

**COTTONWOOD PARKVIEW ADDITION  
DECLARATION OF RESTRICTIONS ON REAL ESTATE**

THIS DECLARATION, made on the date hereinafter set forth by **WACHTER FAMILY REVOCABLE TRUST**, and its successors or assigns, hereinafter referred to as **"DEVELOPER"**.

WHEREAS, DEVELOPER, is the owner of certain real property located in Burleigh County, North Dakota, which is more particularly described on Exhibit "A", which is attached hereto located in the **COTTONWOOD PARKVIEW ADDITION**, City of Bismarck, Burleigh County, North Dakota (hereinafter referred to as the **"PROPERTY"**); and

WHEREAS, the PROPERTY has been platted into lots which are presently known as **COTTONWOOD PARKVIEW ADDITION** to the City of Bismarck, Burleigh County, North Dakota.

WHEREAS, DEVELOPER desires to provide for the preservation of the values and amenities on the PROPERTY and to this end, desires to subject the PROPERTY together with such additions as may hereafter be made thereto, to the covenants, restrictions, reservations, easements, charges and liens, set forth in this Declaration of Restrictions on Real Estate, each and all of which is and are for the benefit of the PROPERTY and each owner of a portion of the PROPERTY; and

NOW, THEREFORE, the DEVELOPER declares that the PROPERTY, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, reservations, easements, charges and liens (sometimes hereinafter referred to as "covenants and restrictions") hereinafter set forth. Each and all of the covenants and restrictions shall insure to the benefit of, be binding upon, and pass with the 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.

**ARTICLE I.  
DEFINITIONS**

Glossary. The following words, when used in this Declaration or in any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- a. **"Architectural Review Committee"** shall mean and refer to the Cottonwood Parkview Addition Architectural Review Committee as appointed by DEVELOPER.
- b. **"Property"** shall mean and refer to:
  - Block 1, Lots 4-9 (R10 Zoning);
  - Block 2, Lot 1 (R10 Zoning);
  - Block 3, Lot 1 (RM15 Zoning);
  - Block 4, Lots 1-30 (R10 Zoning);
  - Block 6, Lots 1-24 (R10 Zoning); and
  - Block 5, Lots 1-27 (R5 Zoning)

which are more particularly described in the Plat of Cottonwood Parkview Addition, City of Bismarck, County of Burleigh, State of North Dakota, recorded with the Burleigh County Recorder's office as Document No. 888885, together with any additions which may occur



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thereto, as are subject to this Declaration, or subject to any Supplemental Declaration under the provisions of Article II hereof.

- c. **“Lot or Lots”** shall mean and refer to any lot located within the PROPERTY identified in the Plat of Cottonwood Parkview Addition filed as Document No.888885 with the Burleigh County Recorder’s office, together with any additions which may occur thereto, which is intended for use as a site for a mixed-use development with such lots as described in the Plat of Cottonwood Parkview Addition.
- d. **“Owner”** shall mean a Person who owns a Lot, but excluding contract for deed vendors, mortgagees, and other secured parties. The term “Owner” includes, without limitation, contract for deed vendees and holders of a life estate.
- e. **“Person”** shall mean a natural individual, corporation, limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.
- f. **“Developer”** shall mean the Wachter Family Revocable Trust, or
  - a. Any person or entity who succeeds to the title of Developer to all or a portion of the PROPERTY by sale or assignment of all of the interest of the Developer in the PROPERTY, if the instrument of sale or assignment expressly so provides, or
  - b. Any person or entity to which the power to enforce the provisions of this DECLARATION has been assigned, as permitted by this DECLARATION. Any such person or entity shall be entitled to exercise all rights and powers conferred upon DEVELOPER by the DECLARATION.
- g. **“Declaration”** shall mean and refer to this Declaration of Restrictions on Real Estate for Cottonwood Parkview Addition, applicable to the PROPERTY as recorded in the office of the County Recorder for Burleigh County, North Dakota and as subsequently amended and modified.
- h. **“County”** shall mean Burleigh County, a political subdivision of the State of North Dakota.
- i. **“City”** shall mean the City of Bismarck, a political subdivision of the State of North Dakota.
- j. **“Guidelines”** shall mean the Architectural Guidelines promulgated and amended from time to time by the Architectural Review Committee established under the provisions of Article VIII.

**ARTICLE II.  
PROPERTY SUBJECT TO DECLARATION**

The PROPERTY is and shall be held, transferred, sold, conveyed and occupied subject to this DECLARATION and is located in the City of Bismarck, Burleigh County, North Dakota, and is more particularly described above.



