DECLARATION OF RESTRICTIVE COVENANTS

Brooks Harbor Development, LLC, a North Dakota limited liability company, whose post office address is c/o Thomas McInnes, 3217 Fiechtner Drive, Fargo, ND 58103, owner of:

> **Lots 1-95, Block 3; Lots 1-16, Block 4; Lots 1-10, Block 5; Lots 4-15, Block 6; and Lots 1-5, Block 7; all in Brooks Harbor First Addition to the City of West Fargo, Cass County, North Dakota; and Lots 1-9, Block 1; Lots 1-10, Block 2; Lots 1-12, Block 3; Lots 1-12, Block 4; Lots 1-53, Block 5; Lots 1-12, Block 6; and Lots 1-14, Block 7; all in Brooks Harbor Second Addition to the City of West Fargo, Cass County, North Dakota (all such lots, collectively, the "Property"),**

hereby declares that in order to protect the community and future individual land owners, all of said Property 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 property or any part thereof, the same as though fully incorporated in any deed or conveyance thereof. The Restrictions shall be deemed and considered as covenants running with the Property 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 Property 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 Brooks Harbor Development, 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 plat of the Property, or any replat thereof.

(c) "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.

2. LAND USE AND BUILDING TYPE. The use of all Lots shall conform to zoning ordinances of the City of West Fargo, North Dakota ("City"), and unless expressly prohibited under these Restrictions, such further uses as may be allowed by variance or special use permit permitted thereunder.

3. DWELLING SIZE AND OTHER CHARACTERISTICS.

(a) Residential dwellings constructed on the following Single Family/Twin home Lots shall meet the following minimum square footage requirements, unless waived in writing by Developer:

Lots	Three or More Level Split	Rambler or Single Level	Two Story	Bi-Level
Lots 1-95, Block 3; and Lots 1-16, Block 4; all in Brooks Harbor First Addition.	1700 sq. ft. total for top three levels.	1200 sq. ft. on level entirely above grade.	1600 sq. ft. total for all levels entirely above grade	1700 sq. ft. total on both levels
Lots 1-10, Block 5; Lots 4-15, Block 6; and Lots 1-5, Block 7; all in Brooks Harbor First Addition; and Lots 1-9, Block 1; Lots 1-10, Block 2; Lots 1-12, Block 3; Lots 1-12, Block 4; and Lots 1-53, Block 5; Lots 1-12, Block 6; Lots 1-14, Block 7; all in Brooks Harbor Second Addition.	2100 sq. ft. total for top 3 levels. (excludes fully excavated basement)	1500 sq. ft. on level entirely above grade	2000 sq. ft. on all levels entirely above grade	2200 sq. ft. total on both levels

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

(b) On Single Family/Twin home Lots, no evaporative cooler shall be placed, installed or maintained on the roof or wall of any building or structure.

(c) On Single Family/Twin home Lots, all garages shall be attached to the residential dwelling.

(d) The tops of all foundations shall be a minimum of 24 inches above curb level.

(e) 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. All outbuildings will be limited to a maximum size based on the following:

Lots 1-81 of block 3, First Addition; 225 square feet maximum.

Lots 1 & 2 of block 7, Second Addition; 500 square feet maximum.

All other lots in First and Second Addition; 375 square feet maximum.

(f) 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.

(g) Excluding garage doors, the lowest 4 feet above grade on the front of the garage portions of all residential dwellings located on the following Single Family/Twin home Lots shall be comprised of brick, stone or cultured stone: Lots 1-95, Block 3; and Lots 1-16, Block 4; Brooks Harbor First Addition. For all other Single Family Lots in the Property, the lowest 2 feet above grade on the front of residential dwellings, including the garage, shall be comprised of brick, stone or cultured stone, excluding any portions thereof comprised of windows, entry doors or garage doors.

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 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 from their work. No soil shall be removed from the Property without the written consent of Developer. Sodding and/or seeding of the entire Lot shall be completed as soon as weather permits following substantial completion of the residential dwelling, but not later than September 1 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, but shall not be obligated to, immediately undertake such action as is necessary to render any Lot consistent with this Section and thereafter bill the owner of any such Lot for the costs of doing so. The owner shall remit payment for such bill within 10 days after receipt of same.

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 City. Nor shall any trailer, tent, shack, garage, barn, outbuilding or the like erected on 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. **HOMES BUILT ON SITE/ALTERATIONS.** Unless waived in writing by Developer, all residential dwellings shall be "stick-built" on site, and no residential dwelling shall be constructed elsewhere and moved in or onto any of the Lots. 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. **DRAINAGE.** Drainage, drainage ways and drainage easements shall at all times conform to requirements of City and/or Cass County and of all lawful public authorities, including the engineer or other appropriate governmental authority having jurisdiction thereof. No outbuildings, gardens, play areas or other permanent features shall be placed within drainage easements as shown on the plat for the Lots.

8. **TANKS AND OTHER STORAGE.** No above or below ground tanks of any kind shall be erected, placed or permitted on any part of the Property, except for propane tanks associated with and connected to a gas grill or any tanks located inside a residential dwelling or permitted outbuilding. 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 Lots, roads, streets and sidewalks.

9. **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 or exterior microwave, television, radio, Internet or other electronic media towers or antennas, except that a maximum of two antennas/dishes, each less than 30 inches in diameter, are allowed outside of residential dwellings or outbuildings on each Single Family Lot, and a maximum of two antennas/dishes, each less than 30 inches in diameter, are allowed outside of each living or business unit on each Lot other than a Single Family Lot. 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.

