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KIDDER COUNTY, Recorded: 4/16/2024 at 10:57 AM
Return To: CHAPMAN AND CHAPMAN
103 S 3RD ST STE 6
BISMARCK, ND 58501-3808

166974 Fee: \$65.00
RECORDER'S OFFICE, KIDDER COUNTY, ND 4/16/2024 10:57 AM
I certify that this instrument was filed for record this date
BARBARA J. STEINKE, County Recorder
By Geri Nichols, Deputy

RESTRICTIVE COVENANTS LAKE ETTA ESTATES

RTM Development, LLC, a North Dakota limited liability company ("Declarant") is the sole owner of the following parcels of real property ("Property"), located in the County of Kidder, State of North Dakota, as follows:

Lake Etta Estates, located in part of tract 27-10 of the NW ¼ of Section 27, Township 139 N, Range 72 W, including the following lots:

Lots 1 through 12, Block 1

Declarant intends to preserve lot values by assuring harmony, consistency, and quality in improvements, appearance, and use of lots in the Property. Therefore, Declarant does hereby create, declare and establish, the following restrictive covenants upon the Property, which restrictive covenants shall run with the land and shall remain in full force and effect upon all persons claiming under them from the date these restrictive covenants are recorded, unless amended or terminated as set forth herein. These restrictive covenants are established for, and shall inure to the benefit of, the Declarant, and Declarant's assigns and successors in interest, as the present and future owners of the Property.

Any violation, attempt to violate, or omission to perform any of the covenants as hereinafter set forth shall entitle, and it shall be lawful for, any person owning real property in the Property, to institute and prosecute proceedings at law or in equity for any failure to abide by, or to comply with, the covenants.

THEREFORE, the following restrictive covenants are declared and imposed against the Property:

1. All lots on the Property shall be used for single-family residential purposes. Except as may be incidental to the Declarant's development of the Property, no lot shall be used for any commercial, business, or professional purpose. All references to a "lot" or to "lots" within this document shall refer to the residential lots.

2. Architectural Review Committee

2.1. A three-person Architectural Review Committee is established, and the Declarant reserves the exclusive right, for a term of 50 years from the date of this document, to designate the three persons who shall be members of the Architectural Review Committee. The Declarant designates Matt Geiger, Troy Jangula, and Rod Mattern as the initial members of the Architectural Review Committee. Thereafter, the members of the Architectural Review Committee shall be selected by the Lake Etta Home Owners Association.

2.2. No construction, erection or installation of any improvements, including but not limited to buildings, landscaping, structures, fences, signage, walls, screens, or other structure shall be commenced upon a lot, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted in writing to, and shall have been approved in writing by, the Architectural Review Committee. Such approval shall be left to the discretion of the Architectural Review Committee, which can consider any factors determined important to the Architectural Review Committee, including but not limited to the safety of the design, as well as the harmony of design and location in relation to surrounding structures and topography. Declarant further declares that the Architectural Review Committee shall also have the authority to consider cosmetic issues, such as exterior color of siding, trim, shingles, or other visible improvements. In the event that the Architectural Review Committee fails to approve or disapprove such plans and specifications within thirty (30) calendar days after said plans and specifications have been submitted to it, approval for those particular plans and specifications will be deemed to have been granted; provided, that plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding the foregoing. The Architectural Review Committee shall have the right, at its election, but shall not be required, to enter upon any lot during construction, erection or installation of improvements on said lot to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workman-like manner, utilizing approved methods and good quality materials. All decisions of the Architectural Review Committee shall be final, binding, and non-appealable.

2.3. In addition to the rights set forth in Paragraph 2.2, the Architectural Review Committee, in the exercise of its discretion, shall have the authority, in its discretion, to administer the enforcement of all of the covenants set forth herein and, in the exercise of such authority, shall have the right to enter upon any lot in order to inspect any improvements on, or the condition of, such lot, in order to determine compliance with the covenants. If the Architectural Review Committee gives notice to any single owner of a lot, said notice shall be conclusively deemed to have been given to all owners of that lot. The Architectural Review Committee shall have the same rights, as set forth in Section 5 herein, to bring an action in a court of law or equity, and to seek all remedies set forth in Section 6, on behalf of owners of lots within the Property. However, nothing herein shall be deemed to require the Architectural Review Committee to take enforcement action,

and the failure or refusal of the Architectural Control Committee to take enforcement action shall be final, binding, and non-appealable.

