), shall have the following meanings:

1. "Lot" shall mean a Lot as set forth in the Plat of Cub Creek First Addition to the City of Horace recorded with the Cass County Recorder as Document No. 1565229.

2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

3. "Building Plot" shall mean and consist of one or more Lots or one Lot and a portion or portions of adjacent Lots which have the same Owner. A Building Plot may never consist of less than one entire Lot as set forth in the Plat of Cub Creek First Addition to the City of Horace, recorded as Document No. 1565229 with the Cass County Recorder.

4. "Family" shall mean one or more persons living in a residential building as a single housekeeping unit and shall exclude a group or groups of persons where three (3) or more persons thereof are not related by blood, adoption or marriage.

5. "Developer" shall mean and refer to Cub Creek Development LLC, its successors and assigns, if any successors or assigns shall acquire a majority of the undeveloped Lots for the purpose of development.

6. "Property" shall mean that real property described more specifically in Article II of this Declaration and not excepted and/or excluded. The Property was platted as part of Cub Creek First Addition to the City of Horace.

7. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges may from time to time be amended.

8. "Residential Lots" or "Lots" shall mean all Lots within Cub Creek First Addition to the City of Horace, as shown on the Plat of Cub Creek First Addition to the City of Horace, as Residential Lots except for those excepted and/or excluded as set forth in Article II.

9. "Architectural Review Committee" or "Review Committee" shall mean the Developer or the Developer's representative until such time as the Developer divests itself of the authority to act as the Architectural Review Committee using the procedures set forth in Article III Section 1. The Architectural Review Committee may also establish Architectural Guidelines with which Owners must comply.



ARTICLE II.

PROPERTY SUBJECT TO THIS DECLARATION

The Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration as Residential Lots is described as all Lots located in Cub Creek First Addition to the City of Horace, except for and excluding the following:

- Dedicated streets and roads;
- Lot 47, Block 6 (drainage);
- Lot 1, Block 6 (City-owned park and pond);
- Lot 1, Block 1 (not subject to this Declaration);
- Lots 46, 47, 48, 49 and 50, Block 6 (not subject to this Declaration);

All of the above described Lots are in Cub Creek First Addition to the City of Horace, Cass County, North Dakota. All of the real property which is not excepted and excluded as set forth above shall hereinafter be called the "Property."

ARTICLE III.

ARCHITECTURAL CONTROL

1. Cub Creek First Addition Architectural Review Committee. There is hereby established the Cub Creek First Addition Architectural Review Committee (or "Review Committee") for the Property. The Architectural Review Committee shall be comprised of the Developer or its appointed representative until the earlier of the time that residences have been constructed and completed on all Residential Lots in the Property; or until such time as Developer decides to divest itself of responsibility for functioning as the Architectural Review Committee. When such control is relinquished in writing, the responsibility shall be vested in a committee comprised of three Owners of Residential Lots, who shall be elected by a majority of the Residential Lot Owners whether at a meeting or by written ballot. The elected committee shall, at that time, adopt a meeting schedule and rules of operation. It shall be conclusively presumed that there has been no complete construction upon all Residential Lots and that the Developer has not divested itself of responsibility for Architectural Control until and unless there is a sworn affidavit placed of record with the Cass County Recorder from the Developer stating that one or the other of said factual circumstances exists and Developer is no longer the Architectural Review Committee. Whenever there is a reference in these documents to "Architectural Review Committee" or "Review Committee," such reference shall include either the Developer or the elected committee, whichever is acting at that time.