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As the owner of the PROPERTY, DEVELOPER shall have the unilateral right, privilege, and option, from time to time, to subject additional real property to provisions of this DECLARATION. Such annexation of additional real property shall be accomplished by filing with the Burleigh County Recorder's office an amendment to this DECLARATION annexing such additional property. Any such annexation shall be effective upon filing for record of such subsequent Amendment unless otherwise provided for herein. DEVELOPER shall have the unilateral right to transfer to any other person or entity the right, privilege and option to annex additional property which is herein reserved to DEVELOPER, provided that such transferee or assignee shall be the developer of at least a portion of the PROPERTY and that such transfer is memorialized in a written document which is recorded with the Burleigh County Recorder's office and has been executed by the DEVELOPER.

This Article shall not be amended without the prior written consent of DEVELOPER, so long as the DEVELOPER owns any part or portion of the PROPERTY.

**ARTICLE III.  
ANNEXATION**

**Section 1.**

Annexation. DEVELOPER shall have the right, privilege and option, from time to time, at any time, to annex any additional parcel or parcels of real property to the provisions of this DECLARATION. Such annexation shall be accomplished by filing in the County Recorder's office for Burleigh County, North Dakota, an amendment to this DECLARATION annexing such property. Such Supplemental Declaration shall not require the consent of any person other than DEVELOPER. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. DEVELOPER shall have the unilateral right to transfer to any other person, the right, privilege, and option to annex additional property which herein is reserved to the DEVELOPER, provided that such transferee or assignees shall be a developer of at least a portion of the PROPERTY and such transfer is required to be memorialized in a written document recorded with the County Recorder's office for Burleigh County, North Dakota in a document executed by DEVELOPER.

**Section 2.**

Amendments to this Article. This Article shall not be amended without the prior written consent of DEVELOPER so long as DEVELOPER owns any part or portion of the PROPERTY.

**ARTICLE IV.  
PROPERTY RIGHTS**

**Section 1.**

Owners' Easements of Enjoyment. Every Owner shall have the right to the use and enjoyment of the Owners' respective Lot which shall be appurtenant to and pass with the title to every Lot.

**Section 2.**

Owner's Use of Lots. Use of Lots shall be limited to the use as detailed and delineated on the Plat of Cottonwood Parkview Addition.



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**ARTICLE V.  
ARCHITECTURAL CONTROL**

**Section 1.**

Developer Exemption. Notwithstanding the provisions of this Article V, the DEVELOPER SHALL BE EXEMPT FROM THE REQUIREMENTS SET FORTH IN THIS ARTICLE V. The DEVELOPER shall not be required to comply with the procedure set forth in this Article. This exemption applying to the DEVELOPER shall extend until the DEVELOPER has transferred and conveyed the last Lot owned by the DEVELOPER in Cottonwood Parkview Addition.

**Section 2.**

Architectural Control. No building, landscaping, or other structure or any improvement of any nature whatsoever shall be commenced, erected, or maintained (which shall include but not be limited to staking, excavating, filling, clearing, grading, or other site work) upon any Lot within the PROPERTY, nor shall any exterior addition to or change or alteration thereon be made until the plans and specifications shall have been approved in writing by the Architectural Review Committee. Once constructed, any change in exterior appearance or color scheme shall also require approval by the Architectural Review Committee. The plans and specifications shall show, among other requirements, all items required herein or in the guidelines adopted by the Architectural Review Committee, including but not limited to, the design, nature, character, shape, height and location shall be compatible and harmonious with the surrounding residences and topography. Each Lot Owner is required to submit conceptual drawings and preliminary specifications for exterior elevations of any construction, including residential living units and commercial developments, in advance of submitting all final submittals outlined herein. Conceptual approval is not mandatory and is provided only as a courtesy to Lot Owners and builders retained by Lot Owners so that preparation of plans and specifications, and final approval thereof, will be cost-effective and time-efficient. Conceptual approval plans shall not constitute approval for commencement of construction. The Architectural Review Committee reserves the right to require three-dimensional elevations to be included in any building plan if the exterior elevations submitted are not sufficiently clear and representative of the design and character of the exterior elevation in the sole judgment of the Architectural Review Committee. The DEVELOPER specifically discloses that building plans for any construction that the Architectural Review Committee determines in sole discretion is not compatible in style, design and/or quality may be disapproved, even if disapproval is solely on the basis of aesthetic preference, compatibility, image, taste, or harmony as determined solely and exclusively by the Architectural Review Committee.

**Section 3.**

Landscaping Plan. At the time building plans are presented for approval, there shall be included a landscaping plan meeting the consistent landscaping criteria set forth above, and also delineating each of, but not necessarily limited to, the following items:

- a. The location and type of each plant, tree, or other type of foliage intended to be included as part of the landscaping plan.
- b. The proposed removal of any existing plant, tree, or other type of foliage which exists on the Lot prior to commencement of any landscaping.



