

**SHADOW CREEK FIFTH ADDITION  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
RESERVATIONS, EASEMENTS, LIENS AND CHARGES**

This DECLARATION, is made February 2, 2014, by Shadow Creek Development III, LLC, 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 the 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 are for the benefit of the Property and each Owner. These covenants, conditions, restrictions, reservations, easements, liens and charges shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the properties herein described of any part thereof, and shall inure to the benefit of each Owner thereof.

NOW, THEREFORE, the 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 the Declaration (unless the context shall prohibit), shall have the following meanings:

1. “Lot” shall mean and refer to any plot of land shown upon any recorded Plat of the Property. If a Lot as shown on the Plat of a portion thereof is added to an adjacent Lot, then the same shall be considered as on Lot for purposes of this Declaration.
2. “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 sellers, but excluding those having an interest merely as security for the performance of an obligation.
3. “Building Plot” shall mean and consist of one or more Lots or one Lot and a portion or portions of adjacent Lots which have the same Owner.
4. “Family” shall mean one or more persons living in a residential building as a single housekeeping unit and shall exclude a group or groups of persons where three (3) or more persons thereof are not related by blood, adoption or marriage.

5. "Developer" shall mean and refer to Shadow Creek Development III, LLC, its successors and assigns, if any successors or assigns shall acquire a majority of the undeveloped Lots for the purpose of development.
6. "Property" shall mean that real property described more specifically in the Article II of this Declaration.
7. "Declaration" shall mean the covenants, conditions, restrictions, reservations, easements, liens and charges set forth in the Agreement, as made from time to time be amended.

## **ARTICLE II.**

### **PROPERTY SUBJECT TO THIS DECLARATION**

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

Shadow Creek Fifth Addition to the City of West Fargo, Cass County, North Dakota. All of which real property shall hereinafter be called the "Property".

## **ARTICLE III.**

### **ARCHITECTURAL CONTROL**

1. Shadow Creek Fifth Addition Architectural Review Committee. There is hereby established the Shadow Creek Fifth Addition architectural Review Committee ("Review Committee") for the Property which shall be comprised of the Developer or its appointed architect until the time that residences have been constructed and completed on all properties, or until the time the Developer decides to divest itself of responsibility for the 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 Lot 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. Two (2) copies of Plans (for which receipt must be acknowledged in writing) will be submitted to the Review committee electronically. Approval or disapproval of those plans will be made in writing within ten (10) days after the receipt of those plans. Approval shall not be arbitrarily withheld or delayed, it being the intention of the Review Committee to grant or withhold the approval for the purpose 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. 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. No outside storage of building materials shall be permitted on any lot after the twelve (12) month construction period.
4. Architectural Control. No building, fence, wall, landscaping feature, pool, hot tub, 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 or its appointed architect from time to time.

A. Plans submitted for approval shall include the following:

- i. Two complete sets of electronically submitted house plans, two site plans and a completed application form.
- ii. The house plan should indicate construction materials and specifications, roofing material, exterior finishes and colors.
- iii. 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 main floor proposed grade, and the basement floor grade should be clearly shown. 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, window wells and driveway locations and sizes.
- iv. *A tree removal plan shall also be included. No trees shall be removed without Developers prior approval.*

B. Accessory structures such as pools, pool houses, gazebos, utility buildings, storage buildings, additional garages, decks and play structures should be indicated on the site plan.

C. Any and all solar heating devices or satellite dishes larger than 30", TV and radio antennae must be approved by the Review Committee or its architect.

D. Each Lot will be restricted to construction of one single family detached residence with a three car attached garage. No lean-to, car-port, vehicle storage building detached from the residence will be permitted, without the written approval of the Review Committee.

E. The exterior minimum square footage requirements apply. Square foot calculations will not include basements, open porches and decks or garages.

**Lots 1-7 inclusive, in Block 1.,Lots 1-2 inclusive, Block 2.**

2000 square feet for a standard one story rambler.

2500 square feet for a standard two story.

**Lots 1-26 inclusive, Block 3.,Lots 1-27 inclusive, Block 4.**

1800 square feet for a standard one story rambler.

2400 square feet for a standard two story.

2600 square feet for a split level, if approved by Review Committee.