2. Procedure for Submission of Plans and Specifications. One copy of Plans and Specifications for any planned structure (for which receipt by the Architectural Review Committee must be acknowledged in writing or electronically for the 10-day period to commence) must be submitted to the Architectural Review Committee prior to the



commencement of any construction, including any excavation. Approval or disapproval of these plans and specifications will be made in writing within ten (10) days after acknowledgement of receipt of these plans and specifications. Approval shall be in the sole discretion of the Architectural Review Committee to grant or deny, with the standard being the sole discretion of the Architectural Review Committee. No grant or denial will be construed or considered to be arbitrary. The purpose of the Architectural Review Committee is to establish a high quality residential community of homes that are (i) similar in size, style and workmanship; (ii) free from objectionable or value-destroying features; and (iii) in conformity with the governing zoning codes, building codes and other applicable regulations then in force. All approvals or disapproval/denial from the Architectural Review Committee will be in writing.

3. Construction Time and Requirements; New Construction. Construction of all primary structures shall be substantially completed within twelve (12) months after issuance of any building permit for the structure. No outside storage of building materials shall be permitted on any Lot after the 12-month construction period.

All improvements constructed on Lots shall be new construction and no buildings or other structures shall be moved from other locations onto any Lots. Construction of improvements on any Lot must commence within twenty-four (24) months of conveyance of the Lot by Developer. In the event construction of improvements does not commence within this time frame, Developer will have the option to purchase the Lot back from the Owner upon payment to the Owner of ninety percent (90%) of the price originally paid to Developer for the Lot.

4. Architectural Control. No building, fence, wall, landscaping feature, pool, play structure, patio, gazebo, sport court, ice rink, trellis, pergola, structure of any type, driveway, sidewalk or any other structure shall be commenced, erected or maintained on the Lots, nor shall any exterior addition to or change or alteration thereto be made to any buildings on the Lots until the plans and specification for the same have been submitted to and approved in writing by the Review Committee or its appointed representative.

- A. Plans submitted for approval shall include the following:
 - i. One complete set of house plans, one site plan, in paper copy or electronically, and a completed application form.
 - ii. The house plan and application form should indicate construction materials and specifications, roofing material, exterior finishes and colors.
 - iii. The site plan must indicate the basement outline with projections shown as a dotted line. The garage footprint and exterior steps or decks must be indicated. The main floor proposed grade and the basement floor grade must be clearly shown. The site plan must clearly indicate the finished landscape grade at each corner of the building as well as those adjacent to any unusual



indentations within an elevation. The site plan should indicate sidewalk, walkway and driveway locations and sizes.

B. Accessory structures such as pools, pool houses, gazebos, sheds, sport courts, ice rinks, trellises, pergolas, patios, utility buildings, storage buildings (site-built or pre-manufactured), additional garages, decks and play structures should be indicated on the site plan and must be approved by the Review Committee or its appointed representative in its sole discretion. Sheds, if authorized by the Architectural Review Committee, shall not exceed 10'x10' in size and not be higher than 10' at peak height. Sheds, if permitted, must be constructed of the same materials and colors as the primary residential structure on the Lot and not exceed 100 square feet of ground surface area.

C. Any and all solar heating devices or satellite dishes larger than 30" in length or diameter and all TV and radio antennae must be approved by the Review Committee or its architect. Any satellite dishes or antennae must be mounted on the main residential building ("House") on the Property, unless location on another structure on the Lot is approved by the Review Committee or its appointed representative.

D. Each Lot will be restricted to construction of one single family detached residence with a two or three car attached garage.

E. All Lots in Cub Creek First Addition to the City of Horace not excepted as set forth in Article II shall have residential structures that are a minimum of the square footage set forth below:

- 1100 square feet for a standard one story rambler;
- 1400 square feet for a standard two story or a one and one-half story;
- 1600 square feet for a bi-level (including both floors);
- 1700 square feet for a three or more level split.

F. A reduction of the square footage with respect to any of the Lots may be granted by the Developer or the Review Committee, but only in special circumstances. Any reduction shall be evidenced by a written certificate of variance issued by the Review Committee.

G. No residence shall exceed two stories in height when viewed from the street. Roof slopes of not less than 3 in 12 are required, roof slopes of 6 in 12 and greater are encouraged. Flat roofs will be considered on a case by case basis by the Architectural Review Committee.