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- c. The height, width, size (including container size), spacing and quantity of each variety of plant material.
- d. The tree specifications, including height, spread, number of trunks and trunk caliper and height.
- e. The location of each item of landscaping on the Lot and the design and arrangement of the same.

Final approval as required by this Article will not be deemed to be complete until such landscaping is satisfactorily installed, inspected and installation is finally approved by the Architectural Review Committee. The approval of building plans without submission of an approved landscaping plan shall be deemed to be a waiver of the requirement of this Section 3 requiring approval of and inspection of landscaping.

**Section 4.**

Composition of Architectural Review Committee. An Architectural Review Committee is hereby formed and shall initially consist of the DEVELOPER. The DEVELOPER may, at any time, appoint qualified individuals in the opinion of DEVELOPER to constitute the Architectural Review Committee.

- a. DEVELOPER will provide written notice to all Owners upon the appointment of a qualified individual to act as a member of the Architectural Review Committee, designating the individual who will receive all submissions, notices, and other communications on behalf of the Architectural Review Committee.
- b. Excluding the initial Architectural Review Committee, consisting of DEVELOPER, each successor member of Architectural Review Committee shall be appointed for a two (2) year term. At the end of a member's respective term, the member shall appoint a new qualified individual to serve on the Architectural Review Committee and provide written notice to all Owners designating the individual to receive all submissions, notices, and other communications on behalf of the Architectural Review Committee.
- c. In the event no successor is appointed and/or no Architectural Review Committee is formed, or the Owners wish to appoint a different qualified individual as member of the Architectural Review Committee, the Owners may appoint a successor by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. This provision shall not apply to the initial Architectural Review Committee, consisting of DEVELOPER.

**Section 5.**

Duties of Architectural Review Committee. The Architectural Review Committee shall have the following duties and powers:

- a. To promulgate from time to time Architectural Guidelines for the PROPERTY and all Lots and any improvements to be constructed thereon. However, any



Guidelines shall be set forth in writing and made available to all Owners and prospective Owners of any Lot.

- b. To approve all buildings or other structures which shall be commenced, erected, or maintained on any Lot within the PROPERTY and to approve any exterior additions to or changes to or alterations therein as more particularly described in this DECLARATION, specifically including approval of any and all landscaping plans for each Lot;
- c. To disapprove any such building plans and specifications and Lot grading and landscaping plans, which the Architectural Review Committee determines is not consistent with the planned development of the PROPERTY; and
- d. To require to be submitted for approval any samples of building materials and colors proposed or any other data information necessary for the Architectural Review Committee to reach its decision.

**Section 6.**

Required Submittals. At the time of each application, each of the following items is required to be submitted to the Architectural Review Committee:

- a. Complete blueprints of proposed construction, including:
  - i. Elevations for any building, structures, or other improvements including but not limited to decks, patios, porches, pools and exterior lighting;
  - ii. Construction plans including cross-sections and floor plans showing the total square footage of the living space.
- b. Specifications, including without limitation, complete description and samples of exterior materials, colors, paint and rough materials.
- c. Site plan showing:
  - i. Locations and dimensions of buildings, structures, walks, driveways, mailboxes and other proposed improvements;
  - ii. Exterior color chart showing the color of all exterior surfaces, materials, roof, walls, trim, glass, hardware and similar items.
- d. A sample of and adequate description of exterior siding and roofing materials.
- e. Site clearing and grading plan, including identification of existing trees proposed to be removed and showing proposed and existing land grade contours, flow of site drainage, proposed elevations of improvements above the ground level of the public right-of-way detailing any proposed use of fill and any other information requested.



- f. Landscape and irrigation plans.
- g. Any other information required by the Architectural Review Committee in order to insure compliance with the requirements of this DECLARATION and any written Guidelines.
- h. List of all contractors and subcontractors with contact information.
- i. Detailed anticipated construction schedules and construction timelines.

Unless otherwise specifically provided for herein or otherwise required by the Architectural Review Committee at the time of submittal, site plans shall be submitted with the construction plans and shall be the same size as all other sheets of the construction plans. Site plans will be reviewed to determine among other things, if a reverse plan would better serve the PROPERTY based on: i) the location of garages and driveway entry points of the proposed construction, if any, adjoining the Lot in question; and ii) any exterior lighting or other existing structures on a Lot under review.