10. **COMMERCIAL VEHICLES.** Except as to contractors, subcontractors and materialmen during construction on a Lot, 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 Property, 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 Property 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 Property and evade the foregoing Restriction by moving or removing the item periodically within the 72-hour temporary storage exception.

11. **HORSES AND PETS.** No horses shall be kept or stabled, and no live chickens or other fowl shall be permitted, on the Property. Only customary household pets shall be kept or allowed on any part of the Property, and only in compliance with all City requirements. Breeding, raising or boarding of animals for commercial purposes on the Property is prohibited.

12. **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 Property nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or minerals of any kind be produced or extracted anywhere in the Property. No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted on any part of the Property nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any part of the Property.

13. **PARK-DEDICATED LOTS.** Lot 3, Block 6, Brooks Harbor First Addition has been deeded to The West Fargo Park District, a political subdivision of the State of North Dakota (the "Park District"). The Park District may use such lots, in part, but not limited to, for the construction and maintenance of a water retention pond, playground and bike paths. The Park District may assess benefitted property owners for all or portion of improvements it makes to such lots.

14. **FENCES/BERMS.** Except as provided hereafter, a Lot owner may construct a fence or fences on portions of a Lot to the rear of the two corners of the residential dwelling that are closest to the front and side yards of a Lot. Any/all fences on all Lots shall be constructed only of cedar, synthetic material or coated chain link. Any cedar fences shall be treated, painted or stained regularly to be kept in good visual appearance. Any broken or fallen portions of fences shall be promptly repaired with matching materials. If any fence is of a type where the posts or rails are exposed on only one side of the fence, all such posts or rails shall face inward towards the Lot on which the fence is constructed.

15. **BOULEVARD TREES/CERTAIN TREES AND PLANTINGS.** The owners of all other Lots shall plant, water, trim, maintain and replace such boulevard tress on his/her Lot as may be under City requirements.

16. **SIDEWALKS.** Owners of all Lots over which sidewalks pass, or which are adjacent to any sidewalks, shall be responsible for removing snow and debris from such sidewalks over or adjacent to their Lots. The owners of all Lots acknowledge they must install sidewalks on the fronts of their Lots, and if they fail to do so, will be assessed by City for the costs of installing such sidewalks. Owners of Lots acknowledge and agree they will be assessed for sidewalks installed by City on and/or otherwise benefitting their Lots.

17. **NUISANCES.** Except temporarily prior to the next weekly trash removal day, and then only in compliance with other Restrictions, no part of the Property shall be used in whole or in part for storage of rubbish or debris of any kind whatsoever. No Part of the Property shall be used for the storage of any property or things 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 Property 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 pertaining thereto.

18. **UTILITY EASEMENTS.** Lot owners acknowledge and recognize certain portions of their Lots may be subject to easements for, among other things, drainage, pond access, storm water storage, planting and buffer, monument signs, and utilities, including the installation and maintenance of electricity, gas, water, sanitary sewer, storm sewer, cable television, internet access and any other like public utility services, currently or later available. The location of such easements shall be of record by existing or future plats or re-plats or separate instrument. Within any such easements, lawns are allowed, but no structure, planting or other materials shall be placed or permitted to remain that interfere with the purpose of, or installation and maintenance of infrastructure within, such easements. The surface area of a Lot subject to any such easement 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 of its agents or servants are waived by Lot owners.

(b) Developer reserves the right to change, lay out, create new or discontinue any street or road, or any easement on a Lot owned by Developer, all as may be shown on the plats of the Property, so long as the same is not reasonably necessary for servicing a Lot owned by someone other than Developer, subject to the approval of the appropriate governmental authority.

19. **WATER ISSUES.** 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 will fluctuate from time to time.

20. **MORTGAGES.** The breach of any of the foregoing Restrictions 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.

21. **RIGHT TO ENFORCE.** The Restrictions set forth herein shall run with the Lots and all property within the Property and shall bind the present owner or owners of Lots and any property within the Property, 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 continued 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, 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, City 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 City and City may undertake to collect such sum in any manner, including the imposition of an assessment(s) against the applicable Lot.

22. **AMENDMENTS.** This Declaration may be amended by Developer at any time until Developer no longer owns any of the Lots; provided, however, the Developer 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 the Developer, unless the then Owner of such Lot consents in writing to the amendment. After Developer has divested itself of all Lots, this Declaration may be amended by an instrument signed by the owners of not less than 80% 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, Developer may unilaterally remove any Lots from the scope of this Declaration by instrument recorded in the Office of the Recorder for Cass County, North Dakota, and should any of the Lots be re-platted by Developer after the date this Declaration is recorded, any Lots resulting from the re-plat shall be automatically released and removed from this Declaration.

23. **WAIVER.** No delay or omission on the part of Developer or the owners of any Lots in the Property 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.

24. **COMPLIANCE WITH LAWS.** The Property shall be subject to any and all rights and privileges City or Cass County or State of North Dakota may have acquired through dedication or the filing or recording of 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, County of Cass, State of North Dakota or other like municipality or governmental authority having jurisdiction over the Property.

25. **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 ____ day of _____, 2013.

BROOKS HARBOR DEVELOPMENT, LLC

By:_____
Its: President

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

The foregoing instrument was acknowledged before me this _____ day of_____, 2013, by Thomas McInnes, President of Brooks Harbor Development, LLC, a North Dakota limited liability company, on behalf of the limited liability company.

(SEAL) _____
Notary Public