F. A reduction of the square footage with respect to any of the lots may be granted by Review Committee, but only in special circumstances. Any reduction shall be evidenced by a written certificate of variance issued by Review Committee.

G. No residence shall exceed two stories in height when viewed from the street. Roof slopes of not less than 4 in 12 are required, Roof slopes of 7 in 12 and greater are encouraged.

H. No fences are allowed on Blocks 1, 2 and 3.

## ARTICLE IV.

### RESTRICTIONS

The property shall be subject to the following restrictions:

1. **Land Use and Building Type.** All Lots zoned R1-A shall be used for single family purposes only. No improvements or structures whatsoever, other than a private dwelling house, swimming pool, Review Committee approved outbuildings, garages and fences (subject to limitations hereinafter set forth) may be erected, placed or maintained on any Lot on the Property.
2. **Building Location.** No building shall be erected on any Lot unless the side Lot clearances and the front line set backs are in compliance with the City of West Fargo zoning ordinances for residential zoning districts unless variances are approved by Review Committee and the City of West Fargo. Eaves and steps shall also be constructed in such a way so as to comply with such zoning ordinances and restriction, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.
3. **Lot Drainage Control.** All lots shall be graded to the finished design grades as designed by the engineering firm appointed by the City and approved by Developer. 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. The Developer or the engineer will provide grade stakes to assist in the provision of grading to the final design grades along the rear and side lot lines, and prior to the issuance of plan approval as required by the Architectural Guidelines, the Developer may require a grade deposit to ensure compliance. The deposit will be refunded upon confirmation of compliance, and completion.
4. **Fencing.** All fencing provided by the builder or 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 Developer. Fences of wrought iron, maintenance free or composite cedar only are encouraged. No fence shall exceed six (6) feet in height. Fencing is allowed only in Block 4. Contact Developer for design guidelines and examples of approved fencing.
5. **Landscaping.** 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 prior to the end of the following summer. 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. Boulevard and front yard trees required to be installed by the City of West Fargo's ordinances, regulations, permits or other applicable law must be installed within twelve (12) months of occupancy. If such trees are not installed within such twelve (12) month time frame, at Developer's election, Developer may install the trees and the homeowner shall be required to pay Developer for the installation.

6. **Diseases and Insects.** No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed, or harbor infectious plant diseases or noxious insects.
7. **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 of 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. Any such antennas must be still installed in accordance with the guidelines set forth by the Review Committee.
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 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 Design 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 Residential Unit, Garage, Hangar or other building so as to be visible from neighboring property.
10. **Basketball Goals and Backboards.** No basketball goal or backboard shall be attached to a Residential Unit or other building. Basketball goals and backboards attached to a freestanding pole may be installed on a Lot provided the location, design and appearance of the basketball goal and backboard is approved in writing by the Review Committee.
11. **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 owners Lot, must not be a nuisance and will not be allowed to stray to adjacent property.
12. **Mailboxes.** The United States Postal service has determined that mail delivery service to homes in this Addition shall be to Centralized Box Units (CBU's). The location of the CBU's has been predetermined by the Postal Service, with the approval of the Developer and the City of West Fargo. Each property owner should contact the Postal Service in West Fargo prior to move in to coordinate lock keys and start of delivery service.
13. **Clotheslines.** Clotheslines will be permitted as long as placement and design are approved by the Review Committee.
14. **Vehicle Parking, Storage.** No commercial vehicles, motor homes, boats, travel trailers, personal watercraft, recreational vehicles, flat bed trailers, storage trailers, storage containers, car trailers, or construction equipment shall be permitted on any

Lot in the subdivision. Construction equipment will be allowed during the normal course of construction. Motor homes, travel trailers and the 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 for a maximum of seventy two (72) hours.

