

*Rose Creek*



**NEIGHBORHOOD ASSOCIATION**

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**DECLARATION OF RESTRICTIVE COVENANTS**

**AND RESERVATION OF PUBLIC UTILITY EASEMENTS**

Rose Creek Associates, a joint venture consisting of Plaza Development Group, Inc. and Rose Creek Development Corp. whose post office address is PO Box 1691, Fargo, North Dakota 58107, owner of the Rose Creek First Addition and Rose Creek Second Addition to the City of Fargo, Cass County, North Dakota (herein "the premises") according to the certified plat thereof hereby declares that in order to protect the community and the individual land owners the said property shall be subject to the restrictions and conditions hereinafter set forth and that such restrictions and conditions shall apply to and be a part of every conveyance or deed to said property or any part thereof, the same as though fully incorporated in any deed or conveyance thereof.

The said restrictions and conditions shall be deemed and considered as covenants running with the land when conveyed or deeded and shall be binding on the heirs, executors, administrators, successors" and assigns of any person to whom said land may have been conveyed until January 1, 1996, on which said date these covenants, conditions, reservations, and restrictions shall be automatically extended for a term of 10 years and thereafter in successive 10 year terms unless on or before the end of any such extension period or the initial period by vote of a majority the then owners shall be by written instrument, duly recorded, declare a termination, change, or modification of these restrictive covenants and conditions.

Although these covenants, conditions, reservations, and restrictions may expire, any and all remedies for breach of these covenants, conditions, reservations, or restrictions committed or suffered prior to expiration shall be absolute.

**1. LAND USE AND BUILDING TYPE.**

All Lots zoned R-1A as presently defined in the zoning ordinances of the City of Fargo, North Dakota shall be used for single family residential purposes only. No building or structure intended for or adopted to business purposes, and no apartment house, double house, lodging house, rooming, hospital, sanitarium or professional office, or other multiple family dwellings, or properties to be rented out either privately or under Airbnb, Vrbo, or a similar service, shall be erected, contracted for, placed, permitted, or maintained on any such lot or on any part of such lot. No improvement or structure whatsoever other than a first-class private dwelling house, patio walls, swimming pools and customary outbuildings, garages, car ports and fences subject to limitations herein set forth may be erected, placed, or maintained on any such lot in the premises. Boulevard gardens are not permitted on any lot in the subdivision.

## **2. DWELLING SIZE, QUALITY, AND DRAINAGE.**

**(a)** No building shall be erected on any lot unless the design, location, materials, and workmanship are at harmony with existing structures and locations in the residential portions of the premises and such building must conform to these restrictive covenants.

**(b)** With regard to R-1 A, single family dwelling Lots, no structure shall be erected, altered, placed, or permitted on any building lot other than one detached single family dwelling with front yard and side yard setbacks in compliance with the R-1A zoning ordinances of the City of Fargo as existing on the date hereof.

**(c)** Any dwelling structure on Lots 1 through 19, Block 1, Rose Creek First Addition (excluding porches, decks, basements, and garages) shall have a structural area if a single story rambler type structure of not less than 1,600 square feet, if a two story structure of 3 not less than 2,250 square feet.

**(d)** Any dwelling structure on Lots 1 through 12, Block 1 and Lot s 1 through 6, Block 2 Rose Creek Second Addition (excluding porches, decks, basements, and garages) shall have a structural area if a single story rambler type structure of not less than 1,850 square feet and if two story structure of not less than 2,500 square feet and shall have a garage capable of storing a minimum of 3 conventional automobiles.

**(e)** Any dwelling structure located on Lots 1 through 18, Block 2, Rose Creek First Addition and Lots 1 through 13, Block 3, Rose Creek Second Addition (excluding porches, decks, basements, and garages) shall have a structural area if a single story rambler type structure of not less than 1,400 square feet, if a two story structure of not less than 1,900 square feet and if bi-level structure of not less than 1,200 square feet per level.

**(f)** A split level dwelling structure on any Lots of Rose Creek First Addition and Rose Creek Second Addition (excluding porches, decks, basements, and garages) shall have a structural area for the top three levels of not less than 1,950 square feet.

