

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
ROCK PRAIRIE ESTATES ADDITION TO THE CITY OF MANDAN
MORTON COUNTY, NORTH DAKOTA

This Declaration of Covenants, Conditions, and Restrictions ("Declaration") is made, imposed, declared this 28 day of March, 2024 by Red Trail Holdings, LLC, of 5012 37th Avenue NW, Mandan, ND 58554, hereinafter referred to as "Developer".

WHEREAS, Developer is the Owner of the following described Real Property located in Morton County, North Dakota, which is hereinafter referred to as the ("Real Property"):

Lot One (1), Block One (1), Rock Prairie Estates Addition to the City of Mandan, Morton County, North Dakota.

Lot One (1), Block Two (2), Rock Prairie Estates Addition to the City of Mandan, Morton County, North Dakota.

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), and Twenty One (21) Block Three (3), Rock Prairie Estates Addition to the City of Mandan, Morton County, North Dakota.

Lots One (1), Two (2), Three (3), Four (4), Five (5), and Six (6), Block Four (4), Rock Prairie Estates Addition to the City of Mandan, Morton County, North Dakota.

Lots One (1), Two (2), Three (3), Four (4), and Five (5), Block Five (5), Rock Prairie Estates Addition to the City of Mandan, Morton County, North Dakota.

NOW THEREFORE, in consideration of the premises, the Developer hereby certifies and declares that it has established and does hereby establish the following covenants and restrictions for the protection and benefit of all of the said Real Property, and has fixed and does hereby fix the following additional protective conditions, restrictions, and obligations upon and subject to which each and all of the lots in the said Real Property shall be hereafter held, used, occupied, leased, sold and/or conveyed. Each and all of which the said conditions

and restrictions shall inure to the benefit of, be binding upon and pass with said Real Property, and each and every lot and/or parcel thereof, and shall inure to the benefit of, apply to, and bind the respective successors in title or interest of Developer.

PURPOSE

The purpose of these restrictions are to ensure the use of the lots, structures, and improvements constructed thereon or attached to for attractive residential and commercial purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the property, and to maintain the desired tone of the project and thereby to secure each lot owner the full benefit and enjoyment of the lot and residential or commercial structure with no greater restrictions on the free and undisturbed use of the site than is reasonably necessary to ensure the same advantages to the other lot owners.

The lots shall be used for the intended purposes as set out on the development plan of Developer, including as Developer may hereafter amend such development plan. Developer shall have the absolute right and ability to amend and change the development plan without notice, in the sole discretion of the Developer. Every person who purchases a lot in the above-described Real Property waives any and all objection to such development, as well as all amendments and changes thereto. Such waiver and consent shall bind all transferees and future owners of any lot in the said Real Property.

PERSONS BOUND BY THE COVENANTS AND RESTRICTIONS

All persons, corporations, or other entities, who shall hereafter acquire any interest in and to the lots and residential structures constructed on the above-described Real Property, shall be taken to hold and agree and covenant with the remaining owners of the lots and homes, and with their heirs, trustees, and assigns, to conform to and to observe the following covenants, restrictions, and stipulations as to the use thereof and as to improvements thereon. Every person who purchases or otherwise obtaining an interest in the above-described Real Property, shall be deemed to have ratified and agreed to be bound by the terms and conditions set forth in this Declaration.

DEVELOPMENT CONTROL COMMITTEE

The Development Control Committee ("Committee") shall consist of the Developer, Derek Zander, or a representative of or on behalf of Red Trail Holdings, LLC until such time as the Developer has sold or otherwise conveyed all lots in the project to third persons or parties, at which time the committee shall be composed of three (3) persons selected by a vote of the then lot owners in the Real Property, with each lot having one (1) vote.