**Section 7.**

Review Procedure. The Architectural Review Committee shall either approve, disapprove, or request more specific information regarding any plans or materials submitted to it within thirty (30) days from the date of receipt of all submittals required above. Under no circumstances shall the thirty (30) day period begin to run until all of the items specified in Section 6 of this Article required to be submitted has been received by the Architectural Review Committee. It is the intent of the Architectural Review Committee to make all reasonable efforts to expedite plan approval processes. Applicants requesting review by the Architectural Review Committee are encouraged to make initial submittal packages as complete as possible, and in a case of a request for more information, to respond as quickly as possible in order to prevent delays in the approval process.

The failure of the Architectural Review Committee to either approve, disapprove, or request more specific information within such thirty (30) day period shall be deemed to be and constitute an approval of said plan or materials, subject, however, at all times to the Covenants, Conditions, Restrictions, and other requirements in this DECLARATION. The failure of the Architectural Review Committee to act within the thirty (30) day period specified above shall not under any circumstances constitute a waiver of the provisions of this DECLARATION.

- a. Initial Construction of an Improvement. The Owner who initially constructs an improvement on any Lot must complete such construction in a timely manner and substantially in accordance with all plans and specifications, landscaping plans, and any other plans for construction of any improvements on the Lot (the "Construction"). Any construction of an improvement on any Lot shall be substantially completed within twelve (12) months unless otherwise approved in writing by the Architectural Review Committee. Landscaping on a Lot shall be completed within six (6) months from the date the dwelling residence is completed. The Owner shall notify the Architectural Review Committee in writing when the Construction has been completed, and the Architectural Review Committee shall within ten (10) days of receiving such notice, make an inspection to verify completion of the improvements in accordance with the approved plans.



- b. Inspection Rights. The Architectural Review Committee shall have the right to enter upon any Lot to inspect any improvement to insure the improvements conform to the approval granted by the Architectural Review Committee. The right of entry as granted herein and all associated rights of inspection shall extend from the beginning of Construction including site work and continue until thirty (30) days after all improvements have been completed.
  
- c. Remedies for Non-Compliance. Should the Architectural Review Committee determine that the Construction has not been completed in accordance with approved plans and specifications, the Architectural Review Committee shall notify the Owner in writing citing the deficiencies (Notice of Non-Compliance) and the Owner shall within fifteen (15) days after receipt of the Notice of Non-Compliance commence correction of the deficiencies and continue in an expeditious manner until all deficiencies have been corrected. Should any Construction not be completed in a timely manner as determined by the Architectural Review Committee, or not be completed in accordance with the plans and specifications approved by the Architectural Review Committee, the Architectural Review Committee shall have the right to seek specific performance of the Owner's obligation to complete the Construction as initially approved by the Architectural Review Committee; or, in the alternative, enter upon any Lot and complete the Construction as approved at the expense of Owner, subject, however, to the following provisions. Prior to commencement of any work on a Lot, the Architectural Review Committee must furnish written notice to the Owner that unless the specified deficiencies are corrected within fifteen (15) days, the Architectural Review Committee shall correct the deficiencies at Owner's expense. The provisions allowing the Architectural Review Committee to enter upon any Lot does not impose any obligations upon the Architectural Review Committee to act in such manner and such election shall be completed at the sole discretion of the Architectural Review Committee. If correction of the deficiencies is not commenced within fifteen (15) days, or if such correction is not continued thereafter in an expeditious manner, the Architectural Review Committee has the right to seek legal action to force the Owner, or any successor to an Owner, to complete all improvements in accordance with the approved plans and specifications. The Notice of Non-Compliance shall contain the legal description of the Lot. Once recorded, the Notice of Non-Compliance shall constitute a notice to all potential purchasers from the Owner that the Architectural Review Committee shall have the right to enforce completion of all improvements against the Owner, or any successor of the Owner. Once the Architectural Review Committee determines that all improvements have been completed in accordance with the approved plans and specifications, the Architectural Review Committee shall issue the Owner a Certificate of Approval in a recordable form, which shall make reference to the recorded Notice of Non-Compliance, and be executed by a majority of the members of the Architectural Review Committee. The recording of the Certificate of Approval shall be conclusive evidence that all improvements have been approved by the Architectural Review Committee, but shall not excuse the Owner from the requirement that the plans and specifications for subsequent changes,





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modifications, or alterations to improvements must be submitted to and approved by the Architectural Review Committee prior to the commencement of any work.

