

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration made on the date hereinafter set forth by Pierce, Inc., (hereinafter referred to as "Declarant")

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of West Fargo, County of Cass, State of North Dakota, which is more particularly described as follows:

All of Sommerset Second Addition, a platted subdivision situated in West Fargo, Cass County, North Dakota,

and

WHEREAS, Declarant has heretofore executed the plat of Sommerset Second Addition and by virtue thereof has dedicated to the public all streets, avenues, roads, drives and lanes shown on said plat for use of the public for street or road purposes, reserving to Declarant, its successors and assigns, easements and common areas as indicated on the plat for the location of utilities, and common area facilities, and in addition thereto, the easements specifically set forth herein, and

WHEREAS, Declarant has caused to be incorporated, SOMMERSET SECOND ADDITION ASSOCIATION, under the laws of the State of North Dakota, as a non-profit corporation, to which are assigned the powers and duties of operating, maintaining, administering and improving the common areas and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created, and

WHEREAS, Declarant desires and intends to sell the property described above and to impose on it mutually beneficial restrictions under a general plan of improvement for the benefit of all the lands in the tract and the future owners of those lands.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

Section 1. "Association" shall mean and refer to Sommerset Second Addition Association, its successors and assigns.

Section 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 Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean and refer to those areas of land shown on any recorded subdivision plat of the Properties and improvements thereto, which are intended to be devoted to the common use and enjoyment of the Members. Such common areas are legally described as follows:

Lot 1, Block 1 and Lot 1, Block 2, Sommerset
Second Addition.

Section 5. "Lot" shall mean any part or parcel of real property designated for residential use (with the exception of common areas) and shown on the plat or any replat of Sommerset Second Addition situated in the County of Cass and State of North Dakota which is the property described in this Declaration or shown on the plat of any subdivision annexed thereto pursuant to the terms of this Declaration. In the event that any residential lot is originally platted as part of Sommerset Second Addition situated in the County of Cass and State of North Dakota or any other subdivision annexed thereto is subdivided for the purpose of constructing on such subdivided lot a separate residential improvement, any such subdivision of the original platted lot shall be considered a separate lot. In the event that two or more lots or parts of two or more lots are originally platted as part of Sommerset Second Addition situated in the County of Cass and State of North Dakota or any subdivision annexed thereto are joined for the purposes of construction of a single residential or commercial investment upon the lots or parts of lots, such joined tracts shall be considered a single lot. In the event any condominium projects are erected within Sommerset Second Addition situated in the County of Cass and State of North Dakota, each separate condominium living unit shall be considered a lot.

Section 6. "Declarant" shall mean and refer to Pierce, Inc., its successors and assigns if such successors or assigns shall acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II.

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment.

Every owner shall have a right and easement of enjoyment in and

to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2. Delegation of Use.

Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS

Section 1. Members.

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants or record to assessment by the Association shall be a mandatory member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. All members of the Somerset Second Addition Association shall be governed and controlled by the Articles of Incorporation and the By-Laws thereof.

Section 2. Voting Rights.

The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners of Lots and shall be entitled to one (1) vote for each Lot owned.

Class B. Class B membership shall be the developer (as more fully defined in this Declaration); and shall be entitled to three votes for each Lot owned. Class B memberships shall cease and be converted to Class A

memberships on the happening of either of the following events, whichever occurs earlier.

- A. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- B. On July 1, 1999.

ARTICLE IV.

COMMON AREA

Section 1. Obligations of the Association.

The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

Section 2. Members' Easement of Enjoyment.

Subject to the provisions herein, every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, and every Member shall have a right of enjoyment in the Common Area.

Section 3. Extent of Members' Easements.

The Members' easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Association to establish reasonable rules and to charge reasonable admission and other fees for the use of the Common Area;

(b) the right of the Association to suspend the right of an Owner to use the facilities for any period during which any assessment against his Lot remains unpaid for more than thirty (30) days after notice; the right of the Association to suspend the right of a Member to use the said facilities for a period not to exceed sixty (60) days for any other infraction of this Declaration or the Book of Resolutions;

(c) the right of the Association to mortgage any or all of the facilities constructed on the Common Area for the

purposes of improvements or repair to Association land or facilities pursuant to approval of the Class B member and of two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a regular meeting of the Association or at a meeting duly called for this purpose;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Owners, agreeing to such dedication or transfer, has been recorded.