RESPONSIBILITIES OF DEVELOPMENT CONTROL COMMITTEE

1. The Committee shall review the plans for all proposed new construction. The Committee shall be responsible for ascertaining that the plans and subsequent construction meet the minimum building requirements outlined in this Declaration. The primary purpose of the Committee shall be to assist lot owners in achieving compliance with the building restrictions.
2. Any lot owner seeking to construct a new home shall first submit the plans to the Committee for review.
3. No construction for which plans are to be submitted to the Committee shall commence until a scaled set of plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing by the Committee as to the harmony of external design and location to surrounding structures and topography, size, estimates of cost, and such other factors as the Committee may consider necessary, appropriate, and relevant to maintaining property values of nearby properties. In the event the Committee fails to approve or disapprove the design and location plan within thirty (30) days after the plans and specifications have been properly submitted to it, approval will not be required, and compliance with this section of the Declaration will be deemed to have occurred. The Committee, in the Committee's sole discretion, shall have the power and authority to issue variances to these covenants, upon written request of an owner.
4. Despite the above provisions, the Committee shall have no affirmative obligation to be sure that all design elements comply with the restrictions contained in this Declaration, nor shall the right to enforce any provisions be waived. No member of the Committee shall have any liability, responsibility, or obligation whatsoever, for any decision or lack of a decision, in carrying out the duties as a member of the Committee. The Committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this Declaration shall rest with the lot owners. Each lot owner agrees to save, defend, and hold harmless the Committee and each of its members on account of any activities of property or buildings to be constructed on his or her lot.

BUILDING AND USE RESTRICTIONS

1. Square-Footage Requirements.
 - a. For lots zoned R-7, the primary home constructed on the lot shall have a minimum main floor area of not less than 1,200 square feet for a one-story dwelling and for a split-level or two-story dwelling, the total above-ground floor area shall not have less than 1,200 square feet.

- b. For lots zoned R-3.2, the minimum above-ground floor area shall not be less than 1,200 square feet.
- 2. Building Code and Setbacks. All buildings are subject to the requirements of the City of Mandan building code. The setback line for construction of a house shall be in conformity with the restrictions reflected on the Development Plan or by the City of Mandan.
- 3. New Materials. Any residential or commercial structure shall be constructed on site with new materials only. Any construction commenced on a residential lot shall be substantially completed within twelve (12) months from the date the construction is commenced.
- 4. Siding. All siding colors shall be white or of earthen tones.
 - a. Block 3 lots 1-6 shall contain approximately 20% rock, stone, or brick on the front street facing elevation as homes at the entrance to the development and high visibility.
 - b. Block 4 lots 1-5 shall contain approximately 20% rock, stone, brick, or other decorative elements on the front street facing elevation and backside elevation as structures at the entrance to the development and high visibility to I-94 and Old Red Trail.
- 5. Garages. Each single-family residential structure shall have an attached two (2) full stall garage at a minimum. Each twin-home shall have an attached two (2) full stall garage at a minimum.
- 6. Alternative or Temporary Residences. No trailer, tent, shack, or other outbuildings shall at any time be used as a residence on any building site. No modular, manufactured, or mobile homes are to be used as a residence or may be placed on any lot. No person shall reside or live in a residential structure until a Certificate of Occupancy has been issued thereon.
- 7. Detached Structures and Accessory Buildings. All storage sheds, garages, shops, or other accessory buildings must be constructed with roofing, soffits, siding, and doors of the same or similar color and style to the principal residence structure. All detached structures shall have a concrete floor. No part of any detached structure shall be constructed or placed ahead or in front (street side) of the main residential structure. For areas zoned R-7 and R-3.2, a detached structure may be on its own lot but must be adjacent to the main residential structure lot (owner).
- 8. Driveways and Additional Parking. All driveways shall be constructed of concrete or pavers. Any additional parking areas, such as a camper pad adjacent to a garage, shall be constructed of concrete, concrete aggregate, or pavers.