- d. Guidelines, Rules, and Regulations. The DEVELOPER, in order to give guidelines concerning the architectural design, construction, and maintenance of the dwelling units, may promulgate additional Cottonwood Parkview Addition ARCHITECTURAL GUIDELINES, RULES AND REGULATIONS ("Guidelines"). The Guidelines, if created, shall be maintained at the offices of the DEVELOPER so long as the DEVELOPER owns any Lot in Cottonwood Parkview Addition. If created, DEVELOPER declares that Cottonwood Parkview Addition shall be held, transferred, sold, conveyed, and occupied subject to the Guidelines, as amended from time to time by the DEVELOPER.
- e. Failure of Owner to Comply with Order of Architectural Review Committee. In the event the failure of an Owner of a Lot to comply with the written directive or order from the Architectural Review Committee, then, in such event, the Architectural Review Committee shall have the right and authority to perform the subject matter of such direction or order and the costs of such performance shall be charged to the Owner of the Lot in question.
- f. Storage and Removal of Construction Material. Except the DEVELOPER, the Lot Owners may not store construction materials on a Lot for a period exceeding fifteen (15) days without commencing construction, and if construction does not commence, the DEVELOPER may remove such stored materials. Costs incurred in such removal by the DEVELOPER will become a lien on said Lot, accruing interest at the statutory rate of six percent (6%). Construction, once commenced, shall be diligently pursued to completion.
- g. No Liability. Plans and specifications submitted to the Architectural Review Committee shall not be reviewed for engineering or structural design or quality of materials. By approving any such plans and specifications, neither the Architectural Review Committee nor the DEVELOPER assumes any liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications.

**Article VI.  
RESTRICTIONS**

**Section 1.**

All buildings are subject to the requirements of the Bismarck City Building Code.

**Section 2.**

Square Footage Requirements. Except as provided directly below, under no circumstance shall the above ground square footage of any residential structure, exclusive of open porches, decks and garages, be less than 1,200 square feet. With respect to ranch style homes, the at or above ground living area of each ranch home, exclusive of open porches and garages, shall not be less than 1,600 square feet.



With respect to homes of two stories or more above ground, the at or above ground living area of each such residential structure shall be no less than 2,400 square feet with no less than 1,200 square feet on the main/ground level of each home. With respect to split level style homes, the above ground-main level of each such home shall have a minimum of 1,600 square feet at or above ground level.

**Section 3.**

Building Set Back and Location. The plat map of Cottonwood Parkview Addition sets forth the corridors within which all structures within Cottonwood Parkview Addition shall be located and constructed. The precise location of all structures to be constructed on a given Lot shall be subject to the prior written consent and approval of the Architectural Review Committee. All building setback and location shall be completed in full compliance with all applicable ordinances, rules and regulations of the City of Bismarck. Any setbacks greater than thirty feet (30') must be approved in writing by the Architectural Review Committee.

**Section 5.**

Storm Water Management Plan Elevation Restrictions. Pursuant to the Storm Water Management Plan approved by the City of Bismarck, all Lots within Cottonwood Parkview Addition shall have a minimum basement floor elevation ("BFE") no lower than 1,634 (NGVD '29 Datum) or 1,635.4 (NADV '88 Datum). In addition to the minimum BFE, any occupied structure constructed on a Lot within Cottonwood Parkview Addition shall have a minimum ground elevation of one and four tenths (1.4) feet above the lowest top of curb elevation in front of the Lot on which construction is taking place.

**Section 6.**

Residential Construction. All residential living unit structures shall be constructed on site of new materials only. All single-family residential structures shall have an attached three (3) car garage, minimum. All twin-home residential structures shall have a two (2) car garage, minimum. No garage doors shall exceed ten (10) feet in height. No other existing or prefabricated dwelling structures, sheds or storage buildings shall be moved, placed or permitted on a Lot, unless approved by the Architectural Review Committee. All residential structures shall be constructed in precise compliance with the requirements of the Architectural Review Committee as detailed above. The Architectural Review Committee shall have total discretion in the approval or disapproval of construction plans and the location of all structures to be constructed on each Lot within Cottonwood Parkview Addition.

**Section 7.**

Excavation. Any and all soils excavated from a Lot within the subdivision shall be deposited, at the Lot Owners' sole cost and expense, off site or blended. With the exception of topsoil for purposes of establishing landscaping, no "foreign" soils shall be placed or deposited on any Lot within the subdivision without the prior express written consent of the Architectural Review Committee.

**Section 8.**

Subdivision of Lots. No Lot shall be further subdivided without the express prior written consent of the DEVELOPER.



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**Section 9.**

Exterior Storage. During the period of October 1st through April 30th of each year, no boat, boat trailer, house trailer, horse trailer, recreational vehicle, dual wheel truck, or other dual wheel commercial vehicle, or any part thereof shall be stored or permitted to remain on any residential lot, including driveways, or street within the PROPERTY. For the period from May 1st to September 30th of each year, the same may only be stored or placed in a garage or fully-enclosed space, or placed on a cement pad adjacent to the attached garage, however, the same shall not extend in any way beyond the front of the garage.