Section 4. Delegation of Use.

Any member may delegate his right of enjoyment to the Common Area and facilities to the members of his family and to his guests subject to such general regulations as may be established from time to time by the Association, and included within the Book of Resolutions.

Section 5. Damage or Destruction of Common Law Area by Owner.

In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or member of his family, such Owner does hereby authorize the Association to repair said damaged area; the Association shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The amount necessary for such repairs shall become a Special Assessment upon the Lot of said Owner.

Section 6. Title to Common Area.

The Declarant may retain the legal title to the Common Area or portion thereof until such time as it has completed improvements on the Properties, but notwithstanding any provision hereto, the Declarant hereby covenants that it shall convey the Common Area and portions thereof to the Association, free and clear of all liens and financial encumbrances, not later than the termination of the Class B membership. Members shall have the rights and obligations imposed by the Declaration with respect to such Common Area.

ARTICLE V.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned with the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to

covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment.

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Sixty dollars (\$60.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half(1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment.

Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates

The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Non-payment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding

in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI.

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VII.

USE OF PROPERTY

Section 1. Use of Land.

All Lots shall be used exclusively as single family residential lots.

Section 2. Compliance with Building Code.

All buildings shall conform to the building codes of West Fargo, and Cass County.

Section 3. Height of Residence.

No structure shall be altered, placed or permitted on any residential lot other than a detached single family dwelling not to exceed 2 1/2 stories nor 35 feet in height.

Section 4. Setback of Residence.

As specified in the City of West Fargo Zoning Ordinance.

Section 5. Required Size of Residence.

The fully enclosed ground floor area of any single family dwelling, exclusive of porches and garage, shall not be less than 1,060 square feet, if one story, nor less than 720 square feet, if a

1 1/2 or 2 1/2 story structure. All residences are required to have a garage, which garage cannot be larger than a three-stall garage.

All garage doors shall be of a standard size, and may not be oversized height wise to accommodate any truck or recreation type vehicle.

Section 6. Mailboxes.

All mailboxes placed upon the premises shall either be approved by the Declarant, or shall be identical to a Declarant approved mailbox. Location of mailbox will be consistent with the overall development plan and subject to approval of the Declarant.

Section 7. Miscellaneous.

(a) No basement shall be constructed for residential purposes and no basement shall be used for residential purposes unless and until the entire superstructure has been erected thereupon except that this provision shall not restrict the owner-constructor from occupying a dwelling during the completion of the home provided the home is completed within one year from the commencement of construction. No trailer, tent, shack, garage, barn or any outbuilding shall be erected on any Lot at any time for the purpose of being used as a residence, temporary or permanent.

(b) No houses or structures erected elsewhere shall be moved onto any Lot or Lots in this subdivision and used for residential or garage purposes except that this restriction shall not be interpreted to prohibit the placement on a foundation of preconstructed new modular housing units constructed of material similar in size and composition to those used on "on-site" construction.

(c) 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 materials except during construction, and then only during the course of construction. Such restrictions shall also include allowing noxious weeds to occur on the Lots either during or after the period of construction of the home.

(d) No commercial enterprises or ventures are to be conducted upon any of the Lots in the plat of Somerset Second Addition.

(e) All Lots shall be graded to the finished grade elevation as determined by Moore Engineering, Inc. of West

Fargo, North Dakota, and said elevation shall be maintained to assure proper drainage of each Lot in the Plat of Sommerset Addition.

(f) Easements for the installation and maintenance of utility and drainage facilities as shown on the Plat of Sommerset Second Addition are perpetually reserved. Within the area of these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels in the easement or which may obstruct or retard the flow of water through drainage channels in the easement. The easement area of each lot and all improvements in it shall be maintained continuously by the Owner of the Lot except for those improvements for which public authority or utility company is responsible.

(g) Other than household pets kept for non-commercial purposes, no animals, livestock or poultry of any kind shall be raised, bred or maintained on any of the Lots.

(h) No advertising signs of any nature shall be displayed upon any Lot except for one professional sign advertising the property for sale or rent or sign used by a contractor or builder to advertise the property during construction and sale. Except the Declarant may erect additional signage advertising the property for sale.