9. Fences. All fences shall be designed and constructed to be compatible with the neighborhood. Any yard fences that are not constructed of maintenance-free materials shall be stained or painted and maintained periodically.
10. Vegetation. Each property owner shall exercise as much care as possible to retain vegetation, trees, shrubs, and other similar growth.
11. Landscaping. All property owners shall landscape all yards fronting a street within a reasonable time after building activities have been completed.
12. Trash and Refuse. No trash, ashes, or refuse may be thrown, dumped, or stored on any residential or commercial lot. All trash shall be kept concealed from the view of the streets except during collection days. Absolutely no trash burning shall occur on any premises. There shall be no abandoned, junked, inoperable, or wrecked vehicles, trailers, or equipment stored anywhere within the Project.
13. Nuisance. No noxious, illegal, or offensive use of a property shall be carried on any lot, nor shall anything be done on it that may be or become an annoyance or nuisance to the neighborhood.
14. Pollution Control. Owners and occupants shall not conduct any action that would result in the pollution of soils or any waterway or stormwater drainage conveyance system by refuse, sewage, chemicals, or other materials that would cause pollution or environmental damage. No sediments, soil, or fill material may be placed in areas designated as stormwater retention ponds and stormwater drainages, ditches, or conveyance systems.
15. Subdivision and Lots: No residential, commercial, or agriculture lots shall be further subdivided. However, a lot may be subdivided for the purposes of combining the entire subdivided lot with the directly adjoining lots.
16. Easements: No easement shall be modified, granted, changed, given, or promised without the prior written consent of the Committee, which must be obtained and recorded. If an easement is modified, granted, changed, given, or promised without the written consent of the Committee, said easement shall be of no binding legal effect and shall be considered invalid.

FUTURE RULES AND REGULATIONS

Until the final lot is sold within the Real Property, the Developer reserves the right, without requiring the consent from any lot owners within the Real Property, to grant exemptions for square-footage at the Developer's discretion, to amend this Declaration, the Bylaws of the Association, and any other rules or regulations, and to make and implement such other and additional rules and regulations from time to time as may be deemed reasonable and

necessary by the Developer. Once the last lot is sold within the development, the owners of the lots within the Project, upon a majority 60% vote of the then lot owners, with their being one vote per lot, regardless of the actual number of owners thereof, will take over these rights from the Developer.

NOTICE OF CLAIM OF BREACH

The Committee or Developer may at any time that the Committee or Developer believes a breach of these Covenants, Conditions, and Restrictions has occurred, execute, acknowledge and record in the Office of the Recorder of Morton County a Notice of Claim of Breach. Said notice will set forth the facts of such breach, describing the lot or lots upon which such violation has occurred and setting forth the owner's name. Such notice upon being recorded shall be notice to all persons of such breach. Said notice may not be deemed Slander of Title by any owner, and therefore any right to bring legal action against the Committee or Developer is hereby waived.

FAILURE TO COMPLY WITH ORDER OF THE DEVELOPMENT CONTROL COMMITTEE

In the event of the failure of any individual lot owner to comply with a written directive or order from the Committee then, in such event, the Committee shall have the option, right, and authority to perform the subject matter of such direction or order, and the cost of such performance shall be charged to the owner of the lot in question and may be recovered by the Committee in action at law against such individual lot owner. The Committee shall have the right to place a lien against the Real Property until all such costs and expenses have been collected and reimbursed to the Committee. Said notice may not be deemed Slander of Title by any owner, and therefore any right to bring legal action against the Committee or Developer is hereby waived.

ENFORCEMENT

Each owner and occupant of a lot or Residential Unit thereon shall comply strictly with this Declaration, as any of the same may be amended from time to time. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Committee or Developer shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. Since the enforcement of the provisions of this Declaration is essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that the Committee or Developer, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or threatened violation or breach. No delay, failure, or omission on the part of the Committee or Developer in exercising any right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, shall bar or effect its exercise or enforcement. No right of action shall accrue nor shall any action be brought or maintained by

anyone whomsoever against the Committee or Developer for or on account of any failure to bring any action on account of any violation or breach, or threatened violation, or breach of the provisions of this Declaration, however long continued, or for adopting provisions which may be deemed unenforceable. As to the Developer and the owner or owners of any of said lot or lots, including any bona fide purchaser under contract, the foregoing restrictions and obligations shall operate as covenants running with the land and a breach of any of them or a continuance of any such breach may be enjoined, abated, or remedied by appropriate proceedings by the Committee, Developer, or any lot owner, as the case may be.

VIOLATION BY OTHERS NOT A DEFENSE

A violation of any covenant herein or the decision of the Committee or Developer to waive or otherwise grant and authorize variances from the terms and restrictions herein shall not be a defense to establish a basis for others to violate any of the terms, conditions, or covenants contained herein.