H. All residences must have 10% hard surface coverage which would include brick, rock dryvit or similar type materials.



1575542

Page: 6 of 17
10/29/2019 2:06 PM
REST \$65.00

CUB CREEK DEVELOPMENTS

I. No Residential Lot in Cub Creek First Addition to the City of Horace may be subdivided to create a new Residential Lot not set forth in the Plat of Cub Creek First Addition to the City of Horace. A Residential Lot in Cub Creek First Addition to the City of Horace may be added together with an adjacent Lot in Cub Creek First Addition to the City of Horace to form one Residential Lot. A Residential Lot may be divided between Owners on each side of that Lot to increase the size of the Residential Lots on each side of the Lot being divided. However, no Residential Lot may be decreased in size and remain a buildable Residential Lot unless it becomes a part of an adjacent Residential Lot which has not been reduced in size.

J. Lots 15 through and including Lot 45, Block 6, Cub Creek First Addition to the City of Horace, North Dakota, are located along a drainage easement area created by a Permanent Easement Agreement recorded with the Cass County Recorder as Document No. 1564477 dated June 17, 2019. This Easement is granted to Southeast Cass Water Resource District and will be referred to as the "Easement." The easterly side of each of these Lots abuts the Easement area. No structure may be erected within this area; no sprinkler system may be constructed in this area; no landscaping may be done in this area other than planting to grass and light vegetation. Additional restrictions are set forth in the Easement. Additional uses are permitted in the Limited Use Area as provided in the Easement. A copy of the Easement is attached as Exhibit A for ease of reference.

K. Lot 47, Block 6 is a drainage lot dedicated for that purpose.

ARTICLE IV.

RESTRICTIONS

The Property shall be subject to the following restrictions:

1. Land Use and Building Type. All Residential Lots zoned R6 shall be used for single family purposes only. No improvements or structures whatsoever, other than a private residential dwelling house, Architectural Review Committee-approved outbuildings, garages, swimming pools and fences as approved in writing (subject to limitations hereinafter set forth) may be erected, placed or maintained on any Lot or Building Plot on the Property. See also the requirements in Article III Section 4.

2. Building Location. No building or structure shall be erected on any Lot unless the building or structure is in compliance with the City of Horace zoning ordinances for residential zoning districts, including setbacks, unless variances are approved in writing by the Architectural Review Committee and the City of Horace. Eaves and steps shall also be constructed in such a way as to comply with such zoning ordinances and restriction, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot. Any storage shed approved by the



Architectural Review Committee may not be greater than 10'-width X 10'-depth X 10'-height and must comply with all setback regulations.

3. Lot Drainage Control. All Lots shall be graded and finished to comply with the Drainage Plan approved by Developer. Positive drainage is required to divert water away from the residence and to prevent standing water and soil saturation which may be detrimental to structures and enjoyment of use of the Property. The Developer or its engineer will provide a Drainage Plan which must be complied with for every structure being built. The top of the foundation wall must be at least 24 inches above the grade of the top of the street curb in front of the Lot.

4. Fencing.

4.1. All fencing provided by the builder or owner or anyone other than the Developer shall require the approval of the Review Committee prior to installation. No fencing shall be permitted to extend beyond the front of the primary structure facing the front (street side) of the Lot, except on corner Lots as may be approved by the Architectural Review Committee. No fence shall exceed six (6) feet in height. Privacy fences shall not be allowed on corner Lots. White vinyl privacy fences, chain link fences and natural wood fences are prohibited.

4.2. A split rail fence has been approved for installation along 63rd Street. If constructed, the Association will be responsible for maintaining, repairing and replacing the split rail fence.

4.3. Lots 1 through 15 inclusive Block 6 are "Pond Lots" adjacent to a city park area. Side and rear lot fencing for all Pond Lots must be of black aluminum open picket design and constructed so as to not block the view corridors to the pond from adjacent Lots. Aluminum composition open picket fencing, black in color, is required.

