

RECEIVED
CASS COUNTY COMMISSION

OCT 4 2019

Highway Department

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

MEMORANDUM

TO: Cass County Board of Commissioners

FROM: Barrett Voigt, Cass County Planner

DATE: October 4, 2019

SUBJECT: Consent Agenda Topic for the October 21, 2019
Commission Meeting: **Cornell Second
Subdivision Application**

The Cass County Planning Commission reviewed the application of the proposed subdivision located in Cornell Township, Section 1 at a Public Hearing on September 26, 2019. The intended purpose of the subdivision is to separate the residential structure from the farmstead.

The Planning Commission is recommending approval of the proposed plat entitlement request. Cornell Township has approved of the application and verified that the proposal meets the requirements of the township zoning ordinance. Therefore, the Planning Commission recommendation is forwarded to the Cass County Board of Commissioners for action.

SUGGESTED MOTION:

To accept the findings and recommendations of the Planning Commission and staff and recommend approval of the Final Plat, as the proposal meets the goals and objectives of the Cass County Comprehensive Plan, the Cass County Highway Access Plan, the Flood Damage Prevention Ordinance, the Cass County Subdivision Ordinance, and all other applicable regulations.

1201 Main Avenue West
West Fargo, North Dakota
58078-1301

701-298-2370
Fax: 701-298-2395



Cass County Planning Commission Staff Report

Entitlements Requested:	Minor Subdivision (1 Lots) of a part of the NE 1/4 of Section 1, Township 141 North, Range 55 West		
Title:	Cornell Second Subdivision	Date:	08-15-2019
		Update:	10-04-2019
Location:	NE 1/4 of Section 1, Township 141 North, Range 55 West (2452 138th Ave SE, Cornell Township)	Staff Contact:	Barrett Voigt
Parcel Number:	31-0000-02701-040 & 31-0100-00010-000	Water District:	Maple River Water District
Owner(s)/Applicant:	Feder Properties LLP/Shawn Thomasson, Moore Engineering, Inc.	Engineer/Surveyor:	Moore Engineering, Inc.
Status:	County Commission Hearing: October 21, 2019		

Existing Land Use	Proposed Land Use
Agriculture	Residential

Proposal

The applicant is seeking approval of a minor subdivision entitled **Cornell Second Subdivision** to replat Cornell First Subdivision and plat an unplatted portion of a part of the NE 1/4 of Section 1, Township 141 North, Range 55 West. This proposal seeks approval for a one (1) Lot, one (1) Block subdivision for the purpose of a lot line adjustment to correct a boundary line error of Cornell First Subdivision. The proposal will add approximately more than 2 acres of land on to the west side of Lot 1, Block 1, Cornell Subdivision to satisfy the needs of the applicant. The purpose of the subdivision will remain the same to separate the residential structure from the farmstead. The proposed lot will remain at the location of 2452 138th Ave SE, Cornell Township and is approximately 5.34 acres.

The proposed ownership and maintenance responsibility of the subdivision will be private. The subdivision will use state highway road access, ditches for storm sewer conveyance, rural water, and on-site septic systems for wastewater treatment.

Agency Comments

County Engineer	No comments were received prior to publishing the staff report.
Water Resource District	No comments were received prior to publishing the staff report.
Cass County Electric Cooperative	CCEC has existing plant serving the current home. If power is needed to the second lot a utility easement may be required to serve the site. See map below for approximate location of CCEC owned electric facilities.
Century Link	No comments were received prior to publishing the staff report.
Sprint	No comments were received prior to publishing the staff report.
AT&T	No comments were received prior to publishing the staff report.
Xcel Energy	No comments were received prior to publishing the staff report.
Otter Tail Power Company	Attached is a written notice of approval for Hefty Seed Subdivision. And as I mentioned we have no facilities in the Cornell Addition. So no objections there either. Need anything else, let me know.
Magellan Pipeline Company	Magellan Pipeline Company does not run in either of these Townships. No affected by this work. Thanks.
Nu Star Energy	NuStar Energy will have no conflicts with these proposals, Thanks
Cass Rural Water District	Cornell 2nd Subdivision - it appears that the applicant is splitting the house from the existing property for potential future sale. The existing residence has service from Cass Rural Water District. Consequently, we have no comment.
North Dakota Department of Transportation	No comments were received prior to publishing the staff report.
County Sanitarian	No comments were received prior to publishing the staff report.
Township Chairman	No comments were received prior to publishing the staff report.
The City of Fargo	No comments were received prior to publishing the staff report.
The City of West Fargo	No comments were received prior to publishing the staff report.
Public Comment	No comments were received prior to publishing the staff report.

