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Plains Title LLC      8/22/2019 11:54 AM  
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RECORDER'S OFFICE, CASS COUNTY, ND      8/22/2019 11:54 AM  
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.  
DEBORAH A. MOELLER, COUNTY RECORDER

by Sheena Garcia, Dep      **1569758**  
Recorded Electronically



**TERRA GARDENS ADDITION DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS,  
RESERVATIONS, EASEMENTS, LIENS AND CHARGES**

THIS DECLARATION by Peaceful Plains II, Inc. hereinafter referred to as "Developer," who desires to provide for the preservation of the values and amenities of the property described in Article II of this Declaration, hereinafter called the "Property." To this end, the Property is subject to the covenants, conditions, restrictions, reservations, easements, liens and charges set forth in this Declaration, each and all of which is and are for the benefit of the Property and each Owner. This Declaration shall run with the land and be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, and shall inure to the benefit of each Owner thereof.

NOW, THEREFORE, Developer declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, liens and charges (sometimes referred to as "covenants and restrictions") set forth in this Declaration.

**ARTICLE I**

**DEFINITIONS**

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

1. "Association" shall mean the Terra Gardens Addition Homeowners' Association, which is responsible for the enforcement of this Declaration and preservation of values and amenities of the Property and the Lots therein. Each Owner is a member of the Association.

2. "Board" shall mean and refer to the Board of Directors of the Association. "Board," "The Board," and "The Board of Directors" may all be used interchangeably in both the Bylaws and Declaration.
3. "Declaration" shall mean the covenants, conditions, reservations, restrictions and easements as set forth in this Declaration, as may from time to time be amended.
4. "Developer" shall mean and refer to Peaceful Plains II, Inc., and its successors and assigns, if any successors or assigns shall acquire a majority of the undeveloped acreage of the Property, including but not limited to undeveloped residential Lots, for purpose of development.
5. "Lot" shall mean and refer to any plot of land shown upon any recorded Plat or Re-Plat of the Property or property added by way of a Subsequent Declaration. If a Lot as shown on the Plat or a portion thereof is added to an adjacent Lot, then the same shall be considered as one Lot for purposes of this Declaration.
6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract for deed buyers, but excluding those having an interest merely as security for the performance of an obligation, such as mortgagees or contract for deed sellers. Those having a right to purchase under an option or purchase agreement are not considered Owners.
7. "Property" shall mean that real property described more specifically in Article II of this Declaration.
8. "Subsequent Declaration" shall mean the covenants, conditions, reservations, restrictions and easements as set forth in any Declaration that will be recorded against any re-plat of the Property, which will set forth specific covenants, conditions, reservations, restrictions, and easements that will apply to certain Lots as set forth in the Subsequent Declaration. Any Subsequent Declaration will add supplemental covenants and restrictions but will not replace this Declaration.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

The Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is described as follows:

Terra Gardens Addition to the City of Horace, a replat of Auditor's Lots 21 & 22 of the North Half of Section 20, Township 138 North, Range 49 West, Cass County, North Dakota (and any re-plats thereof).

EXCEPTING THEREFROM:

Lot 5 Block 5, in Terra Gardens Addition to the City of Horace.

All of which real property shall hereinafter be called the "Property." Portions of the Property that 1) have been or will be dedicated to the public, whether for park space, right-of-way, or other uses, or 2) will be conveyed by the Developer to the Homeowners' Association as green space or landscaped areas shall not be subject to this Declaration to the extent the intended use of the dedicated or conveyed property is inconsistent with this Declaration.

The Property consists of a first phase of multi-phased development initially consisting of three (3) Lots that have been dedicated to the public, and seventy-four (74) residential Lots. It is intended that this Declaration, as amended from time to time, shall apply to the Property, and that any Subsequent Declaration recorded against a portion of Lot 5 Block 5 will add that portion of Lot 5 Block 5 Terra Gardens Addition to this Declaration, and this Declaration will govern the use of said portion of Lot 5 Block 5 Terra Gardens Addition by way of the Subsequent Declaration. The Subsequent Declaration shall also provide supplemental covenants and restrictions that will govern the use of the Residential Lots specified within the Subsequent Declaration.