**Section 10.**

Pets. No horses, mules, llamas, cows, hogs, goats, chickens, poultry, pigeons, or other similar animals shall be kept or maintained anywhere within the PROPERTY. Only dogs, cats, or other household pets shall be allowed and only to the extent allowed by the ordinances of the City of Bismarck. All household pets shall be subject to proper confinement and control so as to not create a nuisance to be offensive to other Owners. The commercial breeding and sale of any animal is forbidden upon any Lot. All dogs shall be either maintained on a leash or otherwise restricted to the owner's premises so as not to run at large at any time. All kennels shall be erected or placed directly adjacent to the exterior of the residential living unit as approved by the Architectural Review Committee. All kennels shall be cleaned and maintained so as to reduce, to an absolute minimum, odors. The Architectural Review Committee shall reserve the right to require that a kennel wall be of solid wall construction (i.e. no chain link fence). Excessive dog barking and/or the failure to restrict pets to the Owner's premises, in the discretion of the Architectural Review Committee, may be deemed a "nuisance."

**Section 11.**

Trash and Refuse. No trash, ashes or other refuse may be thrown, dumped or stored on any Lot. All trash, or other refuse, and trash cans and containers shall be kept in garages or in enclosures such that they will be concealed from the view of streets and Lots which are adjacent to the Lot on which they are located except on days garbage pickup is made. Absolutely no trash burning shall occur on the premises. Small fire pits and portable fire containers shall be allowed to the extent that the same do not violate any city or county fire code or regulations. There shall be no abandoned, junked, inoperable or wrecked vehicles, trailers, equipment stored anywhere within the PROPERTY, outside of the house garage. No garbage or other similar debris shall be stored or allowed to remain on any Lot. All such items shall be promptly removed from each Lot by and at the Lot Owner's sole cost and expense.

**Section 12.**

Fences. The Architectural Review Committee shall have the sole authority to establish reasonable criteria and requirements for approval of any fences and shall be the sole judges of whether the criteria are satisfied. Chain-link fences for animal containment purposes, with proper screening from neighboring Lot Owners and public view, if approved by the Architectural Review Committee, will be permitted. Such fences shall not exceed six (6) feet in height.

**Section 13.**



Signs. No signs, billboards, or objects of unsightly appearance or nuisances shall be erected, placed or permitted to remain on any Lot, nor shall any Lot be used in any way or for any purpose which may endanger the health or unreasonably disturb the residents of the PROPERTY except that no more than one (1) "for sale" sign or "for rent" sign of not more than five (5) square feet may be maintained on any Lot. Except as provided in this Section 13, nothing shall be kept on any Lot that will cause any noise that might disturb the peace, comfort or serenity of the occupants on surrounding property. The foregoing restrictions in this Section 13 shall not apply to the commercial activities, signs and billboards, if any, of the DEVELOPER or the use or operation of sales offices by the DEVELOPER during the construction and sales period.

**Section 14.**

Developer Obligations. All Lots shall be conveyed by DEVELOPER as unimproved property without any obligation on the part of the DEVELOPER to improve the same with the exception of the DEVELOPER'S obligation to install paved roads as depicted on the Plat of Cottonwood Parkview Addition and provide access to utilities for electric service, natural gas, telephone, and cable television.

**Section 15.**

Antennas and Satellite Dishes. Excepting satellite dishes not to exceed 36 inches in diameter, no antennas or satellite dishes may be attached to any structure without the prior express written approval of the Architectural Review Committee. No more than two 36 inch, or less, satellite dishes shall be allowed per structure.

**Section 16.**

Covenants to Run with the Land. This DECLARATION and these covenants and restrictions shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date these covenants and restrictions are recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by two-thirds (2/3rds) of the then Owners of Lots has been recorded, agreeing to change said covenants in whole or in part. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the provisions which shall remain in full force and effect.

**Section 17.**

Driveways. All driveways must be a minimum of four inches (4") of concrete or asphalt or other acceptable hard surface approved by the Architectural Review Committee. Colored concrete and stamped concrete are permitted. All driveways are subject to prior approval and review by the Architectural Review Committee.

**Section 18.**

Game and Play Structures. All game and play structures must be located where approved by the Architectural Review Committee and where the structure will have a minimum visual impact on adjacent Lots. In most cases, material used must match existing materials of the residence constructed upon the Lot and no playhouse may be larger than one hundred (100) square feet. Any metal play



equipment, exclusive of wearing surface, will generally be required to be painted to blend into the surrounding environment.

#### **Section 19.**

Basketball Goals. Any basketball goal backboard must be perpendicular to a primary street, and the backboard must be white, beige, clear, or light gray, while supporting posts for basketball goals must be painted black. Portable basketball goals are permitted.