ROCK PRAIRIE ESTATES STORMWATER MAINTENANCE ASSOCIATION

The owners of Lots 1, 2, 3, 4, and 5, Block 4 Rock Prairie Estates Addition to the City of Mandan, Morton County, North Dakota (the "Association Parcels") shall become members of the Rock Prairie Estates Stormwater Maintenance Association (the "Association"). By purchasing or otherwise acquiring an interest in the Association Parcels, said Owner(s) shall be deemed in all ways to have consented to membership in the Association, to have ratified this Declaration and any amendment thereto, any By-laws, or amendment thereto, of the Association, and agree to be bound by the terms and conditions set forth therein as they presently exist or as the same are amended from time to time.

Stormwater management infrastructure including ponds, drainage pathways, and control outlets may need periodic maintenance within the Real Property and as otherwise described herein, or subsequently expanded. Stormwater and drainage easement lots may need portions of the lots to be mowed during the summer season in accordance with City or other governmental regulations. Likewise, sidewalks adjacent to such stormwater/drainage easement lots will have to be cleared of snow in accordance with City Code or other applicable governmental regulations. Lot 6, Block 4 Rock Prairie Estates Addition to the City of Mandan, Morton County, North Dakota is provided as stormwater and drainage easement and shall be deemed common area owned as an undivided interest between commercial-zoned Lots 1, 2, 3, 4, and 5, Block 4 Rock Prairie Estates Addition to the City of Mandan, Morton County, North Dakota and managed by the Association. An engineered stormwater pond is in the southwest corner of phase 2 and is currently unplatted but will be maintained and managed by the Association and owned by existing and/or new commercial-zoned lots when it becomes platted in Phase 2 of the Development. Each owner of Lots 1, 2, 3, 4, and 5, Block 4 Rock Prairie Estates Addition to the City of Mandan, Morton County, North Dakota shall be obligated to pay a pro rata share of the cost of any repair or maintenance related to Lot 6, Block 4 and the unplatted

engineered stormwater pond, and any other real property identified by the Developer or subsequently conveyed to the Association by the Developer as common area. Each owner of a lot in the Association Parcels property above-described shall be a regular member of the Association which said membership shall be appurtenant to such lot, and the transfer of title to such lot shall automatically transfer the regular membership appurtenant to such lot to the transferee or transferees. Each such owner and/or owners are obligated to promptly, fully, and faithfully comply with and conform to the By-Laws of the Association, and the rules and regulations from time to time prescribed thereunder by the Board of Directors of said corporation or its officers and to promptly pay in full all dues, fees, or assessments levied by said corporation on its members whether such dues, fees, or assessments were levied prior or subsequent to the date of acquisition of title, except that the purchaser of any such unit at a Trustee's Sale on foreclosure or a lender who acquires the title by deed in lieu of foreclosure shall not be liable for any dues, fees, or assessments levied prior to such sale or acquisition of title. Initially, the Association dues shall be Fifty Dollars (\$50.00) per year for Lots 2, 3, 4, and 5, Block 4 and One-Hundred Dollars (\$100.00) per year for Lot 1, Block 4 payable commencing on the day that the lot is purchased from Developer. Developer shall not at any time be responsible for dues or assessments on those lots owned by Developer. The initial Fifty Dollar (\$50.00) or One-Hundred Dollar (\$100.00) annual dues amount shall be on a prorated basis for the number of days for which the buyer of the lot owned the property for that year. Annual dues shall be due on January 15th of each year. Any assessment that is not paid within thirty (30) days after the due date shall bear interest at the rate of one and one-half percent (1 ½ %) per month (eighteen percent (18%) annual percentage rate). Developer shall not be required to pay any dues on any vacant lots or lots with structures built by the Developer with the intention of being sold after completion.

The initial member of the Board of Directors shall be Derek Zander. Said parties shall serve as the Directors until seventy-five (75%) of the lots eligible for membership in the Association, including all expansions, have been sold by the Developer, however, nothing shall prevent the Developer from electing new members to the Board or withdrawing its right to elect the Board at which time the Board will be elected by the Association members.

The Developer hereby declares that the Association Parcels are and shall be held, transferred, sold and conveyed subject to the covenants, conditions and restrictions set forth herein.

