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BRIAN KOUNOVSKY

DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENTS

K Square Developers LLC, a North Dakota Limited Liability Company, whose post office address is 89 Cedar Ave. N Fargo ND 58102, owner of the real property described as Valley View 4th and 5th Addition to the City of Fargo, hereby declares that in order to promote and protect harmonious occupancy, aesthetics and property values of the Premises for current and future land owners, all of said Premises shall be subject to the covenants, conditions, reservations, restrictions and easements (collectively "Restrictions") hereinafter set forth, and that such Restrictions shall apply to and be a part of every conveyance or deed to said Premises or any part thereof, as if fully incorporated in any deed or conveyance thereof. The Restrictions shall be deemed and considered as covenants running with the Premises when conveyed or deeded and shall be binding on the heirs, executors, administrators, successors and assigns of any person to whom any part of the Premises may have been conveyed until 10 years after the date this Declaration is recorded, on which date these Restrictions shall be automatically extended for a term of 10 years, and thereafter in successive 10-year terms, unless on or before the end of the initial period, or any such extension period, a majority of the then owners of Lots shall vote to declare a termination, change or modification of the Restrictions, and an instrument signed by a majority of such owners evidencing such termination, change or modification has been recorded in the office of the Cass County Register of Deeds. The Restrictions may be amended effective prior to the end of the initial 10-year term, or any 10-year extension term, only upon the written agreement of seventy-five percent of owners of Lots. If these Restrictions expire, any and all remedies for a breach committed or suffered prior to expiration, shall survive such expiration.

1. DEFINITIONS.

For purposes of this instrument, the following definitions shall apply:

- (a) Developer - shall refer to K Square Developers, LLC, a North Dakota limited liability Company, or its successors and assigns under instrument expressly conveying the rights of Developer hereunder.
- (b) Lot - shall refer to any parcel of real property referred to as a numbered or lettered lot per the subdivision plats of the Premises, or any replat thereof.
- (c) "Premises" or "Property" - shall refer to all real property defined as the Premises on page 1 hereof, and shall specifically include all Lots. Any Restriction herein created as to the Premises shall also expressly apply to all Lots within the Premises.



2. LAND USE AND BUILDING TYPE.

(a) The use of all Lots shall conform to zoning ordinances of the City of Fargo, and except as to uses or improvements expressly prohibited hereunder, subject to such variances or special/conditional use permits as may be granted by the City of Fargo. No improvement or structure whatsoever other than a residential dwelling, patio walls, swimming pools, outbuildings, customary and reasonable landscaping, garages and fences, all as may be subject to limitations herein set forth, may be erected, placed or maintained on any Lot.

(b) These lots are not included in this declaration, all of block 5 Valley View 4th and Block 5 Valley View 5th which is Limited commercial Zoning with a Conditional overlay and Multi Family.

3. DWELLING SIZE AND OTHER CHARACTERISTICS.

(a) The developer of Valley View 4th and 5th Addition shall review all plans for the addition until the time that residences have been constructed and completed on all properties.

(b) Procedure for submission of plans and Specifications, plans will be submitted to the developer. Approval or disapproval of those plans will be made in writing within ten days after the receipt of those plans. Approval shall not be arbitrarily withheld or delayed, it being the intention of the review committee to grant or withhold the approval for the purpose for establishing a quality, restricted residential district, free from objectionable or value destroying features and in conformity with the governing zoning codes, building codes and other applicable regulations then in force.

(c) Residential dwellings constructed on the following Lots shall meet the following minimum square footage requirements, unless waived in writing by Developer:

DWELLING STYLE	Lots 26-45 Block 2 Valley View 4 th Addition; and Blocks 1, 2, 3 and 4 of Valley View 5 th Addition.	Lots 1-10 block 1, Lots 1-25 and 46-60 Block 2, Lots 1-8 Block 3, Lots 1-8 Block 4, Valley View 4 th Addition	
Rambler, Single Level or Modified Two-Story	1,100 sq. ft. on level(s) entirely above grade	1650 sq. ft. on level entirely above grade.	