Generally, and without limiting the terms of this Declaration or any Subsequent Declaration, this Declaration is intended to create a Review Committee for the Property and all property added to this Declaration by way of a Subsequent Declaration, provide governance for the process of obtaining Review Committee approval for the Property and all property added to this Declaration by way of a Subsequent Declaration, provide general architectural control provisions that govern all of the Property and all property added to this Declaration by way of a Subsequent Declaration, provide construction requirements for all of the Property and all property added to this Declaration by way of a Subsequent Declaration, create a Homeowners' Association for the entire Property and all property added to this Declaration by way of a Subsequent Declaration, provide general enforcement provisions relating to all of the Property and all property added to this Declaration by way of a Subsequent Declaration, and to provide certain architectural control provisions that only apply to the residential Lots platted by the Terra Gardens Addition Plat. Any Subsequent Declaration shall supplement this Declaration by

providing architectural control provisions that apply to the residential Lots described in the Subsequent Declaration.

By way of example, and without limiting the foregoing provisions, this Declaration will set forth building size requirements (and other covenants and restrictions) governing only Lots One (1) through Thirteen (13), Block One (1); Lots One (1) through Eighteen (18), Block Two (2); Lots One (1) through Fourteen (14) and Sixteen (16) through Twenty-nine (29), Block Three (3); Lots One (1) through Eleven (11), Block Four (4); and Lots One (1) through Four (4), Block Five (5). After Terra Gardens Second Addition Plat (a re-plat of a portion of Lot Five (5), Block Five (5) Terra Gardens Addition) is recorded, a Subsequent Declaration will be recorded by the Developer that will provide specific building size requirements (and other covenants and restrictions) that will govern the residential Lots platted by the Terra Gardens Second Addition Plat. As a result, the covenants contained herein are not applicable to Lot Five (5), Block Five (5). In the future, Developer may record covenants against all or a portion of Lot Five (5), Block Five (5) to govern the use of the property described therein. Further, any property added upon which Subsequent Declarations are filed would be incorporated into the Terra Gardens Homeowners Association.

If any conflict exists between the terms of this Declaration and any Subsequent Declaration, this Declaration shall govern.

### ARTICLE III

#### ARCHITECTURAL CONTROL

1. **TERRA GARDENS ADDITION ARCHITECTURAL REVIEW COMMITTEE.** There is hereby established the Terra Gardens Addition Architectural Review Committee ("Review Committee") for the Property which shall be comprised of the Developer until the time that residences have been constructed and completed on all Lots (including future Lots added to this Declaration by way of a Subsequent Declaration), or until the time the Developer decides to divest itself of responsibility for Architectural Control. When such control is relinquished, the responsibility shall be vested in a committee comprised of three Owners, who shall be elected by all Owners in the subdivision. 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 properties or that the Developer has not divested itself of responsibility for Architectural Control unless there is a sworn affidavit of record stating that one or the other of said factual circumstances exists.

2. **PROCEDURE FOR SUBMISSION OF PLANS AND SPECIFICATIONS.** The Plans (for which receipt must be acknowledged in writing) will be submitted to the Review Committee.

Approval or disapproval of those plans will be made in writing within five (5) days after the receipt of those plans. In the event the Review Committee fails to approve or disapprove of the plans and related documents within this five (5) day period, approval will not be required and the related covenants shall be deemed to have been met. 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 of 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.

**3. ARCHITECTURAL CONTROL.** No building, fence, wall, landscaping feature, pool, play structure, 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 from time to time.

- A. Plans submitted for approval shall include the following:
  - i. One complete set of house plans. The house plans should indicate construction materials and specifications, roofing material, and exterior finishes.
  - ii. One site plan. The site plan should indicate the basement outline with projections shown as a dotted line. The garage footprint and exterior steps or decks should be indicated. The site plan should 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, driveway locations and sizes.
- B. No improvement or structure whatsoever other than a residential dwelling, patio walls, swimming pools, accessory buildings allowed by this Declaration or a Subsequent Declaration, customary and reasonable landscaping, and fences allowed by this Declaration or Subsequent Declaration, all as may be subject to the Review Committee and limitations set forth herein, may be erected, placed or maintained on any Lot.
- C. The Review Committee may disapprove plans and specifications if, in the Review Committee's discretion, the proposed improvement is inconsistent with the covenants and restrictions set forth in this Declaration, or if, in the Review

Committee's discretion, the proposed improvement interferes with the preservation of value of the Property. Any variance approved by the Review Committee from these covenants and restrictions shall not be deemed precedential.