**(g)** All Lots in the Rose Creek First Addition and Rose Creek Second Addition shall have trees on the boulevards according to the requirements of City of Fargo zoning ordinances as existing on the date hereof and all such Lots shall have not less than two (2) trees in the front of the lot and shall have sodded or seeded yards with sidewalks according to the requirements of the City of Fargo provided, 4 however, no sidewalks shall be required for Lots fronting on cui de sacs of the Rose Creek First Addition and Rose Creek Second Addition unless required by the City of Fargo.

**(h)** Minimum installation required for dwelling structures on all Lots shall be R-50 ceilings, R-22 walls, and R-10 basement walls.

**(i)** All plans and specifications of each dwelling house and appurtenant structure including garages, outbuildings, and car ports require approval of the developer. Developer may grant variances from literal compliance with these restrictive covenants in writing. In the event that

developer does not disapprove any plan within ten (10) working days from the day developer receives said plans said plans shall be considered as approved. No construction shall be permitted during the ten (10) day review period. Requirement for preapproval of plans by the developer shall cease and become null and void when all Lots in the Rose Creek First Addition and the Rose Creek Second Addition are improved and occupied or not later than January 1, 1996, whichever occurs first.

### **3. CONSTRUCTION TIME AND REQUIREMENTS.**

No white or light colored roofs shall be permitted unless approved by the developer. No evaporative cooler shall be placed, installed, or maintained on the roof or wall of any building or structure. All coolers shall be concealed. Construction of all primary structures shall be substantially completed within six (6) months after issuance of any building permit for the structure. Landscaping shall be completed as soon as weather permits following 5 substantial completion of the primary structure. No outside storage of building materials shall be permitted on any lot after the six (6) month construction period.

### **4. GARAGE AND OUTBUILDINGS.**

No garage or outbuilding shall be used for any purpose except in connection with the residence constructed on the lot. Except as otherwise required herein, all homes shall have a garage capable of storing a minimum of 2 conventional automobile. The design and location of all outbuildings for storage and otherwise shall be approved by the developer.

### **5. BASKETBALL BACKBOARDS AND HOOPS.**

No basketball backboards or hoops shall be attached to a dwelling structure on any lot. A separate pole for installation of such equipment erected and maintained at the expense of the lot owner shall be permitted.

### **6. DRAINAGE.**

Drainage ways shall conform to requirements of the City of Fargo and of all lawful public authorities including the engineer or other appropriate authority of Cass County, North Dakota having jurisdiction thereof.

### **7. OCCUPANCY.**

No private dwelling house erected upon any lot shall be occupied in any manner while in the course of construction nor at any time prior to full completion. Nor shall any residence, when completed, be in any manner occupied until made to comply with the approved plans and all covenants, conditions, reservations, and restrictions herein set forth. No temporary house, temporary dwelling, temporary garage, temporary outbuilding, trailer home, recreational vehicle, or other temporary structure shall be placed or erected upon any lot unless approved by the developer.

### **8. LETTER AND DELIVERY BOXES.**

The developer shall determine the location, color, size, design, lettering, and all other particulars of all mail or delivery boxes and standards and brackets and name signs for such boxes. Failure of the developer to make the aforesaid determination shall not constitute a waiver of the right of the developer or owners to make such determination with respect to any lot in the future

including the revision of mail or paper delivery boxes not previously approved by the developer. No delivery boxes other than the boxes for the U.S. mail shall be permitted on any lot or abutting such lot without written authorization of the developer.

#### **9. COMMERCIAL, RECREATIONAL VEHICLES, TRAILERS, BOATS.**

No mobile homes, travel trailers, toy trailers, boats, boat trailers, or like vehicles shall be permitted on any lot in the subdivision. With prior written approval, mobile homes, travel trailers, toy trailers, boats, boat trailers, or like vehicles shall be temporarily permitted on the premises or lots therein only for the purpose of loading and unloading such vehicle at the time of use. Under no circumstances shall any commercial vehicles, construction or like equipment be permitted on any lot of the subdivision for more than forty-eight (48) consecutive hours unless first approved by the developer.