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Three or more Level Split	1,300 sq. ft. total for top 2 levels	Not allowed	
Two Story	2,000 sq. ft. total on all levels entirely above grade	950 sq. ft. on first level entirely above grade and a total of 2200 sq. ft. on all levels entirely above grade.	
Bi-Level	2,100 sq. ft. total	Not allowed	

The above stated minimum square footage requirements do not include basements, garages, decks, or porches.

- (a) No evaporative cooler shall be placed, installed or maintained on the roof or wall of any building or structure.
- (b) Any storage sheds or other outbuildings shall be constructed of material of like quality, nature and color as that of the residential dwelling. Without limiting the foregoing, siding and roofing/shingles for any outbuildings shall match that on the home.
- (c) Driveways shall be constructed of concrete, bituminous asphalt or like "hard-surfaced" material. Clay, gravel or like materials shall not be permitted for driveway surfaces.
- (d) Minimum of 2 siding textures to be used on sides of homes facing streets or avenues not including the 10% hard surface in letter e.
- (e) Minimum of 10% hard surfaces to be used on the front of homes.
- (f) Gable ends facing streets or avenues shall have "Band Board" or other change in siding different from the main body of the house incorporated into the siding.

4. CONSTRUCTION TIME AND REQUIREMENTS.

- (a) Construction of all residential dwellings on a Lot shall be substantially completed within 12 months after the earlier to occur of (i) topsoil being scraped and piled, or (ii) issuance of any building permit for the structure. If construction is not commenced within 12 months after topsoil is scraped and piled, topsoil shall thereafter be promptly replaced and leveled. Contractors, subcontractors and materialmen shall perform construction



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activities on any Lot in a neat and clean manner, and shall keep the Lot and all surrounding property free of debris, trash, and discarded building materials. Prior to an owner's occupancy of a dwelling, no soil shall be removed from a lot without the written consent of Developer. Yards may be sodded or seeded grass. Sodding and/or seeding shall be completed as soon as weather permits following substantial completion of the residential dwelling, but not later than November 15th of the calendar year following the calendar year the residential dwelling is substantially completed. Until the sodding/seeding is completed, the owner of the Lot shall maintain the property in a condition free of noxious weeds.

- (b) No storage of building materials on a Lot shall be permitted outside of the residential dwelling or outbuilding after the 12-month construction period. No construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion within the time prescribed herein, is in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto, and conforms to usual construction practices in the area. No construction activities shall be carried on in such a way as to create a health hazard or unreasonably interfere with the use and enjoyment by any Lot owner or his/her family. Should construction on, or maintenance of, any Lot be undertaken in a manner inconsistent with the Restrictions imposed in this Section, Developer may immediately undertake such action as is necessary to render any Lot consistent with this Section and thereafter the owner of any such Lot shall pay Developer upon demand Developer's costs of doing so plus a 15% administrative fee.

5. **PARTIAL RESIDENTIAL IMPROVEMENTS.** No basement shall be constructed for temporary residential purposes and no basement structure shall be used for residential purposes unless and until the entire residential dwelling has been erected thereon and complies with the building code of the City of Fargo. Nor shall any trailer, camper, recreational vehicle, tent, shack, garage, barn, outbuilding or the like erected or located on or near any Lot at any time be used as a residence, temporary or permanent. The foregoing Restrictions shall not prohibit a Lot owner from erecting a tent or placing a camper or recreation vehicle on a Lot for use by occupants or guests of a Lot for a period not to exceed 72 hours consecutively and 120 hours in any calendar month.

6. **ALTERATIONS.** No residential dwelling shall be constructed elsewhere and



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moved in or on any of the Lots without the prior written consent of Developer, and no structure when once erected shall be at any time altered or changed so as to permit its use in any manner which would be in violation of these Restrictions.

