

PAGE: 1 of 5 AMRST 1704527
Dwyer Law Office 1/9/2024 2:24 PM
Recorded Electronically \$20.00

RECORDER'S OFFICE, CASS COUNTY, ND 1/9/2024 2:24 PM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
DEBORAH A. MOELLER, COUNTY RECORDER

by Sheva Garcia, Dep 1704527
Recorded Electronically



**AMENDMENT TO LOST RIVER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
RESERVATIONS, EASEMENTS LIENS AND CHARGES**

This Amendment to the Lost River Addition Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges is made January 9, 2024, by the Developer who declares:

RECITALS

- A. The Developer has not divested itself of the responsibility of architectural control.
- B. The undersigned desires to amend and modify the Lost River Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges recorded in the office of the Cass County Recorder on May 31, 2017, at 8:30 a.m. as document No. 1511136 (the "Declaration"), by the terms of this Amendment, against the following property:

Lost River Addition, Lost River Second Addition, Lost River Third Addition, Lost River Fourth Addition, Lost River Fifth Addition, Lost River Sixth Addition, and Lost River Seventh Addition all to the City of Horace, a part of the West Half of Section 19, Township 138 North, Range 49 West, Cass County, North Dakota (and any re-plats thereof).

AMENDMENT

- 1. Paragraph 4 of Article I is replaced with the following:
 - 4. "Developer" shall mean and refer to Winnie Development II, Inc. a North Dakota corporation, and its successors and assigns, if any successors or assigns shall acquire a majority of the undeveloped acreage of the Property, including but not limited to undeveloped residential Lots, for purpose of development. The Developer shall have all the powers of the Board until that time that Developer divests itself of architectural control as set forth in Paragraph 1 of Article III.
- 2. Paragraph 1 of Article III is replaced with the following:

1. **LOST RIVER ADDITION ARCHITECTURAL REVIEW COMMITTEE.** There is hereby established the Lost River Addition Architectural Review Committee ("Review Committee") for the Property which shall be comprised of the Developer until the time that residences have been constructed and completed on all Lots (including future Lots re-platted out of the two (2) agricultural Lots), or until the time the Developer decides to divest itself of responsibility for architectural control. At the Developer's option, the Developer may appoint three Owners to serve on the Review Committee prior to divesting itself of architectural control, in which case the Review Committee shall serve in an advisory capacity. When such control is relinquished, the responsibility shall be vested in a committee comprised of three Owners, who shall be elected by all Owners in the subdivision. The elected committee shall, at that time, adopt a meeting schedule and rules of operation. It shall be conclusively presumed that there has been no complete construction upon all properties or that the Developer has not divested itself of responsibility for architectural control unless there is a sworn affidavit of record stating that one or the other of said factual circumstances exists.

3. Paragraph 5 of Article III is replaced with the following:

5. **NEW CONSTRUCTION.** All improvements constructed on Lots shall be new construction and no buildings or other structures shall be moved from other locations onto any Lot without approval of the Review Committee. Construction of improvements on any Lot must commence within twenty-four (24) months of conveyance of the Lot by Developer. In the event construction of improvements does not commence within this time frame, the Developer will have the option to purchase the Lot back from the owner upon payment to the Owner of ninety (90%) percent of the price originally paid to Developer for the Lot

4. Paragraph 2 of Article IV is replaced with the following:

2. **FENCES/BERMS.** All fencing provided by the Owner or anyone other than the Developer shall require the approval of the Review Committee prior to installation. No fencing shall be permitted to extend beyond twenty (20) feet behind the front of the primary structure. No fence shall exceed six (6) feet in height. All fencing must be made of maintenance-free material; no chain-link or wood fence will be permitted. The Review Committee may restrict the Owners to a certain color fence to appear cohesive with other fences within the Property. No white or light colored fences are allowed, except as approved by the Review Committee. The rear half of side fencing (measured from the front of the primary structure to the rear Lot corner) and all rear Lot fencing for all Lots along the Sheyenne River, the abandoned river bed that runs through the Property, pond Lots and wooded lots must be of transparent design and must be constructed so as to not block the view corridors to the river, abandoned river, or pond (as applicable) from adjacent Lots. Each Owner shall be responsible for the continued maintenance and replacement (if necessary) of any buffer fence installed by the Developer, which abuts his/her Lot. The buffer fence shall at all times be kept in good visual appearance. Any broken or