#### **10. TANKS AND OTHER STORAGE.**

No elevated tanks of any kind shall be erected, placed, or permitted on any part of the premises or Lots located therein. Any tanks used in connection with any residence shall be located inside of the primary structure or shall be buried or walled sufficiently to conceal them from view from neighboring Lots, roads, or streets.

All clotheslines, garbage cans, equipment, coolers, wood piles, or storage piles shall be walled in to conceal them from view of neighboring Lots, roads, or streets. Plans for all enclosures of this nature must be approved by the developer prior to construction.

#### **11. HORSES AND PETS.**

No horses shall be kept or stabled on any of the Lots or on the premises. No animals of any kind other than customary household pets (including birds) shall be kept or allowed on any part of the premises or any Lots thereof.

#### **12. UTILITY LINES. RADIO. AND TELEVISION ANTENNAS.**

All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. There shall be no exposed or exterior microwave towers, television, or radio antennas and no satellite dishes larger than 24 inches permitted on residential Lots. This restriction may be waived by the developer for a specific lot.

#### **13. NUISANCES.**

No lot shall be used in whole or in part for storage of rubbish of any kind whatsoever nor for the storage of any property or things that will cause such lot to appear untidy, unclean or obnoxious to the human eye; nor shall any substance, thing or material be kept on any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of the surrounding property. No owner of a lot shall regularly engage in a business, hobby, or activity that disrupts the peace, quiet, and tranquility of the neighborhood.

#### **14. SIGNS.**

No billboards or advertising signs of any kind or character shall be erected, placed, permitted, or maintained on any lot or improvement except as herein expressly permitted. A name and address

sign used solely for the purpose of identification of dwelling house occupants may be placed on the lot by said occupants provided the design of the sign is approved by developer prior to installation.

Signs promoting a political candidate or ballot measure are only permitted within sixty days prior to any primary, general, or special election. Signs promoting schools, sports teams, colleges, civic organizations, and garage/yard sales, are not permitted for longer than 48 hours. Signs can measure no larger than 2 feet (24 inches) in any linear or diameter measurement. Duplicates of any sign on a single lot are not permitted. Signs of any nature are not permitted in Rose Creek common areas or on the shared perimeter fence. Signs indicating a dwelling's security system are permitted provided they are no larger than 1 foot (12 inches) in any linear or diameter measurement.

The provisions of this paragraph may be waived by the developer only when in its discretion the same is necessary to promote the sale of property in the premises area or promotion of the premises. The developer may erect, place, and maintain such sign structure or structures as it deems necessary for the operation or identification of the subdivision.

#### **15. DIVISION OF LOTS OR USE OF MORE THAN ONE LOT.**

No Lots shall be subdivided except as approved by the developer. All transfers of less than the entire lot shall be prohibited without the prior written approval of developer. If more than one lot is used for erection of a single primary structure the two or more Lots thus used shall be considered as a single lot for all purposes.

#### **16. FENCES.**

All fencing provided by any owner or person other than developer shall be approved by the developer prior to erection. The use of chain link fence in any way is not permitted on any lot of the subdivision. Owners must contact the developer first to discuss fencing material. No fence shall be constructed to extend beyond the front of the primary structure facing the front of the lot (that side of the lot facing a street). If an owner does not receive written approval for fencing material or fencing design prior to installation, the fence will be removed by the owner at the owner's expense.

No fence shall exceed six (6) feet in height. No entrances or exits through fences shall be permitted along 40th Avenue South, 25th Street South, and 52nd Avenue South.

The developer shall have the absolute right to establish such fence design and construction as it deems appropriate along 40th Avenue South, 25th Street South, and 52<sup>nd</sup> Avenue South as well as on any lot lines adjoining parkways, public spaces, public rights-of-way, and the golf course. Such fencing shall be maintained in a good condition by the lot owner and in a condition maintaining its original appearance. Fencing established by the developer along 40th Avenue South, 25th Street South, and 52nd Avenue South shall be maintained on the public side by the developer or such entity as may be established by the developer for such purposes. The lot owner shall maintain any and all fences on his lot in the event of the need of repair or replacement but shall not be permitted to paint, stain, or otherwise apply any finish to the street side of the fence.