(i) No oil drilling, quarrying or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, general excavation or shafts be permitted upon any Lot. No derrick or other structures designed for use in boring for oil or natural gas shall be erected and maintained or permitted upon any Lot.

Section 8. Fences.

Certain fence restrictions exist in the Sommerset Second Addition. These restrictions are as follows:

- A. No wire mesh, chain link or similar fence is allowed on any of the Sommerset Second Addition Lots.
- B. Block 1, Lot 2 -- Southwest boundary no fence is allowed. South boundary split rail fence allowed only.
- C. Block 1, Lot 3 -- South boundary split rail fence allowed only.
- D. Block 1, Lot 6 -- South boundary split rail fence allowed only.

- E. Block 2, Lot 2 -- Declarant/Association Fence Easement:
12 feet along the entire length of the West boundary
(37.48')
- F. Block 2, Lot 5 -- Declarant/Association Fence Easement:
12 feet along the entire length of the West boundary
(115.43')
- G. Block 2, Lot 6 -- Declarant/Association Fence Easement:
12 feet along the entire length of the West boundary
(156.24')
- H. Block 2, Lot 7 -- Declarant/Association Fence Easement:
12 feet along the entire length of the West boundary
(170.77'); 12 feet along the entire length of the North
boundary (30.09')
- I. Block 2, Lot 8 -- Declarant/Association Fence Easement:
12 feet along the entire length of the North boundary
(173.04')
- J. Block 2, Lot 9 -- Declarant/Association Fence Easement:
12 feet along the entire length of the North boundary
(164.39'); 12 feet along the entire length of the East
boundary (9.25')
- K. Block 2, Lot 10 -- Declarant/Association Fence Easement:
12 feet along the entire length of the West boundary
(149.94)
- L. Block 2, Lot 11 -- East boundary split rail fence only.
- M. Block 2, Lot 13 -- North boundary split rail fence
only.
- N. Block 2, Lot 14 -- North boundary split rail fence
only. East boundary split rail fence only.
- O. Block 3, Lot 1 -- East and South boundary split rail
fence only.
- P. Block 3, Lot 2 -- East boundary split rail fence only.
- Q. Block 3, Lot 3 -- East boundary split rail fence only.
- R. Block 3, Lot 4 -- East boundary split rail fence only.
- S. Block 3, Lot 5 -- East boundary split rail fence only.

Section 9. Trash and Garbage.

No trash, garbage or other waste shall be kept except in a covered sanitary container.

Section 10. Tanks, etc.

No elevated tanks of any kind shall be erected, placed or permitted on any part of the premises. Any tanks for use in connection with residences constructed on such premises, including tanks for storage of fuel, must be buried or walled sufficiently to conceal them from the view of neighboring lots, roads or streets.

Section 11. Telephone Service Lines.

Above ground service telephone lines to homes and other buildings shall be prohibited, except during construction.

Section 12. Power Service Lines and Cable.

Above ground service lines to homes and other buildings shall be prohibited, except during construction.

Section 13. Dirt Removal.

In the excavation for structures or in the leveling of Lots, no earth or soil shall be removed from said Sommerset Second Addition as platted, except with written permission of the Declarant, or its successors in interest, and then only to such places as directed by such written permission.

Section 14. Antennae.

There shall be no free-standing antennae and any antennae attached to a roof shall not be more than three feet high above the highest point of the roof, except the height of any chimney.

Section 15. Satellite Disk.

No satellite disks shall be installed or permitted in the Sommerset Second Addition.

Section 16. Sight Distance at Intersection.

Shall be governed by local ordinances.

Section 17. Landscaping.

After completion of the construction of any dwelling on a Sommerset Second Addition Lot and as soon as weather permits all front and side lots shall be fully sodded. The rear lot shall be either sodded or seeded.

ARTICLE VIII.

GENERAL PROVISIONS

Section 1. Enforcement.

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability.

Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment.

The covenants and restriction of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation.

(a) As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option from time to time at any time until January 1, 2009, to subject all or any portion of the real property described on Exhibit A attached hereto and by reference made a part hereof, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the office of the register of deeds of Cass County, North Dakota, a supplementary declaration with respect to the property being annexed. Any such annexation shall be in effect upon the filing for record of such supplemental declaration unless otherwise provided therein.

(b) The rights reserved unto Declarant to subject additional land to the Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or