Surrounding Uses

The subject property is bound by agricultural production land on the north, west, and east. Land that appears to be used for a farmstead is located south of the property. Cornell Township has not verified if the proposed development meets Township zoning ordinance requirements.

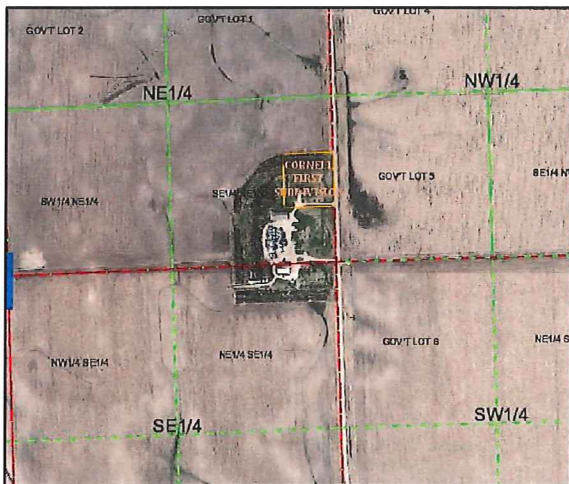
Floodzone

According to the FEMA Flood Map Service Center, this property is currently unmapped and no Special Hazard Flood Area has been identified. In addition, no wetlands or other notable features are present on the proposed subdivision Lot.

Land Development Rights

The subject quarter-quarter section currently has one (1) platted residential development and a partial unplatted farmstead development that is located on the quarter-quarter line. Section 308 of the Cass County Subdivision Ordinance states that every quarter-quarter section is granted one (1) Development Right to create a buildable lot with a minimum of 40 acres and to allow for development that was legally permitted prior to the adoption of the CCSO. Because the lot subdivision proposal is less than 40 acres, a transfer of a development right is required along with a deed restriction. In addition, interpretation of CCSO Section 308 has determined that partial developments are not one (1) complete development and are not factored into the transfer of development rights evaluation.

When Cornell First Subdivision was platted on April 2, 2019, a deed restriction for the Southwest Quarter of the Northeast Quarter of Section 1, Township 141, Range 55 West was recorded to satisfy the Section 308 requirement of the CCSO (Document number 1559462). Because the subject property is located in the Southeast Quarter of the Northeast Quarter, the recorded deed restriction does not prohibit the proposed expansion to replat Cornell First Subdivision by platting addition land west of Lot 1, Block 1. For more information, please see the illustration provided below.



This subdivision plat application seeks to rectify a boundary error and expand the boundaries of platted land. The applicant claims that because the application is a lot line adjustment and not the addition of another lot, the applicant seeks approval to use deed restriction document 1559462 to satisfy the Section 308 requirements of the CCSO.

Staff Recommendation

To accept the findings and recommendations of the Planning Commission and staff to approve of the subdivision application as the proposal meets the goals and objectives of the Cass County Comprehensive Plan, the Cass County Highway Access Plan, the Flood Damage Prevention Ordinance, the Cass County Subdivision Ordinance, the Township Zoning Ordinance, and all other applicable regulations.