7. **TANKS AND OTHER STORAGE.** No above or below ground tanks of any kind shall be erected, placed or permitted on any part of the Premises, except as may be located inside a residential dwelling. All clotheslines, garbage cans or other trash receptacles, equipment, coolers, wood piles or storage piles shall be screened to completely conceal them from view of neighboring Lot owners, roads, streets and sidewalks.
8. **UTILITY LINES, RADIO AND TELEVISION ANTENNAE.** All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. There shall be no exposed, exterior or freestanding microwave, television, radio, Internet or other electronic media towers or antennas, except that up to two antennas/dishes attached to the residential structure shall be permitted. Dishes shall each be less than 36 inches in diameter. Any dishes or antennas shall be no higher than 3 feet above the nearest roof deck. Whenever technologically feasible, dishes and antennas shall be installed on the rear of all residential dwellings, in a manner and location to minimize their view from streets (excluding alleys). Notwithstanding the foregoing, electric transmission lines of utility companies (and additions to and replacements of same) existing as of the date hereof shall be permitted.
9. **COMMERCIAL AND RECREATIONAL VEHICLES.** Except as to contractors, subcontractors and materialmen during construction on a Lot, and except as allowed under Section 5, no commercial vehicles, construction equipment, boats, recreational vehicles, campers, snowmobiles, buses, motorcycles, wagons, sleighs, mobile homes, trailers of any kind or the like shall be permitted on the Premises, unless kept in a garage or other completely screened and enclosed area so as to be out of view of neighboring Lot owners, roads, streets and sidewalks. Notwithstanding the foregoing, such items are permitted on the Premises and not subject to the foregoing Restriction for the purpose of loading and unloading and for temporary, non-regular storage for less than 72 consecutive hours. A Lot owner may not regularly store or permit the storage of any such item on the Premises and evade the foregoing Restriction by moving or removing the item periodically within the 72-hour temporary storage exception.
10. **HORSES AND PETS.** No horses shall be kept or stabled on the Premises. No



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animals of any kind other than customary household pets (including birds) shall be kept or allowed on any part of the Premises. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be maintained on any portion of the Premises.

11. **MINING.** No derrick or other structure designed for use in burrowing for oil or natural gas shall be erected, placed or permitted upon any part of the Premises nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or minerals of any kind be produced or extracted anywhere in the Premises. No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted on any part of the Premises nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any part of the Premises.
12. **FENCES.** All Fencing provided by the builder or owner, or anyone other than K Square Developers LLC., shall require the written approval of K Square Developers LLC., prior to installation. No fencing shall be permitted to extend beyond the front of the primary structure facing the front of the lot except on corner lots as approved by K Square Developers, LLC. No fence shall exceed six (6) feet in height. Chain link fence is not permitted.
13. **TREES.** Lot owner shall plant boulevard trees within twelve months of occupying his/her residential dwelling. The type, size and location of trees shall be as directed by the City of Fargo.
14. **NUISANCES.** Except within 24 hours prior to the next scheduled trash removal, all trash, rubbish or debris of any kind whatsoever including receptacles for same, shall be confined to the interior of any structures or screened as provided in Section 8. No Part of the Premises shall be used for the storage of any property or things or any other purpose that will cause it to appear untidy, unclean or obnoxious to an average and reasonable surrounding property owner. No substance, thing or material may be kept on any part of the Premises that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of an average and reasonable surrounding property owner. The Restrictions set forth in this Section shall not apply during any construction activities, so long as such construction activities conform to the Restrictions set out at Section 4 above.
15. **UTILITY EASEMENTS.** Perpetual (or the longest period allowed by law) easements are hereby dedicated, created and established for the installation and maintenance of electricity, gas, water, sanitary sewer, storm sewer, cable television, Internet access and any other like public utility services, now



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contemplated or hereafter first available. The location of such easements shall be in the areas designated as "drainage and utility easement" on the plat of the Premises. If any portion of the Premises is replatted, the easements hereby dedicated terminate or "shift" consistent with "drainage and utility easements" designated on such replat. These easements are hereby dedicated and made a part hereof as easements and restrictions on the use of property in the Premises. Within drainage easements, lawns are allowed, but no structure, planting or other materials shall be placed or permitted to remain that interfere with the installation and maintenance of drainage or utility services. The easement area and all improvements thereon shall be maintained continuously by the owner of the Lot, except for those structures or improvements for which a public authority or utility provider is responsible.