2.4. In the event that the Architectural Review Committee is required to incur any expenses, including but not limited to survey costs, engineering costs, legal costs, and the like, the applicant for approval shall be required to reimburse the Architectural Review Committee for all such expenses, as a condition precedent to the delivery of a written approval.

3. Use and Building Restrictions. Without limiting the rights of the Architectural Review Committee, as set forth in Paragraph 2, the Declarant sets forth the following restrictions, which shall apply to all lots within the Property. To the extent that any restriction requires the approval of the Architectural Review Committee, the refusal of the Architectural Review Committee to grant approval shall be final, binding, and non-appealable.

3.1. No construction shall be initiated upon a lot, unless the provisions of Section 2, relating to the approval of Architectural Review Committee, have been satisfied. Construction shall be substantially completed within 12 months following the date of commencement of construction, where substantial completion includes completion of staining, painting, and other finish work, and where substantial completion also includes the cleanup and removal of all construction equipment and unused construction materials.

3.2. No vehicles, motor homes, recreational vehicles (including but not limited to four-wheelers and similar vehicles), buses, boats, campers, or similar property may be parked or stored on a street, or on a lot, either outside the confines of a fully enclosed building, or in any other way that allows such items to be visible beyond the boundaries of the lot, unless the following conditions are satisfied: (1) such property item is parked or stored at a location approved by the Architectural Review Committee, (2) the property item is in working condition without damage, (3) the property item is less than 15 years old, and (4) the property item must be registered and approved with the Architectural Review Committee if said property item is to be parked or stored for more than 48 hours.

3.3. No person, who is then listed on the North Dakota Sex Offender Website, maintained by the North Dakota Attorney General, or on a substantially similar government-maintained listing of sexual offenders, may reside within any lot, as an owner, tenant, guest, or in any other capacity. Any owner, who offers that owner's lot for sale or lease, shall, prior to entering into a purchase agreement or lease agreement, as applicable, notify potential buyers or potential tenants about this restriction. If an owner or renter is first listed as a sexual offender after purchase or commencement of rental, the owner or renter shall be allowed to remain living within the lot for no more than 60 days after written notice from the Architectural Review Committee of the restrictions of this paragraph.

3.4. No fences, walls, or other boundary barriers, including but not limited to a maintenance-free fence, may be constructed or installed, unless the Architectural Review

Committee has given its prior written approval. It is provided, however, that no chain link fences may be constructed or installed upon any lot.

3.5. No docks may be constructed or installed, unless the Architectural Review Committee has given its prior written approval. It is provided, however, that all docks, boat lifts, and similar water items, located either at water's edge or in the water, must be placed no less than ten (10) feet away from the property line.

3.6. All structures must be newly constructed on site with new materials; no structure, including but not limited to houses, decks, storage buildings, or other improvements, may be constructed or placed upon any lot, unless the Architectural Review Committee has given its prior written approval. It is provided, however, that all lots shall be subject to the following setback restrictions, so that no improvements of any type shall be constructed or placed within such setbacks: twenty-five (25) feet on the front (roadside), ten (10) feet on the sides, and fifty (50) feet on the rear (lakeside).

3.7. No noxious, annoying, unlawful, or offensive activity shall be conducted or allowed upon any lot, nor shall anything be conducted or allowed upon any lot which may reasonably be expected to become noxious, annoying or offensive to the owners of the other lots. Without exhausting the identification of such prohibited activities, Declarant notes such activities could arise from noise and smell. The Architectural Review Committee shall have the right to exercise its discretion in the declaration and enforcement of violations of this Paragraph 3.7.

3.8. All persons residing in, or otherwise present upon, the Property shall comply with all laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof.