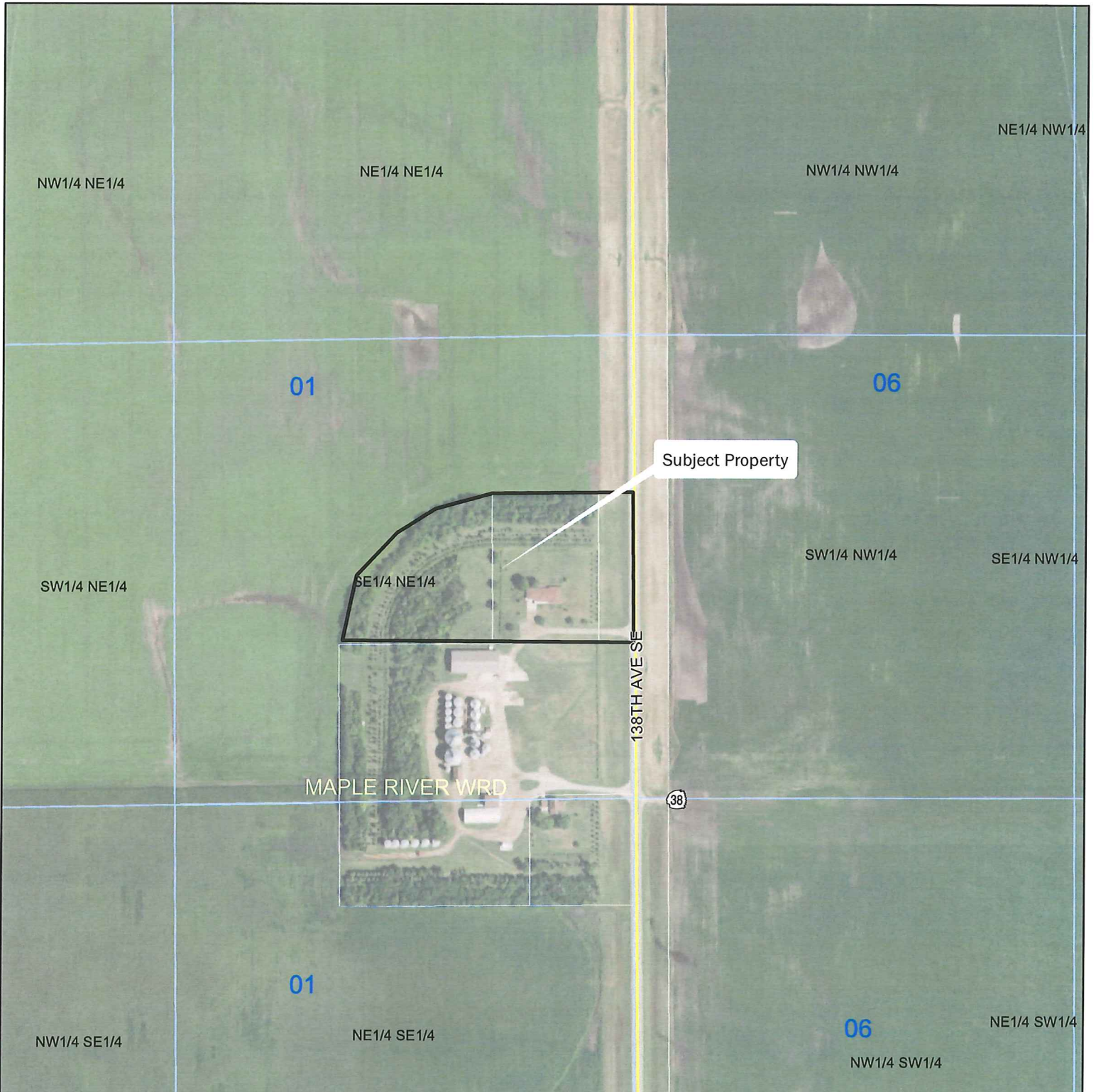
Attachments

1. Location Map
2. Plat Document
3. Deed Restriction document 1559462

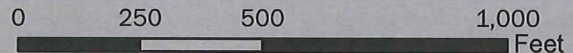
Minor Subdivision

Cornell Second Subdivision

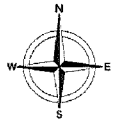
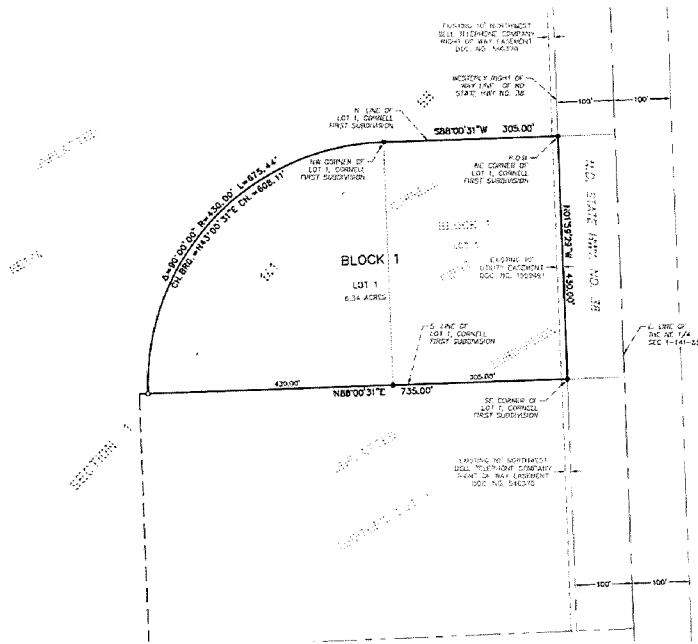
Cornell, Section 1 - Township 141 North - Range 55 West



Maps and data are to be used for reference purposes only and Cass County, ND, is not responsible for any inaccuracies herein contained. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.



**PLAT OF
CORNELL SECOND SUBDIVISION
(A MINOR SUBDIVISION PLAT)
A REPLAT OF LOT 1, BLOCK 1 CORNELL FIRST SUBDIVISION
AND A PLAT OF PART OF THE NORTHEAST QUARTER OF SECTION 1,
TOWNSHIP 141 NORTH, RANGE 55 WEST OF THE 5TH PRINCIPAL MERIDIAN,
CASS COUNTY, NORTH DAKOTA.**



0 100
Scale in Feet
BASIS OF BEARINGS: THE PLAT OF
CORNELL FIRST SUBDIVISION, ACCORDING
TO THE RECORDED PLAT THEREOF.

- EASEMENTS OF RECORD**
- CASS COUNTY ELECTRIC RIGHT OF WAY EASEMENT, DOCUMENT NO. 755669
 - CASS RURAL WATER USING, INC. RIGHT OF WAY EASEMENT, DOCUMENT NO. 826487

- LEGEND**
- IRON MONUMENT EXHIBIT