### **17. REMOVAL OF DIRT.**

When excavating for structures, leveling of Lots or doing any dirt work, no earth or soil shall be removed from the premises except with the written consent of the developer and then only to such places as may be directed by such written consent.

### **18. MINING.**

No derrick or other structure designed for use in burrowing for oil or natural gas shall be erected, placed, or permitted upon any part of the premises nor shall any oil, natural gas, petroleum, asphalt, or hydrocarbon products or minerals of any kind be produced or extracted anywhere in the premises. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted on any lot or any part of the premises nor shall oil wells, tanks, tunnels, mineral 10 excavations, or shafts be permitted on part of the premises.

### **19. BASEMENTS.**

No basement shall be constructed for temporary residential purposes and no basement structure shall be used for residential purposes unless and until the entire primary structure has been erected thereon and complies with the building code of the City of Fargo, nor shall any trailer, tent, shack, garage, barn, or other outbuilding erected on any lot at anytime be used as a residence, temporary or permanent, nor shall any structure of a temporary character be used as a residence.

### **20. SUBSEQUENT TRANSFERS.**

No house or structure shall be moved in or on any of the Lots located in the premises and no structure when once erected shall be at anytime altered or changed so as to permit its use in any manner which would be in violation of these restrictions and conditions.

### **21. EASEMENTS.**

Easements are established for the installation and maintenance of public utilities. These easements for public utilities in the premises are hereby dedicated and made a part hereof as easements and restrictions on the use of property in the premises. Within these easements no structure, planting, or other materials shall be placed or permitted to remain or interfere with the installation and maintenance of public utilities except as permitted by the public utility using such easement.

The easement area and all improvements thereon shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility is responsible. Perpetual easements for the above and within described premises are granted over, across, and under the respective Lots and parcels of land in the locations set forth on the plats of Rose Creek First 11 Addition and Rose Creek Second Addition filed and recorded with the office of the Cass County Register of Deeds on \_\_\_ in Book \_ of Plats, page which is made a part hereof as if fully set forth herein.

*(a)* Once the installation of such utilities including electricity, gas, water, telephone, sanitation, sewer, storm sewer, and cable television is completed with respect to a particular lot the exact

location of installation shall be established and other utilities easements shall be released as to that portion of the lot not used.

*(b)* All claims for damages, if any, arising out of the construction, maintenance, and repair of the utilities or an account of temporary or other inconvenience cause thereby against the developer or any utility company or municipality or any of its agents or servants are waived by the owners. Developer reserves the right to change, layout new, or discontinue any street, avenue, or way shown on the plats of the development not necessary for ingress or egress to and from a lot or premises. Subject to the approval of the appropriate governing authority of the City of Fargo if such approval is required.

## **22. PRIVATE WATER AND SEWER.**

No private septic tanks, drain fields, or private or community wells shall be permitted in the premises or on any lot constituting a part thereof. All properties in the subdivision shall be served by the City of Fargo water and sewer.

## **23. DRIVEWAYS.**

All driveways at Lots in the premises must have a concrete surface. Driveways with access directly to the abutting street will not be permitted except for Lots 1, 2, 3, 4, and 5 of Block 1 and Lots 1, 2, and 3 of Block 2 Rose Creek First Addition. Developer may waive this 12 requirement as to specific lots.

## **24. GOLF COURSE.**

Easements to permit the doing of every act necessary and proper to the playing of golf on the golf course adjacent to the Lots of the subdivision which abut the golf course and are subject to these restrictions are hereby granted and established. These acts shall include, but not be limited to, the recovery of golf balls from Lots, the flight of golf balls over and upon the Lots, the use of necessary and usual equipment upon the golf course, the usual and common noise level created by the playing of the game of golf, together with all other common and usual activity associated with the game of golf and with all the normal and usual activities associated with the operation of a golf course.