- D. The top of foundation or lowest opening of all residential structures within the Property shall be the greater of 908.50 or 1.75' above the top of curb directly in front of the structure, but the top of foundation shall be no higher than 2.75' above the top of curb in front of the structure. In addition, the Lot shall be graded in such a manner that the finished grade shall correspond with the Lot corner elevations set by the Review Committee's civil engineer.
- E. Accessory structures such as pools, pool houses, gazebos, utility buildings, storage buildings, additional garages, lean-to, car-port, decks and play structures should be indicated on the site plan. No accessory structure will be permitted without the written approval of the Review Committee, regardless of whether any such accessory structure is allowed by this Declaration or a Subsequent Declaration.
- F. Any and all solar heating devices or satellite dishes, TV and radio antennae must be approved by the Review Committee.
- G. The exterior minimum square footage requirements as set forth in this Declaration or in a Subsequent Declaration shall apply. Square foot calculations will not include basements, open porches and decks or garages. A reduction of the square footage with respect to any of the Lots may be granted by Review Committee, if the Review Committee believes that the overall curb appeal of the proposed dwelling does not diminish the look or the property values of the surrounding neighborhood. Any reduction shall be evidenced by a written certificate of variance issued by the Review Committee.
- H. No residence shall exceed two and a half stories in height when viewed from the street. Roof slopes of not less than 3 in 12 are required unless otherwise approved by the Review Committee. Roof slopes of 7 in 12 and greater are encouraged.
- I. All residences shall have a minimum attached two-stall garage.

- J. No white, light, or bright colored roofs shall be permitted unless approved by the Review Committee. No evaporative cooler shall be placed, installed or maintained on the roof or wall of any building or structure. All coolers shall be concealed.
- K. The use of all Lots shall conform to zoning ordinances of the City of Horace, 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 Horace. Any approval from the Review Committee shall not provide the Owner consent to violate any ordinance of the City of Horace.
- L. The design of each residence shall be considerate of the site plan of neighboring residences which have been previously constructed to promote privacy of each residence and to avoid nuisance to existing residences.
- M. No building shall be erected on any Lot unless the side Lot clearances and the front line setbacks are in compliance with the City of Horace zoning ordinances for residential zoning districts unless variances are approved by the Review Committee and the City of Horace. Eaves and steps shall also be constructed in such a way so as to comply with such zoning ordinances and restrictions, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot. This Declaration or a Subsequent Declaration may provide front yard or side yard setbacks which are more restrictive than the City of Horace zoning ordinances.

**4. CONSTRUCTION TIME AND REQUIREMENTS.** Construction of all primary structures shall be substantially completed within twelve (12) months after issuance of any building permit for the structure. Landscaping shall be completed as soon as weather permits following substantial completion of the primary structure, but in any event, within fifteen (15) months of issuance of the building permit. 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.

No storage of building materials on a Lot shall be permitted outside of the residential dwelling or outbuilding after the fifteen (15) 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 Owner. Should construction on, or maintenance of, any Lot be undertaken in a manner inconsistent with the Restrictions imposed by this Declaration, Developer may immediately undertake such action as is necessary to render any Lot consistent with this Declaration and thereafter the Owner of any such Lot shall pay Developer upon demand Developer's costs of doing so plus a fifteen (15%) percent administrative fee.

5. **NEW CONSTRUCTION.** All improvements constructed on Lots shall be new construction and no buildings or other structures shall be moved from other locations onto any Lot. 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, the Developer will have the option to purchase the Lot back from the owner upon payment to the Owner of ninety (90%) percent of the price originally paid to Developer for the Lot.