 - SET SURVEY RETURN WITH YELLOW PLASTIC CAP #5000
 - P.O.B. POINT OF BEGINNING

CASS COUNTY PLANNING COMMISSION REVIEW
REVIEWED BY THE CASS COUNTY PLANNING COMMISSION THIS _____ DAY OF _____ 2019

SIGNED: RON LUDGREN, CHAIRPERSON _____
ATTEST: DEANN BUEKHUSE, SECRETARY _____

CASS COUNTY COMMISSION APPROVAL
APPROVED BY CASS COUNTY, NORTH DAKOTA, THIS _____ DAY OF _____ 2019

SIGNED: MARY SCHERLING, CHAIRPERSON, BOARD OF COUNTY COMMISSIONERS _____
ATTEST: MICHAEL MONTPLAISIR, CASS COUNTY AUDITOR _____

CERTIFICATE
SHAWN M. THOMASSON, BEING DULY SWORN, DEPOSES AND SAYS THAT HE IS THE PROFESSIONAL LAND SURVEYOR WHO PREPARED AND MADE THE ATTACHED PLAT OF "CORNELL SECOND SUBDIVISION", A REPLAT OF LOT 1, BLOCK 1, CORNELL FIRST SUBDIVISION AND A PLAT OF PART OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 141 NORTH, RANGE 55 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA; THAT SAID PLAT IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY, THAT ALL DISTANCES ARE CORRECTLY SHOWN ON SAID PLAT, THAT MONUMENTS HAVE BEEN PLACED IN THE GROUND AS INDICATED FOR THE GUIDANCE OF FUTURE SURVEYS AND THAT SAID SUBDIVISION IS DESCRIBED AS FOLLOWS:

ALL OF LOT 1, BLOCK 1, CORNELL FIRST SUBDIVISION, ACCORDING TO THE RECORDED PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, CASS COUNTY, NORTH DAKOTA AND THAT PART OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 141 NORTH, RANGE 55 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA, DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND IRON MONUMENT WHICH DESIGNATED THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 88 DEGREES 00 MINUTES 21 SECONDS WEST ON A RECORD BEARING ALONG THE NORTH LINE OF SAID LOT 1 FOR A DISTANCE OF 305.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTHWESTERLY ALONG A TANGENTIAL CURVE CONVEX TO THE SOUTHWEST HAVING A RADIUS OF 430.00 FEET AND A CENTRAL ANGLE OF 36 DEGREES 00 MINUTES 00 SECONDS FOR AN ARC DISTANCE OF 875.44 FEET TO THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 1; THENCE NORTH 88 DEGREES 00 MINUTES 21 SECONDS EAST ALONG SAID WESTERLY EXTENSION AND ALONG THE SOUTH LINE OF SAID LOT 1 FOR A DISTANCE OF 745.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH 91 DEGREE 59 MINUTES 29 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 1 FOR A DISTANCE OF 430.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 6.34 ACRES, MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD, IF ANY.

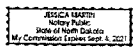
Shawn M. Thomasson
SHAWN M. THOMASSON
PROFESSIONAL LAND SURVEYOR
NO. PLS. #26100



STATE OF NORTH DAKOTA
COUNTY OF CASS

ON THIS 15th DAY OF September 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED SHAWN M. THOMASSON, REGISTERED LAND SURVEYOR, WHO TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

Jessica Maden
JESSICA MADEN
NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA



DEDICATION
I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I AM THE OWNER OF THE LAND DESCRIBED IN THE PLAT OF "CORNELL SECOND SUBDIVISION", A REPLAT OF LOT 1, BLOCK 1, CORNELL FIRST SUBDIVISION AND A PLAT OF PART OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 141 NORTH, RANGE 55 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA; THAT WE HAVE CAUSED IT TO BE PLATTED INTO LOTS AND BLOCKS AS SHOWN BY SAID PLAT AND CERTIFICATE OF SHAWN M. THOMASSON, PROFESSIONAL LAND SURVEYOR AND THAT THE DESCRIPTION AS SHOWN IN THE CERTIFICATE OF THE REGISTERED PROFESSIONAL LAND SURVEYOR IS CORRECT.

OWNER: FEDER PROPERTIES, L.L.P.

JEROME D. FEDER, MANAGING PARTNER
STATE OF NORTH DAKOTA
COUNTY OF CASS

ON THIS _____ DAY OF _____ 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JEROME D. FEDER, MANAGING PARTNER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE NAME OF FEDER PROPERTIES L.L.P.

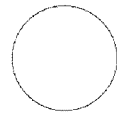
NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

CORNELL TOWNSHIP REVIEW
REVIEWED BY CORNELL TOWNSHIP, CASS COUNTY, NORTH DAKOTA, THIS _____ DAY OF _____ 2019

SIGNED: DALEN GREGG, CHAIRPERSON _____
ATTEST: VERNA EMERICH, TREASURER _____

COUNTY ENGINEER REVIEW
REVIEWED BY THE CASS COUNTY ENGINEER THIS _____ DAY OF _____ 2019

SIGNED: JASON BENSON, CASS COUNTY ENGINEER _____



DEED RESTRICTION

Pursuant to Section 309 of the Cass County Subdivision Ordinance, this **DEED RESTRICTION** is entered into this 6 day of March, 2019, by:

Owner(s): Feder Properties L.L.P., a North Dakota Limited Liability Partnership

1. **PURPOSE**

The owner recognizes the following agreement is set forth to encourage orderly and economically-feasible growth, prevent new developments from creating economic strains on county residents, protect the county's valuable farmland and agricultural traditions and promote development that will more easily convert to an urban environment and implement the goals and objectives established by the Cass County Comprehensive Plan (2005). The following agreement will promote small, truly rural developments that will mesh more easily with existing agricultural land and activities, and will encourage larger urban style subdivisions to develop in the urban fringe and other areas with supportive infrastructure. Developments built beyond the density restriction will be constructed with full supportive urban infrastructure, ensuring developments that will more easily transition into an urban development upon annexation without extensive and costly infrastructure upgrades.