#### **Section 20.**

Swimming Pools. No approval shall be required for children's portable wading pools which are emptied at night and that do not exceed eighteen inches (18") in depth and whose surface area does not exceed thirty-six (36) square feet. Above ground pools are prohibited. For all in-ground pools, the appearance, height, and detailing of all retaining walls must be consistent with the architectural character of the residence constructed on the Lot with some terracing acceptable. All pools must include covers and/or fencing for safety as required by applicable governmental regulations. No glaring light sources which can be seen from neighboring Lots are permitted. Exterior hot tubs must be screened from adjacent properties and streets, and any screening must comply with fence restrictions and be approved by the Architectural Review Committee. All in-ground pools and any safety features shall be subject to the Architectural Review Committee's approval.

#### **Section 21.**

Temporary Structures. No temporary structure shall be permitted to be constructed or located upon a Lot, including ice fishing houses or hunting blinds.

#### **Section 22.**

Clotheslines and Above-Ground Tanks. No clothesline or above-grounds tanks of any kind are permitted.

#### **Section 23.**

Vehicles and Repair. All vehicles parked in open view and not in a garage must be operable and may not be unsightly. No vehicle may be parked on any yard.

#### **Section 24.**

Solar Devices. Solar devices shall be permitted provided they are approved, in advance, by the Architectural Review Committee.

#### **Section 25.**

Statues, Windmills, Fountains/Water Ornaments and Other Ornamental Features. One (1) statue, windmill, fountain, or ornamental feature is permitted per residential living unit provided they are approved, in advance, by the Architectural Review Committee. These features may not be taller than seventy percent (70%) of the first level of any residential living unit. No such feature can produce power other than to operate a water feature itself.



**Section 26.**

Review Fees. In addition to the Required Submittals as described above, the Owner shall be responsible for payment for such costs and expenses which are incurred by the Architectural Review Committee in the evaluation process, including, but not limited to, ordering surveys of lot lines and easements, and/or engaging the resources of an engineer, architect, attorney, or consultant. Notwithstanding this provision, the Architectural Review Committee is not required or obligated to incur any outside third-party costs in the evaluation process of plans, specifications, or permits.

**Section 27.**

Occupancy and Sale. The occupancy of any Lot within the PROPERTY shall be subject to the provisions set forth in this Section. As used herein, a Lot is considered to be leased if it is occupied on a temporary or continual basis by parties other than the Owner or the Owner's family.

- a. All leases or non-owner occupancy arrangements must be in writing and shall each have a minimum term of one (1) year, unless a shorter period is permitted specifically by the DEVELOPER. At the time of entering into a lease, the Owner and the Owner's tenant shall provide DEVELOPER with an executed copy of the lease and pay a review fee of One Hundred Dollars (\$100).
- b. Each lease shall contain, or shall be deemed to contain the following:
  - i. The lease shall designate the parties who are entitled to occupy the Lot and shall state that no other parties are permitted to occupy such Lot.
  - ii. The lease shall provide that continued violation of any provisions of this DECLARATION shall constitute cause for termination of the lease and eviction of the tenant.

**Section 28.**

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

**ARTICLE VII.  
WAIVER OF VIOLATION**

Where an improvement on any Lot is submitted to the Architectural Review Committee for approval or where a building has been erected or the construction thereof is substantially advanced and the construction would constitute a violation of this DECLARATION or is situated on any Lot in such a manner that the same constitutes a violation or violations of any of this DECLARATION, or the DEVELOPER shall have the right to release such Lot or portion thereof from such part of the provisions of this DECLARATION which are violated; provided, however, said Architectural Review Committee or DEVELOPER shall not release a violation or violations of any such covenant except as to a proposed waiver either the Architectural Review Committee or the DEVELOPER, in their respective sole



*Debbie Kroshus*

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discretions, determine to be not seriously detrimental to the neighborhood of Cottonwood Parkview Addition, or to be a positive contribution to surrounding residential living units Cottonwood Parkview Addition. For example, but not by way of limitation, preservation of existing trees might be a circumstance. Waivers may also be appropriate where a proposed material, design, or treatment, while in not strict compliance, is a positive element or is indistinguishable from a permitted material, design, or treatment or possesses the same visual quality. A violation of any provision of this DECLARATION or the decision of the DEVELOPER or the Architectural Review Committee to waive or otherwise grant and authorize variances from any terms or restrictions herein shall not be deemed to be a defense to establish a basis for others to violate any of the terms, conditions, covenants, or provisions contained in this DECLARATION.