#### ARTICLE IV

##### GENERAL COVENANTS AND RESTRICTIONS

The property shall be subject to the following additional restrictions:

1. **LOT DRAINAGE CONTROL.** All Lots shall be graded to the finished design grades as designed by the engineering firm appointed the Review Committee. Each Lot shall be kept and maintained to be in compliance with current storm water regulations until such times when the Lot is sodded or seeded. 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.

1. **FENCES/BERMS.** All fencing provided by the 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 of the Lot except on corner Lots approved by Review Committee. No fence shall exceed six (6) feet in height. All fencing must be made of maintenance-free material; no chain-link or wood fence will be permitted. All park and pond Lots must be of opaque design and constructed so as to not block the view corridors to the park or pond (as applicable) from adjacent Lots or the public right of way. Each Owner shall be responsible for the continued maintenance and replacement (if necessary) of any buffer fence installed by the Developer, which abuts his/her Lot. The



buffer fence shall at all times be kept in good visual appearance. Any broken or fallen portions of the buffer fence shall be promptly repaired with matching materials. The Terra Gardens Homeowners' Association may elect to maintain all buffer fences installed upon the Property by the Developer and assess the cost thereof to the Lots receiving benefit from the buffer fences, as determined by the Homeowners' Association, but until such time as this is approved, the Owner abutting any buffer fence is responsible for maintenance as previously stated.

2.      **SEEDING.** 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 as soon as weather permits but not later than August 31<sup>st</sup> of the calendar year following the completion of the property. 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. Until the sodding/seedling is completed, the Owner of the Lot shall maintain the property in a condition free of noxious weeds.

3.      **BOULEVARD TREES/TREES.** Within three years following construction of the residential dwelling on a Lot, the Owner shall plant boulevard trees in accordance with the following requirements:

- A. One (1) new tree per thirty (30) feet of street frontage.
- B. Street trees installed in the boulevard must be spaced a minimum of thirty (30) feet on-center from each other or existing boulevard trees.
- C. Care and maintenance to establish and preserve the health and appearance of new trees is the responsibility of Owners.
- D. Street tree species must be selected from the approved Terra Gardens Street Trees list below. At planting, such trees shall be at least 2" trunk diameter (at knee height), and at least ten (10) feet in overall height.

Northwood Maple	(Acer rubrum)
Red Maple 'Matador' or 'Sienna Glen'	(Acer x fremanii)
Buckeye 'Autumn Splendor'	(Aesculus sylvatica)
Common Hackberry	(Celtis occidentalis),
Honeylocust 'Skyline' or 'Northern Acclaim'	(Gleditsia triacanthos)
Swamp White Oak	(Quercus bicolor)
Northern Red Oak	(Quercus borealis)
Bur Oak	(Quercus macrocarpa)
Elm 'Prairie Expedition' or 'Princeton'	(Ulmus Americana)

The Association may plant boulevard trees in accordance with the above requirements and assess the cost to an Owner if the Owner fails to comply with this requirement.

4. **LANDSCAPING.** All Owners shall provide landscaping to add to the aesthetic value of the neighborhood on the front of each home and on the front 10' of each side yard that is compatible with neighboring properties. Landscaping shall include mulch, rocks, wood chips, stones, etc., which is artfully filled with perennial and annual plantings. All landscaping shall be regularly maintained to prevent the growth of weeds.

5. **DISEASES AND INSECTS.** No Owner shall permit anything or condition to exist upon any Lot which shall include, breed, or harbor infections plant diseases or noxious insects.

6. **UTILITY LINES, RADIO AND TELEVISION 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. All permanent electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead except for emergencies and repairs. Any such antennas must be still installed in accordance with the guidelines set forth by the Review Committee.

7. **DECKS AND PATIOS.** If any deck is constructed with wood or other materials that require maintenance from time to time, the deck must be regularly maintained and stained.

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 or composts 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 Developer or Review Committee.

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 structure erected upon a Lot or other building so as to be visible from neighboring property.