2. **AGREEMENT**

WHEREAS, for the granting of the division described herein pursuant to Section 309 of the Cass County Subdivision Ordinance, acknowledged herein as good and valuable consideration, the Owner(s) consent and agree to the filing of this **DEED RESTRICTION**, and understand that its effect will be to limit any further residences, divisions, or nonagricultural development on the restricted parcel described herein, except as may be permitted by Section 309.02 of the Cass County Subdivision Ordinance and any amendment thereto:

- A. This **DEED RESTRICTION** shall terminate at such time the deed restricted parcel is completely within the extraterritorial (ET) boundaries of an incorporated city of Cass County;
- B. This **DEED RESTRICTION** shall terminate at such time the restricted parcel is completely annexed by an incorporated city of Cass County; or
- C. Any further subdivision of the restricted parcel will conform to full urban design standards and the strictest requirements outlined within Article VI of the Cass County Subdivision Ordinance, including, but not limited: paved roads with curb and gutter, a paved access road, municipal sewer system, public water supply system with functioning fire hydrants, storm water facilities, street lights, street trees, street signs, sidewalks, bike paths, and park dedications.

WHEREAS, this **DEED RESTRICTION** shall run with the land in perpetuity and be binding on all owners, successors, heirs, assigns, lessees, users, or parties having or acquiring any right, title, or interest in the restricted parcel herein described or any part thereof.

WHEREAS, the restricted parcel described herein meets the criteria established in Section 308 of the Cass County Subdivision Ordinance.

WHEREAS, this **DEED RESTRICTION** shall expire at such time any of the exceptions under Section 309.02 of the Cass County Subdivision Ordinance, and any amendment thereto, apply to the restricted parcel described herein. Upon the written request of any interested party, the Cass County Engineer is authorized to record an instrument with the Cass County Recorder, which declares such an exception applies to the restricted parcel described herein and the **DEED RESTRICTION** is expired.

3. VIOLATION OF DEED RESTRICTION

In the event of a violation of this **DEED RESTRICTION**, the penalties and remedies provided under Section 906 (Penalties and Violations) of the Cass County Subdivision Ordinance and North Dakota law shall apply.

4. LEGAL DESCRIPTION OF THE RESTRICTED PARCEL

The Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section One (1), Township One Hundred Forty-one (141) North, Range Fifty-Five (55) West of the Fifth Principal Meridian, Cass County North Dakota.

The legal descriptions were obtained from Jerome D. Feder.

IN WITNESS of the restrictions, the Owner(s) have caused this DEED RESTRICTION to be executed effective as of:

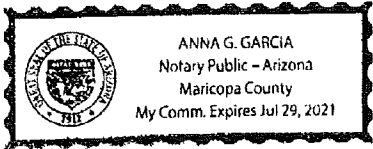
FEDER PROPERTIES L.L.P., Owner

By: Jerome D. Feder
Jerome D. Feder, Managing Partner

3-6-2019
Date

State of Arizona)
County of Maricopa) ss

On this 6 day of March, 2019, before me, a notary public within and for said county and state, personally appeared Jerome D. Feder, known to me to be the Managing Partner of Feder Properties L.L.P., a North Dakota limited liability partnership, the limited liability partnership named in the foregoing instrument, and acknowledged that they executed the same on behalf of said limited liability partnership.



Anna G. Garcia
Notary Public

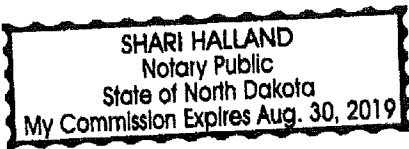
The foregoing instrument was acknowledged before me, this 26th day of March 2019, 2019, by Jason Benson, County Engineer.

Jason Benson
County Engineer Signature

3/26/19
Date

State of North Dakota)
County of Cass) ss

On this 26th day of March, 2019, before me, a notary public within and for said county and state, personally appeared Jason Benson, County Engineer, known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed same as their free act and deed.



Shari Halland
Notary Public

PAGE: 4 of 4 DEEDR

1559462

Cass County Planning Dept

4/2/2019 1:25 PM

Recorded Electronically

\$20.00

RECORDER'S OFFICE, CASS COUNTY, ND 4/2/2019 1:25 PM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
DEBORAH A. MOELLER, COUNTY RECORDER

by *Shera Garcia*, Dep **1559462**
Recorded Electronically