5. Landscaping. The front and side Lots of each Property shall be sodded or seeded prior to the end of the first summer construction season that the home is completed. If a Property is completed in the winter, it shall be sodded or seeded prior to the end of the following summer. If a Property is completed in the same year, the rear Lot shall be seeded or sodded within one year of occupancy of the completed residence. Boulevard trees must be installed within twelve (12) months of occupancy in accordance with the requirements of the City of Horace, North Dakota.

6. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

7. Antennas. To the extent permitted by applicable law, the installation of antennas, satellite dishes or other devices for the transmission or reception of TV or radio signals or any other form or electromagnetic radiation shall be subject to the prior written approval of the Review Committee. Therefore, no antenna, satellite or microwave dish or other device for the transmission or reception of television or radio signals shall be



constructed, installed, erected, used or maintained on any Lot without the prior written approval of the Review Committee unless applicable law prohibits the Review Committee from requiring such approval. Any such antennas must be installed in accordance with the guidelines set forth by the Review Committee.

8. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Review Committee. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot. All garbage or trash shall be collected by a garbage or trash collection service as designated by the City of Horace.

9. Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any Residential Unit, Garage, shed or other structure so as to be visible from neighboring property.

10. Basketball Goals and Backboards. No basketball goal or backboard shall be attached to a Residential Unit 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.

11. Animals. Other than household pets kept for non-commercial uses, no animals, livestock, poultry or insects of any kind shall be raised, bred or maintained on any of the Lots. Pets will be restricted to Owner's Lot, must not be a nuisance and will not be allowed to stray to adjacent property.

12. Mailboxes. The United States Postal Service has determined that mail delivery services to homes in Cub Creek First Addition to the City of Horace shall be to Centralized Box Units (CBUs). The location of the CBUs has been predetermined by the Postal Service with the approval of the Developer and the City of Horace. Each property owner should contact the Postal Service in Horace prior to moving in to coordinate lock keys and start of delivery service.

13. Clotheslines. Clotheslines shall not be permitted.

14. Vehicle Parking, Storage. No commercial vehicles, motorhomes, boats, travel trailers, personal watercraft, recreational vehicles, snowmobiles, ATVs, side-by-sides, 4-wheelers, flat bed trailers, storage trailers, storage containers, car trailers or construction equipment shall be permitted on any Lot in the subdivision, except within a garage with the garage doors closed except when in use. Construction equipment will be allowed during the normal course of construction. Motorhomes, travel trailers and like-vehicles shall be temporarily permitted on the Lots for the purpose of loading and



unloading such vehicles, or for temporary visits by visitors to the Lots for a maximum of seventy-two (72) hours, a maximum of once every fourteen (14) days. All motor vehicles kept on or about a property shall be currently licensed and shall be maintained in an operable condition at all times. Temporary mechanical difficulties and breakdowns not exceeding thirty (30) days per year excepted.

15. Signs. No billboards or advertising signs of any kind of character shall be erected, placed, permitted or maintained on any Lot except as herein expressly permitted. A name and address sign used solely for the purpose of identification of the dwelling house occupants may be placed on the Property by its occupants provided the sign is no more than two feet square maximum and the design of the sign is approved by the Review Committee prior to installation. The provisions of the paragraph may be waived by the Review Committee only when, in its discretion, the same is necessary to promote the sale of the Property in the area of promotion of the premises. The Review Committee may erect, place and maintain such sign structures as it deems necessary for the operation or identification of the Cub Creek First Addition to the City of Horace. Nothing in this Declaration shall be deemed to prevent or prohibit Developer from installing and using sign structure to promote Cub Creek First Addition to the City of Horace and/or the sale of Lots and/or houses by Developer within Cub Creek First Addition to the City of Horace. One real estate "For Sale" sign as used by area real estate agents, not larger than 8 square feet on each side, may be placed on a Residential Lot that is for sale.