10. **BASKETBALL HOOPS AND BACKBOARDS.** No basketball hoop or backboard shall be attached to any structure or other building. Basketball hoops and backboards attached to a freestanding pole may be installed on a Lot provided the location, design and appearance of the basketball hoop and backboard are approved in writing by the Review Committee.

11. **PETS AND OTHER 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 an Owner's Lot, must not be a nuisance and will not be allowed to stray to adjacent property.

12. **MAILBOXES.** No individual mailboxes shall be allowed on any Lot. The United States Postal Service has determined that mail delivery service to the Lots shall be to Centralized Box Units. The location of the Centralized Box Units has been predetermined by the Developer. Each Owner should contact the Horace Postal Service to coordinate lock keys and start delivery service. Snow removal and maintenance of the Centralized Box Units shall be the responsibility of the Owners benefitting from any Centralized Box Unit to the extent not maintained by the City of Horace.

13. **CLOTHESLINES.** Clotheslines will be permitted as long as placement and design are approved by the Review Committee.

14. **VEHICLE PARKING/STORAGE.** Commercial vehicles, motor homes, travel trailers, boats, all-terrain vehicles, side-by-sides, snowmobiles, boats, personal watercraft, construction equipment 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. No commercial vehicles, motor homes, travel trailers, boats, all-terrain vehicles, side-by-sides, snowmobiles, boats, personal watercraft, construction equipment, and like vehicles shall be parked on a frequent, long-term or permanent basis on any Lot in the subdivision unless stored within the confines of a garage or accessory building or stored behind the front house line and are adequately screened from public view with prior approval of Review Committee. 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 excepted.

15. **SIGNS.** No billboards or advertising signs of any kind or 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 (2) feet square maximum and the design of the sign is approved by the Review Committee prior to installation. The provisions of this 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 or promotion of the Premise. The Review Committee may erect, place and maintain such sign structures as it deems necessary for the operation or identification of the subdivision.

16. **NUISANCES.** No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or 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 the construction, and then only during the course of construction. No substance, thing or material may be kept on any part of the Lot 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 owners. No Owner shall allow noxious weeds to occur on any Lot.

17. **DIRT REMOVAL.** No topsoil or excavation material may be removed from the 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 Review Committee. Otherwise the Review Committee will direct as to where the excess excavation, or soil, if any, is to be disposed of.

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. **TANKS.** No above or below ground tanks of any kind shall be erected, placed or permitted on any part of the Lot unless prior written approval is obtained from the Review Committee, which shall only be given in special circumstances.

20. **PARTIAL/TEMPORARY RESIDENCE.** No trailer, basement, tent shack, garage, barn or other outbuilding erected on a Lot shall be used as a residence, nor shall any residence of a temporary character be permitted. No basement shall be used for residential purposes

until the entire primary structure has been erected and complies with the building code of the City of Horace.

21. **EASEMENTS.** Easements for installation of utility and drainage facilities are shown on the plat of the Property, and additional easements will be shown on re-plats of the Property. Within the easement areas, 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. All claims for damages arising out of the construction, maintenance, and repair of any utility or drainage facility against the Developer are waived by the Owners. Developer reserves the right to change, lay out, create new or discontinue any street, avenue, or way shown on the plats of the Property not essential for ingress and egress from a Lot it does not own, subject to the approval of the appropriate governmental authority.

22. **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.

23. **STORMWATER FACILITIES.** All Owners acknowledge that certain stormwater drains and retention/detention ponds will be constructed on the Property. By accepting conveyance of a Lot, all Lot Owners assume the risk of hazards, foreseen and unforeseen, associated with such stormwater drains or retention/detention 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 Horace, Cass County and Developer harmless from and against any damage, claim, suit, injury, cost or expense (including attorney's fees), as it pertains to injury to person or damage to property.

24. **MORTGAGES.** The breach of any of the foregoing Restrictions shall 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 this 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.

25. **DRIVEWAYS AND SIDEWALKS.** The Owners of all Lots acknowledge they must install sidewalks on the fronts of their Lots if required by the City of Horace, and if they fail to do so, will be assessed by the City for the costs of installing such sidewalks. Owners of Lots acknowledge and agree they will be assessed for sidewalks installed by the City on and/or otherwise benefiting their Lots. Driveways and parking areas must be hard surfaces. Permitted materials for driveway construction include interlocking paving stones and case in place concrete. 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.