**ARTICLE VIII.  
GENERAL PROVISIONS**

**Section 1.**

Amendments. In addition to any other manner herein provided for the amendment of the this DECLARATION, this DECLARATION may be amended, changed, added to, modified, or deleted at any time from time to time 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 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 seventy-five percent (75%) of the Lots, and any such amendment shall not be effective until recorded against the Lots at the Office of the Recorder for Burleigh County, North Dakota. In addition, at any time until DEVELOPER no longer owns any of the Lots; DEVELOPER may unilaterally waive any particular restriction or performance criteria as to any Lot, or remove any Lots owned by DEVELOPER from the scope of this DECLARATION, by instrument recorded in the Office of the Recorder for Burleigh County, North Dakota. So long as the DEVELOPER is the Owner of or holds a mortgage on any Lot affected by this DECLARATION, the DEVELOPER'S consent to any amendment to this DECLARATION must be obtained in writing. All subsequent grantees of the PROPERTY hereby grant to DEVELOPER their powers of attorney to effect any change, amendment, modification deemed to be required by DEVELOPER. Additionally, any amendment which materially and significantly affects the DEVELOPER'S ability to develop Cottonwood Parkview Addition, sell improved or unimproved Lots, modify or terminate any rights or reservations granted to the DEVELOPER in this DECLARATION must be approved and executed by the DEVELOPER. No amendment or termination shall require the consent or joinder of any mortgagee or lienholder holding a lien upon any part or portion of the Lot.

**Section 2.**

Severability. Invalidation of any one of these covenants or restrictions set forth in this DECLARATION or any part thereof by judgment or court order shall in no way affect the other provisions of this DECLARATION which shall remain in full force and effect.

**Section 3.**

Governing Law. It is expressly understood that the laws of the State of North Dakota shall govern the interpretation and enforcement of this DECLARATION and all provisions contained herein.



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**Section 4.**

Easement for Inspection. All Owners of a Lot within the PROPERTY agree that the DEVELOPER and/or representatives of the Architectural Review Committee will be allowed to inspect each Lot for purposes of making sure such Lot is in compliance with the provisions of this DECLARATION and conduct all activities reasonably necessary to carry out such inspection. Each Owner waives any and all claims for a trespass on a Lot arising from such inspection.

**Section 5.**

DEVELOPER'S Storm Water and Erosion Control. DEVELOPER will use best practice to prevent storm water and erosion problems relating to the Lots owned by the DEVELOPER. In the event of DEVELOPER'S inability or failure to prevent the loss, transfer, or migration of any soil, silt, sediment, or other materials from or beyond the boundaries of a Lot owned by and under the control of the DEVELOPER, each Owner of a Lot hereby releases, waives, and otherwise discharges any and all claims that an Owner of a Lot may assert against the DEVELOPER relating to storm water and erosion control issues.

**Section 6.**

Indemnification of DEVELOPER for Enforcement Costs. The Owners and their successors and assigns of Lots purchased in Cottonwood Parkview Addition shall indemnify and reimburse the DEVELOPER for any and all court costs and attorneys' fees expended by DEVELOPER in enforcing or defending the provisions of this DECLARATION. Any and all costs which are subject to indemnification of this provision by the Association shall be assessed as a cost to the Owner of a Lot violating such provisions of this DECLARATION.

IN WITNESS WHEREOF, the undersigned DEVELOPER has caused these presents to be executed in its name, by its authorized undersigned trustees this 21<sup>st</sup> day of January 2020.

DEVELOPER:

WACHTER FAMILY REVOCABLE TRUST

By: Paul C. Wachter, Trustee  
Paul C. Wachter, Trustee

By: Valerie S. Wachter, Trustee  
Valerie S. Wachter, Trustee

STATE OF Arizona )  
 )ss.  
COUNTY OF Maricopa )





VOGEL LAW FIRM-FARGO

*Debbie Kroshus*

Recorded Electronically

896359

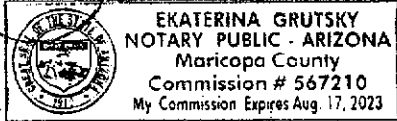
\$75.00  
Page: 17 of 18  
1/24/2020 9:34 AM  
Burleigh County

This record was acknowledged before me on this 21 day of January 2020, by Paul C. Wachter, trustee of the Wachter Family Revocable Trust.

*[Signature]*

Signature of Notarial Officer

Stamp



Sr FSA II

Title of office

My commission expires: 08/17/2023

STATE OF Arizona )  
 )ss.  
COUNTY OF Maricopa )

This record was acknowledged before me on this 21 day of January 2020, by Valerie S. Wachter, trustee of the Wachter Family Revocable Trust.

*[Signature]*

Signature of Notarial Officer

Stamp



Sr. FSA II

Title of office

My commission expires: 08/17/2023



**896359**

VOGEL LAW FIRM-FARGO

*Debbie Kroshus*

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\$75.00

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Burleigh County