16. Nuisance. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Such restrictions shall include, but not be limited to, using the Lot as a dumping ground for rubbish, garbage, trash or other waste materials, the placing thereon of unsightly piles of dirt, lumber or other material except during construction, and then only during the course of construction. Such restrictions shall also include not allowing noxious weeds to occur on the Lot either during or after the period of construction of the home.

17. Dirt Removal. No topsoil or excavation material may be removed from the Development property. When there occurs an excess of soil or excavation material as a result of basement excavation or Lot grading, permission to remove that material must be obtained from the Developer, or its engineer. Otherwise the Developer will direct where the excess excavation, or soil, if any, is to be disposed of at the Lot Owner's expense.

18. Appearance During Construction. All lots are to be kept clean during construction. All garbage is to be stored out of sight. No garbage/trash burning will be permitted.

19. Storm Water. Each Lot shall be kept and maintained to be in compliance with current storm water regulations until such times as the Lot is sodded or seeded and sterilized.



20. Propane Tanks. No combustible liquid or gas tanks, exposed to view from the public street, shall be allowed on the Lots. Exceptions may be granted by Developer during construction periods.

21. Temporary Residence. No trailer, basement, tent shack, garage, barn or other outbuilding erected on the tract shall at any time be used as a residence, nor shall any residence of a temporary character be permitted on any Residential Lot.

22. Easements. The easements for the installation and maintenance of utility and drainage facilities are shown on the recorded plat of Cub Creek First Addition recorded as Document No. 1565229 and/or on the Permanent Easement Agreement recorded as Document No. 1564477 with the Cass County Recorder. Within the area of easements no structures, planting, fencing or other materials shall be placed, erected or permitted to remain which may damage or interfere with the flow of water through drainage channels or swales in the easements. The easement areas of each Lot and all improvements on it shall be maintained continuously by the Owner except for the improvements for which the public authority or utility company is responsible. See also Article III Section 4 J and Article IV Section 3.

All claims for damages, if any, arising out of the construction, maintenance and repair of the utility, drainage facility or easement area or on account of temporary or other inconvenience caused thereby, which claim may otherwise have been asserted against the Developer, the utility provider, the City of Horace or the Horace Park District or any of its agents, contractors or servants, are hereby released by each Owner of a Lot in Cub Creek First Addition to the City of Horace and the successors and assigns of each Owner.

23. Mining. No derrick or other structure designed for use in exploring for oil or natural gas shall be erected, placed or permitted upon any part of the Lots, nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or minerals of any kind be produced or extracted anywhere in the Lots. No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted on any Lot of any part of the properties nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on part of the Lots.

24. Power and Telephone Lines. For all lots, temporary overhead, distribution and service lines are permitted until permanent underground facilities are installed. Otherwise overhead lines are prohibited except during emergencies and repairs.

25. Structural Changes. No house or structure shall be moved onto any of the Lots, unless it is a new structure built to meet all of the current codes and specifically approved in writing by the Review Committee, and no structure once erected shall at any time be altered or changed so as to permit its use to be in violation of these restrictions and conditions.

26. Mortgages. The breach of any of the foregoing covenants, conditions, reservations or restrictions does not defeat or render invalid any lien, mortgage or deed of trust made in good faith for value as to any Lot or Lots or portion of Lots in the



Development; but his Declaration shall be binding upon, and effective against, any mortgagee, trustee or owner, whose title or whose grantor's title is or was acquired by foreclosure, trustee sale or otherwise.

27. Driveways. Driveways and parking areas must be hard surfaces. Permitted materials for driveway construction include interlocking stones or cast-in-place concrete. Asphalt, gravel, clay, dirt, crushed concrete or other driveway surfaces are prohibited.

ARTICLE V.