26. **PRIVATE SEWER AND WATER.** No private septic tanks, drain fields or private wells shall be permitted on any Lot, but Lots along the Sheyenne River may draw water from the Sheyenne River for irrigation or other legal purposes if doing so is legally permissible by the City of Horace, the State of North Dakota, and any other appropriate governmental authority. All Lots in the subdivision will be served by the City of Horace (sewer) and Cass Rural Water (water).

27. **BUSINESS USE RESTRICTION.** Unless prior approval is obtained in writing by the Review Committee, no business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any Lot except that an Owner or Occupant residing in a Lot may maintain a home occupation or office with infrequent on-site client or customer meetings and no on-site employees, consultants or independent contractors on such Lot provided that 1) such use is otherwise in compliance with all applicable ordinances, codes, statutes, other laws, rules and regulations, 2) such use is incidental and secondary to the principal use of the Lot and improvements thereon for residential purposes and does not change the character thereof, 3) such use has no adverse effect on the use or enjoyment of any other part of the Property, 4) such uses do not involve physical alteration of the Lot and or improvements visible from the exterior; and 5) such uses do not involve any observable business activity such as signs, advertising displays, regular deliveries, or pedestrian or vehicular traffic to and from the Lot by customers or employees.

28. **PARK DEDICATION.** Lot Fifteen (15), Block Three (3), Lot Six (6), Block Five (5) and Lot Seven (7), Block Five (5) Terra Gardens Addition have been dedicated to the Horace Park District for the benefit of the public. The City of Horace Park District may use such Lots without limitation, including for the construction and maintenance of park features.

**ARTICLE V**

**COVENANTS AND RESTRICTIONS RELATING TO TERRA GARDENS ADDITION RESIDENTIAL LOTS**

1. **PROPERTY SUBJECT TO THIS ARTICLE.** This Article V is applicable only to the residential Lots lying in Terra Gardens Addition Plat, namely Lots One (1) through Thirteen (13), Block One (1); Lots One (1) through Eighteen (18), Block Two (2); Lots One (1) through Fourteen (14) and Sixteen (16) through Twenty-nine (29), Block Three (3); Lots One (1) through Eleven (11), Block Four (4); and Lots One (1) through Four (4), Block Five (5). Lot Fifteen (15), Block Three (3) and Lots Six (6) and Seven (7), Block Five (5) are specifically excluded from this Article V. Lot Five (5), Block Five (5), and any re-plats thereof, is also specifically excluded from this Article V.

2. **DWELLING SIZE.** Residential dwellings constructed on the following Lots shall meet the following minimum square footage requirements, unless a variance is issued in writing by the Review Committee:

<b>Dwelling Style</b>	<b>One (1) through Thirteen (13), Block One (1); Lots One (1) through Eighteen (18), Block Two (2); Lots One (1) through Fourteen (14) and Sixteen (16) through Twenty-nine (29), Block Three (3); Lots One (1) through Eleven (11), Block Four (4); and Lots One (1) through Four (4), Block Five (5); Terra Gardens Addition</b>
<b>Standard one story (rambler) and one and a half story</b>	1150 sq. ft. total on all level(s) entirely above grade
<b>3 Level Split</b>	1700 sq. ft. total for top three levels
<b>Standard two story</b>	1600 sq. ft. on all levels entirely above grade
<b>Bi-Level (including both floors)</b>	1600 sq. ft. total on both levels
<b>Twin Homes</b>	1150 sq. ft. total on all levels entirely above grade per side

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

3. **FRONT YARD SETBACKS.** All Lots shall be subject to a front yard setback of twenty-five (25) feet from the front property line to the front of any structure.

4. **CURB APPEAL.** In order to protect and preserve the character and nature of the Property, all residences in Terra Gardens Addition shall have 10% hard surface coverage on the

front of the structure which include brick, rock, dryvit or of similar type materials. In lieu of the foregoing, the Review Committee may allow or require alternative material design on the front of the structure.