- (a) All claims for damages, if any, arising out of the construction, maintenance and repair of the utilities or on account of temporary or other inconvenience caused thereby against the Developer or any utility company or municipality or any of their agents or servants are waived by Lot owners; provided such utility provider or municipality shall restore soil and grass affected, but shall not be obligated to restore any items placed in an easement area in violation of the Restrictions hereby imposed.
- (b) Developer reserves the right to change, lay out, create new or discontinue any street, avenue, or way shown on the plats of the Premises not essential for ingress and egress from a Lot it does not own or the Premises, subject to the approval of the appropriate governmental authority.

16. **WATER ISSUES.** All Lot owners acknowledge that certain drainage ditches or retention/detention ponds may be constructed on the Premises and areas surrounding the Premises. 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 City of Fargo, Cass County, and 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 drainage ditch or retention pond, except as to any governmental authority responsible for the normal maintenance thereof.

17. **MORTGAGES.** The breach of any of the foregoing Restrictions shall not defeat



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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 Premises, 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.

18. **RIGHT TO ENFORCE.** The Restrictions set forth herein shall run with the Lots and all property within the Premises and shall bind the present owner or owners of Lots and any property within the Premises, their heirs, executors, administrators, successors and assigns and all parties claiming by, through or under them. No Restriction, however, shall be personally binding on any person except in respect to breaches committed or continuing during his, her or their ownership of the particular property upon which such violations occurred. Except where the right to enforce a Restriction is reserved to Developer (e.g. certain portions of Sections 3 and 4 above), for any violation of the Restrictions herein set forth, the owner of any Lot shall have the right to sue for and obtain an injunction, preventive or mandatory, to prevent the breach of an obligation, or to enforce the performance of an obligation, or to maintain a legal action for damages against the offender. No Lot owner or other party may bring an action against Developer for Developer's failure to enforce a Restriction. Further, the City of Fargo may, but shall not be obligated to, remedy the violation of any Restriction, in which case the cost thereof shall be immediately due and payable to the City and the City may undertake to collect such sum in any manner, including the imposition of an assessment(s) against the applicable Lot.

19. **WAIVER.** No delay or omission on the part of Developer or the owners of any Lots in the Premises in exercising any right, power or remedy herein provided, in the event of any breach of the Restrictions, shall be construed as a waiver thereof or acquiescence therein and no right of action shall lapse. No action may be brought or maintained by anyone whatsoever against Developer for its failure to bring any action for any breach of these Restrictions.

20. **COMPLIANCE WITH LAWS.** The Premises shall be subject to any and all rights and privileges which the City of Fargo or the County of Cass or State of North Dakota may have acquired through dedication or the filing or recording of maps or subdivision plats as authorized by law. The Restrictions herein created shall be in addition to, and not in substitution or replacement for any zoning ordinance, land use law, building code or other applicable law of the City of Fargo, County of Cass, State of North Dakota or other like municipality or governmental authority having jurisdiction over the Premises.



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21. **SEVERABILITY.** In the event any one or more of the foregoing Restrictions is declared for any reason by a court of competent jurisdiction to be null and void, the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of the Restrictions not declared to be void or unenforceable, but all of the remaining Restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

Dated this 10th day of November, 2015.

K SQUARE DEVELOPERS, LLC

By: Brian Kounovsky

Its: President

STATE OF North Dakota)
) ss:
COUNTY OF Cass)

The foregoing instrument was acknowledged before me this 10 day of November, 2015, by Brian Kounovsky, the President of K SQUARE DEVELOPERS, LLC, a North Dakota Limited Liability Company, on behalf of the Limited Liability Company.

[Signature]
Notary Public

(SEAL)

LANCE MOEN
Notary Public
State of North Dakota
My Commission Expires Nov. 1, 2017

RECORDER'S OFFICE, CASS COUNTY, ND 11/10/2015 9:24 AM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

by Teresa A. Kurling Deputy 1463155