**CUB CREEK FIRST ADDITION TO
THE CITY OF HORACE HOMEOWNERS ASSOCIATION**

1. Membership in Association. Upon the completion of construction of all residences on Residential Lots on the Property, or in the sole discretion of Developer at any time, governing control of the Declaration, including covenants and restrictions, shall be transferred to Cub Creek First Addition to the City of Horace Homeowners Association (the "Association"). Immediately upon transfer, the Association shall elect a board of five Lot Owners who shall constitute the governing Board of the Association (the "Board") and oversee enforcement of the Declaration. Every Owner of any Lot which is subject to the Declaration is subject to assessment by the Association and shall be a mandatory member of the Association. There shall be one vote per Lot. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. All members of the Association shall be governed and controlled by the Articles of Incorporation and by the Bylaws thereof adopted by the Association which may not conflict with the provisions of this Declaration. Prior to the commencement of the Association, the authority to create and enforce assessments is with the Developer. The Lot Owners may determine the Property will become part of an Association involving adjoining or other property in the Cub Creek Additions.

2. Creation of a Lien and Personal Obligation and Assessments. The Developer hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not so expressed in such deed, is deemed to covenant and agrees to pay the Association or a fund established by the Developer annual general assessments or charges, and special assessments for capital improvements. All assessments shall be a charge on the Lot and shall be a continuing lien upon the property (Lot) against which each such assessment is made. Each such assessment shall also be the personal obligation of the Owner of such property at the time when the assessment initially fell due.

3. Method of Assessment. By vote of a majority of the members, the Developer or the Association shall fix the annual assessment upon the basis provided herein, provided, however, that the annual assessment shall be sufficient to meet the obligations imposed by this Declaration. The Developer or the Association shall set the date(s) such assessments shall become due. The Developer or the Association may provide for collection of assessments annually or in monthly, quarterly, or semi-annual installments, provided, however, that upon default of the payment of any one or more



installments, the entire balance of said assessment may be accelerated, at the option of the Association, to be declared due and payable in full.

4. General Assessment. The general assessment levied by the Developer or the Association shall be used exclusively to promote the improvements, maintenance and operation of the roads, signage, mailboxes, common areas, parks, perimeter landscapes and entrance to Cub Creek First Addition to the City of Horace. Each Residential Lot, whether improved or unimproved, shall be assessed at a uniform rate with the assessment commencing on a date and for an amount determined necessary by the Developer or the Association.

5. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Developer or the Association may levy, in any assessment year, a special assessment applicable for that year and for not more than the next four succeeding years for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements located within the development, including roads, paving of roads, common areas, parks, entrance and the landscaped area or area of entrance, street lighting, banners or other decorations to enhance the aesthetic value of the subdivision, sidewalks or any other improvement, including fixtures and personal property related thereto, providing that any such assessment shall require the approval of a majority of the Owners who are voting in person or by proxy at a special meeting duly called for that purpose. So long as Developer owns any Lot, any special assessment must also be approved in writing by the Developer. Any special assessment shall be levied in an equal amount for each Residential Lot.

6. Surplus Funds. The Developer or the Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Developer or the Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Developer or the Association may carry forward from year to year such surplus as the Board, in its discretion, may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

7. Enforcement of Lien and Covenants:

A. All delinquent assessments, together with interest thereon (at an interest rate equal to that rate charged by Cass County for delinquent taxes), and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest thereon, attorney's fees and costs of collection thereof, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

B. If the Association elects to claim a lien for non-payment of assessments, it shall, at any time within thirty (30) days after the occurrence of default, make a demand for payment to the defaulting Owner. Said demand shall



state the date and amount of delinquency. If such delinquency is not paid within ten (10) days after delivery of such notice, the Developer or the Association may elect to file a claim of lien against the Lot of such delinquent Owner. Such claim of lien shall state:

- i. The name of the delinquent Owner.
- ii. The legal description of the Lot against which the claim of lien is made.
- iii. The amount claimed to be due and owing.
- iv. That the claim of lien is made by the Developer or the Association pursuant to the terms of this Declaration.
- v. That the lien claimed against the Lot is in an amount equal to the amount of the stated delinquency.
- vi. Due demand has been made upon the defaulting or the delinquent Owner pursuant to this Declaration and that said amount was not paid within the ten days after such demand.