5. **ACCESSORY STRUCTURES.** Accessory buildings with a maximum size of Five Hundred (500) square feet may be approved on all Lots in Terra Gardens Addition. All accessory buildings must be constructed as part of the design style and are constructed with the same exterior materials as the house, and provided that the site plan is harmonious with neighboring properties, in the discretion of the Review Committee. The Review Committee may, on a case-by-case basis, reduce an accessory building's allowable total square footage beyond the Five Hundred (500) square feet restriction based on the dimensions of a particular Lot, the trees that are proposed to be removed, and the impacts a proposed accessory building has on the views of neighboring Lots.

## ARTICLE VI

### TERRA GARDENS ADDITION HOMEOWNERS' ASSOCIATION

1. **MEMBERSHIP IN ASSOCIATION.** Every Owner of any Lot is a mandatory member of the Terra Gardens Addition Homeowners' Association. 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 Association shall be governed and controlled by the Articles of Incorporation and by the Bylaws adopted by the Association, which are not intended to be placed of record.

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 agree to pay the Association annual general assessments or charges, and special assessments for capital improvements. All assessments shall be a charge on the land and shall be a continuing lien upon the property 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 fell due.

3. **METHOD OF ASSESSMENT.** By vote of a majority of the members, the Association shall fix their annual assessment upon the basis provided herein, provided, however, that the annual assessment shall set the date(s) such assessments shall become due. 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 Association shall be used exclusively to promote the improvement, maintenance, and operation of the roads, signage, mailboxes, common areas, parks, perimeter landscape and entrances to the Terra Gardens Addition. Each 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 Association.

5. **SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.** In addition to the annual assessments authorized above, 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 the roads, paving of roads, common areas, parks, entrance and the landscaped area or area of the entrance, street lighting, banners, or other decorations to enhance the aesthetic value of the development, sidewalks, or any other improvement, including fixtures and personal property relating thereto, providing that any such assessment shall have the ascent of a two-thirds majority of the Owners who are voting in person or by proxy at a special meeting duly called for that purpose. So long as the Developer owns any Lot any special assessment must be approved in writing by the Developer. Any special assessment shall be levied in equal amounts for each Lot.

6. **SURPLUS FUNDS.** 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 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 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.**

a. All delinquent assessments, together with interest thereon (at an interest rate equal to the rate charged by Cass County for delinquent taxes), and costs of collection thereof as hereinafter provided, shall be a charge on the land shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with

interest thereon 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 three hundred and sixty five (365) 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 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 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 (10) days after such demand.

c. Upon recordation of a duly executed and acknowledged original of such claim of lien by the Cass County Recorder's Office, the lien claimed therein shall immediately attach to the real property. 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 foreclosure of real estate mortgages pursuant to the statutes of the State of North Dakota. 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. The lien of the assessments provided for above shall be subordinate to the lien of any previously-recorded mortgage or security instrument.

## ARTICLE VII

### MAINTENANCE

1. **AREAS OF ASSOCIATION RESPONSIBILITY.** The Association, or its duly delegated representative, shall be responsible for the management and maintenance of the roads,

signage, mailboxes, common area, parks, perimeter landscape and entrances to the Terra Gardens Addition, and all improvements located thereon, except for any part thereof which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance of all common areas. No Owner, resident or other person, except the Developer, shall construct or install any improvements on the common areas or alter, modify or remove any improvements situated on the common areas without the approval of the Board. No Owner, resident or other person shall obstruct or interfere with the Association in performance of the Association's management or maintenance of the common areas and improvements located thereon.

2. **LOTS.** Each Owner of a Lot shall be responsible for the maintenance of his 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, 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 buildings, landscaping or other improvements have been constructed shall be maintained in a weed free and attractive manner.

3. **ASSESSMENT OF CERTAIN COSTS OF MAINTENANCE AND REPAIR.** In the event that the need for maintenance of and common areas 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 development 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 Association Documents, 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 Board may cause such action to be taken at said Owner's cost. If at the expiration of said 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 VIII

### GENERAL PROVISIONS

1. **ENFORCEMENT.** Except where the right to enforce the Restrictions contained in this Declaration is reserved to Developer, for any violation of the Restrictions, 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 Horace 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 of Horace and the City of Horace may undertake to collect such sum in any manner, including the imposition of any assessment(s) against the applicable Lot.