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 feet square maximum and the design of the sign is approved by the review committee prior to installation. The provisions of the 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 of promotion of the premises. The Review Committee may erect, place and maintain such sign structures as it deems necessary for the operation or identification of the subdivision.
16. **Nuisance.** 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. Such restrictions shall also include allowing noxious weeds to occur on the Lot either during or after the period of construction of the home.
17. **Dirt Removal.** No topsoil or excavation material may be removed from the Development 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 Developer, or its engineer. Otherwise the Developer will direct as to where the excess excavation, or soil, if any, is to be disposed of. Top soil is not allowed to be disturbed until a permit is issued for the primary structure.
18. **Appearance During Construction.** All lots are to be kept clean during construction. All garbage is to be stored out of sight.
19. **Burning.** No burning of garbage, trash, trees, leaves, branches, construction materials or similar items will be permitted. Fire pits shall be allowed provided they comply with all applicable City of West Fargo ordinances and laws.
20. **Storm Water.** Each lot shall be kept and maintained to be in compliance with current storm water regulations until such times when Lot is sodded or seeded.
21. **Propane Tanks.** No combustible liquid or gas tanks, exposed to view from the public street, shall be allowed on the Lots.

22. **Temporary Residence.** No trailer, basement, tent shack, garage, barn or other outbuilding erected on the tract shall at any time be used as a residence, nor shall any residence of a temporary character be permitted.
23. **Easements.** The easements for the installation and maintenance of utility and drainage facilities are shown on the registered plat of the development. Within the area of the easements no structures, planting, fencing or other materials shall be placed, erected, or permitted to remain which may damage or interfere with the flow of drainage channels or swales in the easements or which obstruct or retard the flow of water through drainage channels or swales in the easements. The easement areas of each Lot and all improvements on it shall be maintained continuously by the Owner except for the improvements for which the public authority of utility company is responsible.

All claims for damages, if any, arising out of the construction, maintenance and repair of the utility or drainage facility or on account of temporary or other inconvenience caused thereby against the Developer, the utility or the public authority or any of its agents or servants are waived by the owners.

24. **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.
25. **Power and Telephone Lines.** For all lots, temporary overhead, distribution and service lines are permitted until permanent underground facilities are installed. Otherwise overhead lines shall be prohibited except during emergencies and repairs.
26. **Structural Changes.** No house or structure shall be moved onto any of the Lots, unless it is a new structure built to meet all of the current codes and specifically approved in writing by the Review Committee, and no structure once erected shall at any time be altered or changed so as to permit its use to be in violation of these restrictions and conditions.
27. **Mortgages.** The breach of any of the foregoing covenants, conditions, reservations or 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.
28. **Driveways and Sidewalks.** Driveways and parking areas must be hard surfaces. Permitted materials for driveway construction include interlocking paving stones and cast in place concrete.
29. **Private Sewer and Water.** No private septic tanks, drain fields or private wells shall be permitted on any Lot. All Lots in the subdivision will be served by the City of West Fargo sewer and water utility.

## ARTICLE V

### GENERAL PROVISIONS

1. **Enforcement.** If any party shall violate or attempt to violate any of the covenants or restrictions contained in this Declaration, it shall be lawful for any Owner to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions and either prevent him or them from doing or to recover damage for such violation.
2. **Right to Enforce.** Failure to enforce any of the covenants, conditions, restriction, easements, liens and charges now or hereafter imposed pursuant to the covenants or restrictions should not be deemed a waiver of the right to do so thereafter, nor shall it be construed as an act of acquiescence or approval on the part of the Owners.
3. **Developer Assessments.** The Developer, its successors and assigns shall have the right to assess the lots within the Development annual general assessments or charges, and special assessments for capital improvements to be used exclusively to promote the improvement, maintenance and the operation of the signage, mailboxes, common areas, parks, perimeter landscape, Development fencing and entrance to the Development. Each Lot, whether improved or unimproved, shall be assessed at a uniform rate based on the number of residential units existing on the lot. For example, a Lot containing ten residential units will be charged an assessment equal to ten times the assessment to a lot containing one residential unit. The above notwithstanding, if a residential unit is situated upon more than one Lot, the two or more Lots upon which the residential unit is situated shall be assessed according to the actual number of individual lots for purposes of this paragraph.
4. **Duration.** The covenants, restrictions and conditions of this Declaration shall run with and bind the Property and shall inure to the benefit of and 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 said covenants and restriction in whole or in part.
5. **Severability.** The invalidation of anyone of these covenants or restrictions by Judgment or Court Order shall in no way affect any other provisions which shall remain in full force and affect.
6. **Amendments.** This Declaration of Covenants, Conditions and Restrictions 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.