3.9. No animals, livestock or poultry of any kind shall be kept or maintained on any lot except that dogs, cats or other traditional household pets may be kept and maintained; provided, such dogs, cats, or other traditional household pets shall not be kept or maintained for commercial purposes; further provided, no more than two (2) traditional household pets may be kept in, upon, or about a lot. A pet, which is not then within the boundaries of its owner's lot, shall be kept on a leash and under control. No pet, which exhibits aggressive or dangerous actions towards humans and/or other animals, or which barks or otherwise generates noise in a way that creates unreasonable disturbance to other persons in the Property, shall be kept or maintained, even temporarily, upon a lot. It shall be the affirmative obligation of every pet owner to control such owner's pet and to promptly and properly dispose of any fecal waste left by such owner's pet within the Property. Any damage done to any lot, or any improvements or property thereon, or to any portion of the Property, by a pet of a lot owner, or a pet of any person present within the Property with the consent, express or implied, of a lot owner, shall be the responsibility of the lot owner.

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3.10. No rubbish, trash, garbage, or other waste material shall be kept or permitted on any lot, except in sanitary containers located in appropriate areas concealed from public view.

3.11. No outbuilding, basement, garage, trailer, shed, or temporary building of any kind shall be used as a residence, either temporarily or permanently, and no tent or similar structure shall remain erected on a lot for more than a total of five (5) calendar days out of a calendar month. It is provided, however, that a camper/RV may be permitted, if the Architectural Review Committee has given its prior written approval.

3.12. All mailboxes and mailbox holders shall be of a common and traditional design, either approved in writing by the Architectural Control Committee or provided by United States Postal Service, and adhering to the applicable specifications of the United States Postal Service.

3.13. To the extent that easements for installation and maintenance of utilities and drainage facilities are reserved, no structure, planting or other material, which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels in the easements, may be placed or permitted.

3.14. Each owner shall be responsible to maintain and trim the grass and vegetation on that owner's lot.

3.15. No signage shall be allowed on any lot, (a) except that a sign, no larger than 3' x 3', may be placed on a lot to advertise the lot for sale, (b) except that a sign, no larger than 3' x 3', may be placed on a lot by the general contractor who is engaged to construct a residential dwelling on the lot, and (c) except that signage may be placed, without restriction, by the Declarant and the Declarant's contractors upon any portion of the Property, which is owned by the Declarant, or upon which the Declarant or its successor in interest has easement rights.

3.16. No television or radio antenna or aerials, and no satellite dishes sized greater than 18 inches in diameter, shall be placed on a lot without the prior written approval of the Architectural Review Committee.

3.17. No propane tanks, solar panels, or mechanical equipment, which is visible beyond the boundaries of a lot, shall be placed, without the prior written approval of the Architectural Review Committee, which shall have the authority to require such items to be screened from view.

3.18. No sculptures, railings, monuments, or any other non-vegetation objects shall be placed or erected in the front yard (roadside) of a lot, without the prior written approval of the Architectural Review Committee.

3.19. All structures or other improvements on a lot shall be painted, stained, or otherwise finished, from time to time, so as to maintain a reasonable state of repair. The Architectural Review Committee shall have the authority to determine compliance with this Paragraph 3.19.

3.20. No structure, which is not permanently attached to the residential dwelling, shall be constructed on a lot, without the prior written approval of the Architectural Review Committee.

3.21. Absent an approved amendment to these covenants, no lot shall be subdivided in such a manner that will result in there being more than the number of lots shown on the applicable recorded plat.

4. MISCELLANEOUS PROVISIONS

4.1. Declarant and its contractors will utilize reasonable practices to prevent storm water and/or erosion issues upon lots owned by the Declarant. However, the Declarant shall have no liability in the event of any loss, transfer or migration of any soil, silt, sediment, petroleum product, hazardous substance, or solid waste from or beyond the boundaries of lots still owned and/or under the control of the Developer, and all owners of lots within the Property hereby waive any claims, arising from any such loss, transfer, or migration, against the Declarant, Declarant's contractors, and the Architectural Review Committee.

4.2. The failure of the Declarant, or the Architectural Review Committee, to enforce any provision of these covenants, or a decision by the Declarant, or the Architectural Review Committee, to grant a variance from any of the covenants herein, shall not limit the right of the Declarant, or the Architectural Review Committee, to fully enforce each and every term of these covenants in the future.