The developer reserves the right to prescribe in writing to the governing party charged with operating the golf course the manner and extent to which the rights under this easement shall be exercised. In addition the developer may in its sole discretion, limit or withdraw or prohibit certain of the acts authorized by this easement, and it may limit the manner or place of doing all or certain of the acts authorized by this easement. The owner of any lot or the heirs, successors, and assigns of such owner by accepting conveyance of a lot acknowledge dangers inherent to persons and property posed by the proximity of a lot to the golf course in the subdivision.

By accepting conveyance of a lot abutting the golf course the owner of such lot assumes the risk of usual and normal hazards to abutting lot owners by proximity to the golf course and such of lot owner for himself, his heirs, successors, and assigns agrees to hold the City of Fargo, City of Fargo Park District, the developer, the golf course designers, and 13 employees harmless from any such damage or claims of damages to persons or property arising from or associated with

playing of the game golf at the golf course. This restriction may, but shall not be required, to appear on deeds to all Lots abutting the golf course.

## **25. MORTGAGES.**

The breach of any of the foregoing covenants, conditions, reservations, or restrictions shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any lot or Lots or portions of Lots in the premises but these covenants, conditions, reservations, and restrictions shall be binding upon and effective against any mortgagee or trustee or owner, whose title or whose grantor's title is or was acquired by foreclosure, trustee sale, or otherwise.

## **26. WAIVER.**

No delay or emission on the part of the developer or the owners of any Lots in the premises in exercising any right, power, or remedy herein provided, in the event of any breach of the covenants, conditions, reservations, or restrictions herein contained, shall be construed as a waiver thereof or acquiesce therein and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the developer for or on account of its failure to bring any action on account of any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions herein which may be unenforceable by the developer or any other party.

## **27. RIGHT TO ENFORCE.**

The restrictions set forth shall run with the land and bind the present owner or owners their heirs, executors, administrators, successors, and assigns and all parties claiming by, through or under them, shall hold and hereby agree and covenant with the owners of said Lots, their heirs, executors, administrators, successors, and assigns, and with each of 14 them, to conform to and observe said restrictions as to the use of said Lots hereby restricted and construction of improvements thereon. No restriction, however, shall be personally binding on any person except in respect to breaches committed during his or their ownership of the particular property upon which such violations occurred. For any violation of the restrictions herein set forth the owner or owners of any Lots shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce legal action for damages against the offender only. Failure of the developer or the owner of any lot or Lots to enforce any of the restrictions herein set forth at the time of the violation, shall in no event be deemed a waiver of the right to do so thereafter.

## **28. SEVERABILITY.**

In the event anyone or more of the foregoing covenants, conditions, reservations, or restrictions is declared for any reason by a court of competent jurisdiction to be null and void the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions, reservations, and restrictions not declared to be void or unenforceable but all of the remaining covenants, conditions, reservations, and restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

## **29. DEDICATED RIGHT.**



The premises shall be subject to any and all rights and privileges which the City of Fargo or the County of Cass or State of North Dakota may have acquired through dedication or the filing or recording of maps or subdivision plats as authorized by law and provided further that no covenants, conditions, reservations, or restrictions or acts performed shall be in conflict with any zoning ordinance, land use law, building code, 15 or other applicable law of the City of Fargo, County of Cass or State of North Dakota.

**30. DEVELOPER.**

Rose Creek Associates and its successors and assigns is the developer described herein. The developer shall have the right to grant and convey all its rights to enforce these covenants, conditions, reservations and restrictions to such community association or other entity as may be organized or established for such purpose at such time as in the sole judgment of the developer such entity is able to enforce the restrictions herein contained. If no such community association or other entity is organized the rights of the developer shall vest in owners of the Lots when all Lots of the premises are sold or on January 1, 1996 whichever occurs last. When the developer has transferred all rights under these covenants to such community association, all references to the "developer" shall refer to the Board of Directors.

*Dated October 10, 1989; signed by Rose Creek Associates, a joint venture Owner, by Plaza Development Group, Inc., joint venturer, by Larry S. Nygard, its President, and by Rose Creek Development Corp., joint venturer, by Fred M. Hector, its President, acknowledged by David T. DeMars, Notary Public. Recorded October 10, 1989 at 2:05 p.m. as Document #709236.*