2. **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 this Declaration.

3. **DURATION.** The Restrictions of this Declaration shall run with and bind the Premises and shall inure to the benefit of than 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 and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners has been recorded, agreeing to modify this Declaration in whole or in part.


4. **COMPLIANCE WITH LAWS.** The Property shall be subject to any and all rights and privileges which the City of Horace or the County of Cass or State of North Dakota may have acquired through dedication or the filing or recording of maps or subdivisions plats as authorized by law. The covenants and 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 Horace, County of Cass, State of North Dakota or other like municipality or governmental authority having jurisdiction over the Property.

5.     **SEVERABILITY.** In the event any one or more of the foregoing covenants and 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 covenants and restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

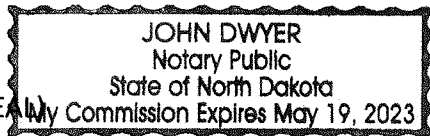
6.     **AMENDMENTS.** This Declaration may be amended by Developer until it divests itself of the responsibility for architectural control. It shall be conclusively presumed that the Developer has not divested itself of responsibility for architectural control unless there is a sworn affidavit of record so stating. After that time, this Declaration may be amended by an instrument signed by the Owners of not less than eighty (80%) percent of the Lots. Any instrument amending, modifying or canceling this Declaration must be properly filed and recorded before it shall be affective.


IN WITNESS of its terms and conditions, the undersigned Declarants, being all of the titled owners of the Property, have caused this Declaration to be executed the day and year first above written.

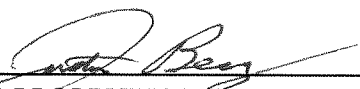
  
 \_\_\_\_\_  
**PEACEFUL PLAINS II, INC.**  
 BY: JUSTIN BERG  
 ITS: PRESIDENT

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

On this 21<sup>st</sup> day of August, 2019, before me, a Notary Public in and for said county and state, personally appeared Justin Berg, known to me to be the President of Peaceful Plains II, Inc. who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same on behalf of Peaceful Plains II, Inc.

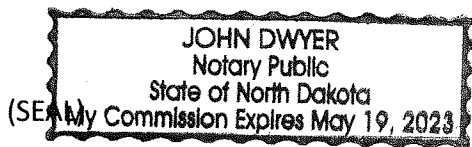


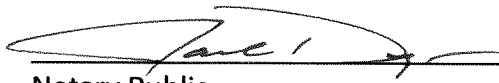
  
 \_\_\_\_\_  
 Notary Public  
 My Commission Expires: \_\_\_\_\_


  
\_\_\_\_\_  
**FENBERG PROPERTIES LLC**  
BY: Justin Berg  
ITS: President

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

On this 21<sup>st</sup> day of August, 2019, before me, a Notary Public in and for said county and state, personally appeared Justin Berg, known to me to be the President of Fenberg Properties LLC, who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same on behalf of Fenberg Properties LLC.

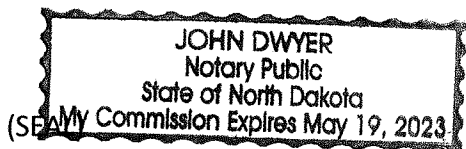



  
\_\_\_\_\_  
Notary Public,  
My Commission Expires: \_\_\_\_\_

  
\_\_\_\_\_  
**PEACEFUL PLAINS HOLDINGS LLC**  
BY: Justin Berg  
ITS: President

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

On this 21<sup>st</sup> day of August 21, 2019, before me, a Notary Public in and for said county and state, personally appeared Justin Berg, known to me to be the President of Peaceful Plains Holdings LLC, who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same on behalf of Peaceful Plains Holdings LLC.



  
\_\_\_\_\_  
Notary Public,  
My Commission Expires: \_\_\_\_\_