The Developer hereby further declares that membership of the Association may be expanded to include additional lot owners and real property within the Rock Prairie Estates Development not otherwise presently described herein. The Developer and/or lot owners may expand the Association, and membership of the Association, by establishing or amending Declarations and/or Bylaws within the Rock Prairie Estates Subdivisions, so long as the same is adopted and/or amended in accordance with the applicable Declarations and/or Bylaws.

The Developer may convey to the Association additional real estate owned by Developer within the Real Property, or other property subject to governance and maintenance

of the Association within or without the Rock Prairie Estates additions, improved or unimproved, upon which conveyance or dedication to the Association shall be accepted by the Association without further action and thereafter shall be considered part of the Common Areas and Improvements hereunder.

POWERS AND DUTIES OF ROCK PRAIRIE ESTATES STORMWATER MAINTENANCE ASSOCIATION:

The Association, acting through its Board of Directors and officers, shall have the sole and exclusive right and duty to manage, operate, control, repair, replace, and/or restore all of the areas designated as stormwater and drainage easement as Lot 6, Block 4 and the unplatted engineered stormwater pond in the southwest corner of Phase 2, all as will be fully set forth in any Articles of Incorporation and/or By-Laws of the Association.

The Association shall also have the duty and obligation to establish, construct, maintain, and repair all property described above and related matters. This may include consulting with an engineering company regarding environmental and stormwater regulations.

The Association, in its sole discretion, shall also have the absolute power and authority to levy assessments against each lot owner for such care.

MERGER POWERS OF ROCK PRAIRIE ESTATES STORMWATER MAINTENANCE ASSOCIATION:

The Association shall have the specific power and authority to merge, combine, or otherwise cooperate with any other maintenance association or similar organization that may share common concerns or interests as the Association.

FUTURE EXPANSION:

Developer intends to develop the area adjacent (west) of Rock Prairie Estates. In the event that said area is developed, then the additional commercial-zoned lots and platted engineered stormwater pond lot will automatically be part of the Rock Prairie Estates development and said lots will be included in the above-described Association, unless Developer elects not to include the new development in the above-described Association.

INTERPRETATION

All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Committee or the Developer, and its decision shall be final, binding, and conclusive on all of the parties affected.

DISPUTES

Any dispute regarding any matter which is the subject of these covenants, including issues related to approvals, non-approvals, non-compliance, breach, and any potential or actual

violation, shall be resolved by the Committee or the Developer and its decision shall be final, binding and conclusive for all parties concerned.

ASSIGNMENT BY DEVELOPER

The Developer may sell or assign its rights under this Declaration and any successor or subsequent assignee shall have all the powers and duties of the Developer.

In the event any restriction or obligation herein contained be invalid or held invalid or void by any court of competent jurisdiction, such invalidity or nullity shall in no way affect any other condition or restriction herein contained.

IN WITNESS WHEREOF, the Developer has executed this Declaration of Covenants, Conditions and Restrictions this 28 day of March, 2024.

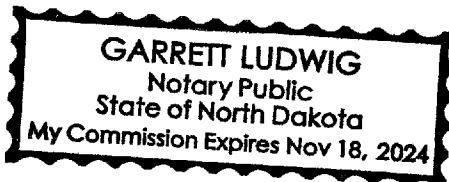
Developer:

Red Trail Holdings, LLC

By: *Derek Zander*
Derek Zander, Its President

STATE OF NORTH DAKOTA)
 Morton)
COUNTY OF ~~BURLEIGH~~) ss.

On the 28th day of March, 2024, before me personally appeared Derek Zander, known to me to be the **President of Red Trail Holdings, LLC**, who executed the foregoing instrument and acknowledged to me that he executed the same on behalf of said company.



Garrett Ludwig
Notary Public
State of North Dakota

COUNTY RECORDER, MORTON COUNTY, ND
I certify that this instrument was filed and recorded.
Nancy Seefeldt, County Recorder Fee \$65.00

519269

Hansen Schelake Deputy
Recorded Electronically

4/12/2024 1:13:41 PM

County Recorder

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Morton County

Mandan ND 58554

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