5. TERM AND AMENDMENT:

5.1. These covenants shall run with the land and shall be binding on all persons claiming under them for a period of twenty years from the date these covenants are recorded. At the end of the initial twenty-year term, these covenants shall be automatically extended for a term of ten years, and thereafter shall be automatically extended for successive terms of ten years, unless, no later than that date which is one year prior to the ending date of the then-current term of these covenants, an instrument, which is signed by owners who represent the ownership interest of at least three-fourths in number of the lots within the Property, and which either releases these restrictive covenants, in whole or in part, or amends the covenants, in whole or in part, is recorded at the office of the Kidder County Recorder, in which case the release, or amendment, as applicable, will be effective on the first day of the new term. To release or amend these covenants, in whole or in part, prior to the ending date of the then-current term of these covenants, an instrument, which is signed by all the landowners of the lots within the Property, and which either releases these restrictive covenants, in whole or in part, or

amends the covenants, in whole or in part, shall be recorded at the office of the Kidder County Recorder, in which case the release, or amendment, as applicable, will be effective on the date of recording.

5.2. The provisions of Paragraph 5.1 notwithstanding, until the occurrence of the last to occur of the following events: (a) that date when the Declarant does not then own real property either within, or contiguous to, Lake Etta Estates, or (b) that date which is twenty five (25) years from the date of the recording of these Restrictive Covenants in the office of the Kidder County Recorder, the Declarant shall retain the right to unilaterally make amendments to these covenants for the purpose of correcting clerical errors, for the purpose of making changes to Declarant's development plans, or for the purpose of updating the covenants to address circumstances which could compromise the reasonable and effective development of the Property.

5.3. The provisions of Paragraphs 5.1 and 5.2 notwithstanding, Declarant specifically reserves the right, at the option of the Declarant, to add property to the coverage of these Restrictive Covenants. Such expansion shall be evidenced by a document, declared by the Declarant and recorded in the office of the Kidder County Recorder, which identifies such additional property and which references these Restrictive Covenants. The Declarant shall not be limited in the number of additional lots which the Declarant can add to the coverage of these Restrictive Covenants.

6. LAKE ETTA HOME OWNERS ASSOCIATION.

6.1. The Declarant plans (a) to build roads in areas set forth in the plat of Lake Etta Estates, and (b) to potentially expand the development for green areas and boat ramp. The Declarant hereby provides for the Lake Etta Home Owners Association (herein the "Association") for the purpose of maintaining, repairing, and replacing said roads and, potentially, such green areas and boat ramp, in order to reasonably present an appealing impression to Lake Etta Estates. Until the occurrence of the last to occur of the following events: (a) that date when the Declarant does not then own real property either within, or contiguous to, Lake Etta Estates, or (b) that date which is twenty five (25) years from the date of the recording of these Restrictive Covenants in the office of the Kidder County Recorder, the Declarant shall have the right to establish the Association and to retain control of the Association.

6.2. Upon establishment of the Association, all lot owners shall be deemed to be members of the Association and shall be bound by the provisions herein. Membership in the Association shall be appurtenant to each lot, and each succeeding owner of a lot shall replace the prior owner as a member of the Association.

6.3. The initial organizational documents, including bylaws, shall be created and declared by the Declarant, prior to establishment of the Association. Thereafter, under the terms set forth in Paragraph 6.1, the Declarant shall transfer management of the Association to the lot owners, who shall have the right to elect a board of directors in accord with the provisions of the bylaws.

6.4. The authority of the Association shall be limited to the maintenance, repair, and replacement of the roads, which are declared to private roads for the exclusive use of lot owners and their guests, and the potential green areas and boat ramp; provided, the Association will not be responsible for snow removal of the roads. In order to defray the expenses of such maintenance, repair, and maintenance, the Association shall have the authority to levy assessments, on an annual basis, or on such other basis as determined appropriate by the board of directors. The assessments shall be levied on a "per lot" basis, so that each lot shall be responsible for an equal fractional share of the total assessment. The initial annual assessment due from each lot shall be \$100; however, the Association shall have the authority to increase the dollar amount of the annual assessment, as determined appropriate by the Association.