Upon recordation of a duly executed and acknowledged original of such claim of lien by the Cass County Recorder, the lien claimed therein shall immediately attach to the real property and become effective subject to the limitations hereinafter set forth. Each default shall constitute a separate basis for a claim of lien or a lien, but a number of defaults may be included within a single claim of lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of real estate mortgages pursuant to the statutes of the State of North Dakota.

The lien of the assessments provided for above shall be subordinate to the lien of any first mortgage, first purchase money security deed, or security deed representing a first lien on said property and including the improvement note and mortgage of the Developer. Sale or transfer of any Lot pursuant to foreclosure shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall release such Lots from liability for any assessments thereafter becoming due or from the lien thereof.

C. In addition to lien rights, the Developer or Association, as the case may be, shall have the authority to levy fines upon any homeowner who remains in default of these covenants after written notice of default. The amount of such fines shall be adjusted on a periodic basis by the Developer or Association, but the minimum amount per violation shall be set at \$50.00. Any fine not paid shall be a charge on the Lot and a continuing lien on the Lot, together with attorney's fees and the cost of recording the lien.



ARTICLE VI.

MAINTENANCE

1. Areas of Association Responsibility. The Developer, until the Association is formed and then the Association, or its duly delegated representative, shall be responsible for the management and maintenance of the roads, signage, mail boxes, common area, parks perimeter landscape and entrance to Cub Creek First Addition to the City of Horace, and all improvements located thereon, except for any part thereof which any governmental entity is maintaining or is obligated to maintain. The cost of this maintenance may be assessed as set forth in Article V. The Developer or the Board of the Association shall be the sole judge as to the appropriate maintenance of all common areas without the approval of the Board. No Owner, resident or other person shall obstruct or interfere with the Developer or the Association in performance of the Association's management or maintenance of the common areas and the improvements located thereon.

2. Lots. Each Owner of a Lot shall be responsible for the maintenance of his/her Lot, and all buildings, landscaping or other improvements situated thereon. All buildings, landscaping and other improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines, trees and plants of any type on a Lot shall be irrigated (except where prohibited by Easements), mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants, and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be visible from neighboring property or streets. All Lots upon which no Residential Units, buildings or other structures, landscaping or improvements have been constructed shall be maintained in a weed-free and attractive manner once sold by Developer.

3. Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance of a common area is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such maintenance shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

4. Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under the Declaration or Association Documents, the Developer or the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Developer or the Board may cause such action to be taken at said Owner's expense. If, at the expiration of the fourteen day period of time, the requisite corrective action has not



been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

ARTICLE VII.

GENERAL PROVISIONS

1. Enforcement. If any party shall violate or attempt to violate any of the covenants, conditions, restrictions, reservations, easements, liens and charges contained in this Declaration, it shall be lawful for the Developer, the Board (if then established) or any Owner to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate the Declaration and either prevent him/her or them from violating the Declaration and/or recover damage for such violation. Recovery may include the Developer or the Board placing a lien against any one or more Lots violating this Declaration and enforcing that lien the same as a mortgage may be enforced under North Dakota law.

2. Right to Enforce. Failure to enforce any of the covenants, conditions, restriction, easements, liens and charges now or hereafter imposed pursuant to the covenants or restrictions should not be deemed a waiver of the right to do so thereafter, nor shall it be construed as an act of acquiescence or approval on the part of the Owners.