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

5. Paragraph 5 of Article V is replaced with the following:

5. **ACCESSORY STRUCTURES.** Each Lot will be restricted to construction of a single-family residence with a two or three-stall attached garage. Accessory buildings may be approved, provided they are constructed as part of the design style and are constructed with the same exterior materials as the house, and provided that the site plan is harmonious with neighboring properties. The Review Committee may, on a case-by-case basis, reduce an accessory building's allowable total square footage from that allowed by city ordinance based on the dimensions of a particular Lot, the trees that are proposed to be removed, and the impacts a proposed accessory building has on the views of neighboring Lots.

6. Paragraph 7 of Article VII is replaced with the following:

7. **ENFORCEMENT OF LIEN.**

a. All delinquent assessments, together with late fees thereon, and costs of collection thereof as hereinafter provided, shall be a charge on the land shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with late fees and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

b. If the Association elects to file a claim of lien for non-payment of assessments, such claim of lien shall be filed within three (3) years after non-payment and state:

- i. The name of the delinquent Owner.
- ii. The legal description of the Lot against which the claim of lien is made.
- iii. The amount claimed to be due and owing.
- iv. That the claim of lien is made by the Association pursuant to the terms of this Declaration.
- v. That the lien claimed against the Lot is in an amount equal to the amount of the stated delinquency.

vi. Due demand has been made upon the defaulting or the delinquent Owner pursuant to this Declaration and that said amount was not paid within the ten (10) days after such demand.

c. Upon recordation of a duly executed and acknowledged original of such claim of lien by the Cass County Recorder's Office, the lien claimed therein shall immediately attach to the real property. Each default shall constitute a separate basis for a claim of lien or a lien but a number of defaults may be included within a single claim of lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for foreclosure of real estate mortgages pursuant to the statutes of the State of North Dakota. Sale or transfer of any Lot pursuant to foreclosure shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. The lien of the assessments provided for above shall be subordinate to the lien of any previously-recorded mortgage or security instrument.

d. All fees, including attorney and recording fees, that the Association incurs in drafting, recording, and enforcing the lien, shall be reimbursed to the Association by the delinquent Owner.

7. Article VII is amended to provide for an additional paragraph as follows:

8. **ASSESSMENT DUE – ASSESSMENT ENFORCEMENT.** All assessments shall be payable within thirty (30) days after a statement is sent to each Member. Any assessment not paid within thirty (30) days shall pay a late fee of twenty (20) dollars and ten (10) dollars each subsequent month beginning on the first of each month.

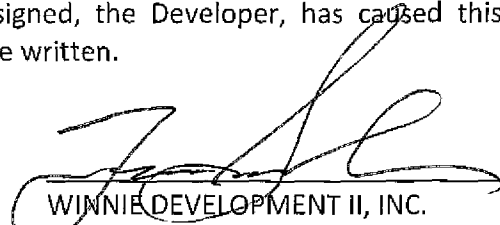
8. Article VII is amended to provide an additional paragraph as follows:

9. **ENFORCEMENT OF COVENANTS.** If the Developer, Association, its successors and assigns, elect to bring an action to enforce this Declaration against an Owner, and the Owner is found in violation of said Declaration, the Owner shall be responsible for all costs and fees the Developer or Association incurs in the process of enforcement, including but not limited to attorney's fees and recording fees.

9. The remaining provisions of the Declaration shall remain in full force and effect.

[THE REST OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.]

IN WITNESS of its terms and conditions, the undersigned, the Developer, has caused this Amendment to be executed the day and year first above written.


WINNIE DEVELOPMENT II, INC.
BY: THOMAS J. SAMUELSON
ITS: PRESIDENT

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

On this 9th day of January, 2024, before me, a Notary Public in and for said county and state, personally appeared Thomas J. Samuelson, known to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same on behalf of Winnie Development II, Inc.



Notary Public
My Commission Expires: _____

(SEAL)