6.5. All owners of a lot shall be personally responsible for the payment of all assessments. In the event that an owner fails to pay an assessment, when due, interest at the legal rate shall accrue from and after the due date. The purchaser of a lot, upon acceptance of a deed of transfer, agrees to personal responsibility for all assessments, including but not limited to those assessments which first became due prior to the date of transfer; provided, the purchaser at a sheriff's foreclosure sale, or a lender who accepts a deed in lieu of foreclosure, shall not be responsible for assessments which first became due prior to purchase at the foreclosure sale or acceptance of the deed in lieu of foreclosure, as applicable. In the event that a lot owner fails to pay the assessment, the lot owner shall be obligated to pay to the Association the amount of the assessment, interest, and any legal fees and expenses incurred by the Association in attempting to seek payment of the assessment. In addition to the personal responsibility of the lot owner, the Association shall also have a lien against the lot for the aforementioned amount of the assessment, interest, and any legal fees and expenses incurred by the Association in attempting to seek payment of the assessment. The Association, at its option, may file a document, evidencing the lien against the lot, with the Kidder County Recorder, and, in such event, the lien shall also cover the expenses incurred by the Association in filing the lien. Each lot owner, by accepting title to a lot, agrees that such lien shall be a valid and enforceable lien against the title to the lot; said lien can be enforced by any procedure available at law or in equity, including but not limited to the procedure for foreclosure of a mortgage. The lien shall always be subordinate to a mortgage created in favor of a bona fide lender. The provisions for a lien notwithstanding, the Association shall always have the right, either exclusively or concurrently, to seek a personal judgment against a lot owner for the amounts due.

6.6. The provisions herein notwithstanding, the Declarant shall not be responsible for assessments, even after creation of the Association.

7. ENFORCEMENT:

7.1. Enforcement of these covenants shall be by any method or manner permitted or provided by law, including actions in a court of law or equity, and such courts shall be authorized to issue and provide injunctive relief to enjoin the commission of any

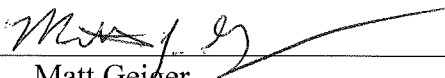
violation of said covenants, to award compensation to the Association for its entitlements under Paragraph 6.5, and to award compensation to the Architectural Control Committee for any expenses, including attorney fees and expenses, incurred by said Committee in the enforcement of these covenants. Any lot owner, who commences a legal or equitable action against one or more other lot owners, to enforce these covenants and who prevails in such legal or equitable action, shall be entitled, in addition to any entitlement to compensation, to recover his/her expenses, including attorney fees and expenses, incurred by said lot owner in enforcement of these covenants. Any person who is found by the Court to have willfully and knowingly violated such covenants shall also be subject to the imposition and award of exemplary or punitive damages as may in the discretion of the court be provided.

7.2. Each lot owner recognizes that, in the event of a continuing violation of the covenants herein, it would be extremely difficult to prove the actual dollar amount, by which such violation has damaged either adjoining lots or the Property in general. Therefore, each lot owner agrees that liquidated damages in the amount of \$250.00 per day shall be assessed, jointly and severally, against all owners of a lot, in the event that a violation of the covenants continues after written notice of the violation has been delivered by the Association or the Architectural Control Committee to any one of the owners of the lot. In so declaring liquidated damages of \$250.00 per day, it is acknowledged that this dollar amount is reasonably related to the harm which would be caused to the peace and harmony of the Property if a violation of the covenants continued and constitutes a reasonable attempt to declare an amount of liquidated damages. Liquidated damages shall be recoverable as an element of compensation as set forth in Paragraph 7.1.

8. SEVERABILITY: Invalidation of any provision of these covenants by the action of a court of competent jurisdiction shall not in any manner affect the validity of any other provisions herein contained.

IN WITNESS WHEREOF, RTM Development, LLC, has signed this document on this 16th day of April, 2024.

RTM Development, LLC

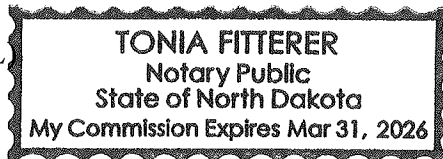
By: 
Matt Geiger
Its: Managing Partner

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On this 16th day of April, 2024, before me, a notary public within and for said County and State, personally appeared Matt Geiger, known to me to be the Managing Partner of RTM Development, LLC, a North Dakota limited liability company, and who executed the above and foregoing instrument on behalf of said limited liability company and who acknowledged to me that RTM Development, LLC, a North Dakota limited liability company, executed the same as its free act and deed.

(SEAL)



Tonia Fitterer
Notary Public
Burleigh County, North Dakota

Prepared by:
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