3. Developer Assessments. The Developer, its successors and assigns shall have the right to assess the Lots within the Development annual general assessments or charges, and special assessments for capital improvements to be used exclusively to promote the improvement, maintenance and the operation of the signage, mailboxes, common areas, drainage areas and easements, parks, utility easements, perimeter landscaping, Development fencing and/or the entrance to the Development. Each Lot, whether improved or unimproved, shall be assessed at a uniform rate. If a Residential Lot is situated upon more than Lot, the two or more Lots upon which the residential unit is situated shall be assessed according to the percentages of square footage of any partial Lot which is part of a full Lot. No assessments may be made against Lots owned by Developer during the time Developer owns one or more Lots. The Developer, its successors or assigns, may place a lien upon any Lot which has not paid its assessment, when due, except that no lien may be placed upon a Lot owned by Developer. Any lien placed against a Lot may be foreclosed in the same manner as a mortgage may be foreclosed under North Dakota law.

4. Duration. The covenants, conditions, restrictions, reservations, easements, liens and charges of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by heirs, devisees, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded. After which time said covenants, conditions, restrictions, reservations, easements, liens and charges shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a two-thirds (2/3) majority of the Lots by the then-Owners has been recorded, agreeing to modify said covenants and restrictions in whole or in part, provided, however,



the easements created are perpetual and run with the real property and Lots involved, regardless of amendment or termination.

5. Severability. The invalidation of any one of these covenants, conditions, restrictions, reservations, easements, liens and charges by Judgment or Court Order shall in no way affect any other provisions, which shall remain in full force and effect.

6. Amendments. This Declaration may be amended by Developer until Developer divests itself of the responsibility for acting as the Architectural Review Committee. It shall be conclusively presumed that the Developer has not divested itself of control of the Architectural Review Committee unless there is a sworn affidavit of record with the Cass County Recorder so stating, signed by Developer or its legal representative. Before and after that affidavit has been recorded. Article III Section 4 E, Article III Section 4 I, Article III Section 4 J and Article IV Section 22 may only be amended with the written consent of Developer. This Declaration may be amended by an instrument signed by the Owners of not less than eighty (80%) percent of the Lots in Cub Creek First Addition to the City of Horace after Developer has divested itself of responsibility for architectural control by a recorded affidavit. Any instrument amending, modifying or cancelling this Declaration must be property filed and recorded with the Cass County Recorder before it shall be effective.

7. Additional Lands. The rights reserved to the Developer to subject additional land to this Declaration shall not be implied or construed so as to impose an obligation upon the Developer to subject any of such additional land to this Declaration or to the jurisdiction of the Owners. If such additional land is not subjected to this Declaration, the Developer's reserved rights shall not impose any obligation on the Developer to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by the Developer or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

8. Developer. Cub Creek Development, LLC, and its successors and assigns, is the Developer and the Declarant described herein. The Developer shall have the right to grant and convey all of its rights to enforce these declarations, covenants, conditions, reservations, easements, liens and charges described herein. The Developer shall have the right to grant and convey all of its rights to enforce these declarations, covenants, conditions, reservations, restrictions, easements, liens and charges to such community association or other entity as may be organized or established for such purposes at such time as in the sole discretion and judgment of the Developer, such entity is able to enforce the restrictions herein contained. If no community association or other entity is organized, the rights of the Developer shall vest in the Owners of the Lots when all Lots of any property are sold, or on July 1, 2031, whichever occurs last.

IN WITNESS of its terms and conditions, the undersigned, with the authority to amend as set forth in Article VII Section 6 of the Declaration, have caused this First Amended Declaration to be executed this ___ day of October, 2019.



1575542

Page: 17 of 17
10/29/2019 2:06 PM
REST \$65.00

CUB CREEK DEVELOPMENTS

DEVELOPER:

CUB CREEK DEVELOPMENT, LLC

By: Donald A. Dabbert, Jr.
Its: Managing Member

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this 29 day of October, 2019, before me personally appeared Donald A. Dabbert, Jr., known to me to be the Managing Member of Cub Creek Development, LLC, who is described in and who executed the within instrument, and acknowledged to me that he executed the same.

ZACH KAPPES
Notary Public
State of North Dakota
My Commission Expires Jan. 17 2023

Notary Public