

**DECLARATION OF RESTRICTIVE COVENANTS
AND PUBLIC UTILITY EASEMENTS**

Woodhaven Development LLP, a North Dakota limited liability partnership, whose post office address is P. O. Box 2316, Arther, North Dakota 58006, owner of:

All of Blocks One through Six, exclusive of Lots 26-34 in Block 6, of Woodhaven Fourth Addition to the City of Fargo, Cass County, North Dakota according to the recorded plat thereof (the "Premises"),

hereby declares that in order to protect the community and future individual land owners, all of said Premises shall be subject to the covenants, conditions, reservations, restrictions and easements (collectively "Restrictions") hereinafter set forth and that such Restrictions shall apply to and be a part of every conveyance or deed to said Premises or any part thereof, the same as though fully incorporated in any deed or conveyance thereof. The Restrictions shall be deemed and considered as covenants running with the Premises when conveyed or deeded and shall be binding on the heirs, executors, administrators, successors and assigns of any person to whom any part of the Premises may have been conveyed until 10 years after the date this Declaration is recorded, on which date these 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 the initial period, or any such extension period, a majority of the then owners of Lots shall vote to declare a termination, change or modification of the Restrictions, and an instrument signed by a majority of such owners evidencing such termination, change or modification has been recorded in the office of the Cass County Register of Deeds. The Restrictions may be amended effective prior to the end of the initial 10-year term, or any 10-year extension term, only upon the written agreement of seventy-five percent of owners of Lots. If these Restrictions expire, any and all remedies for a breach committed or suffered prior to expiration, shall survive such expiration.

1. DEFINITIONS.

For purposes of this instrument, the following definitions shall apply:

- (a) Developer - shall refer to Woodhaven Development L.L.P., a North Dakota limited liability partnership, or its successors and assigns under instrument expressly conveying the rights of Developer hereunder
- (b) Lot - shall refer to any parcel of real property referred to as a numbered or lettered lot per the subdivision plat of the Premises, or any replat thereof.
- (c) Premises - shall refer to all real property defined as the Premises on page 1 hereof, and shall specifically include all Lots. Any Restriction herein created as to the Premises shall also expressly apply to all Lots within the Premises.

2. LAND USE AND BUILDING TYPE.

The use of all Lots shall conform to zoning ordinances of the City of Fargo, subject to such variances or special use permits as may be granted by the City of Fargo. No improvement or structure whatsoever other than a residential dwelling, patio walls, swimming pools, outbuildings, customary and reasonable landscaping, garages, car ports and fences, all as may be subject to limitations herein set forth, may be erected, placed or maintained on any Lot.

3. DWELLING SIZE AND OTHER CHARACTERISTICS

- (a) Residential dwellings constructed on the following Lots shall meet the following minimum square footage requirements, unless waived in writing by Developer:

<u>Lots</u>	<u>Three or more Level split</u>	<u>"Rambler" or Single Level</u>	<u>"Two Story"</u>	<u>"Bi-Level"</u>
Lots 1-16 Block 4; Lots 1-25 Block 6	2,200 sq. ft. for top 3 levels	1,800 sq. ft. on level entirely above grade	1,050 sq. ft. on first level entirely above grade or total of 2,100 sq. ft. on all levels entirely above grade	1,500 sq. ft. on level entirely above grade
Lots 2-24 Block 5;	2,700 sq. ft. for top 3 levels	2,000 sq. ft. on level entirely above grade	1,150 sq. ft. on first level entirely above grade or total of 2,400 sq. ft. on all levels entirely above grade	No Bi levels are allowed



The above stated minimum square footage requirements do not include basements, garages, decks, or porches.

- (b) All garages shall be attached to the residential dwelling.
- (c) No evaporative cooler shall be placed, installed or maintained on the roof or wall of any building or structure.
- (d) The tops of all foundations shall be a minimum of 24 inches above curb level.
- (e) Any storage sheds or other outbuildings shall be constructed of material of like quality, nature and color as that of the residential dwelling. Without limiting the foregoing, siding and roofing/shingles shall match that on the home.
- (f) Driveways shall be constructed of concrete, bituminous asphalt or like "hard-surfaced" material. Clay, gravel or like materials shall not be permitted for driveway surfaces.

4. CONSTRUCTION TIME AND REQUIREMENTS.

Construction of all residential dwellings on a Lot shall be substantially completed within 12 months after the earlier to occur of (i) topsoil being scraped and piled, or (ii) issuance of any building permit for the structure. If construction is not commenced within 12 months after topsoil is scraped and piled, topsoil shall thereafter be promptly replaced and leveled. Contractors, subcontractors and materialmen shall perform construction activities on any Lot in a neat and clean manner, and shall keep the Lot and all surrounding property free of debris, trash, and discarded building materials. No soil shall be removed from the premises without the written consent of Developer. Sodding and/or seeding of the entire Lot shall be completed as soon as weather permits following substantial completion of the residential dwelling, but not later than September 1 of the calendar year following the calendar year the residential dwelling is substantially completed. Until the sodding/seeding is completed, the owner of the Lot shall maintain the property in a condition free of noxious weeds. No storage of building materials on a Lot shall be permitted outside of the residential dwelling or outbuilding after the 12 month



construction period. No construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion within the time prescribed herein, is in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto, and conforms to usual construction practices in the area. No construction activities shall be carried on in such a way as to create a health hazard or unreasonably interfere with the use and enjoyment by any Lot owner or his/her family. Should construction on, or maintenance of, any Lot be undertaken in a manner inconsistent with the Restrictions imposed in this Section, Developer may immediately undertake such action as is necessary to render any Lot consistent with this Section and thereafter bill the owner of any such Lot for the costs of doing so. The owner shall remit payment for such bill within 10 days after receipt of same.

5. **PARTIAL RESIDENTIAL IMPROVEMENTS.**

No basement shall be constructed for temporary residential purposes and no basement structure shall be used for residential purposes unless and until the entire residential dwelling has been erected thereon and complies with the building code of the City of Fargo. Nor shall any trailer, tent, shack, garage, barn, outbuilding or the like erected on any Lot at any time be used as a residence, temporary or permanent. The foregoing Restrictions shall not prohibit a Lot owner from erecting a tent or placing a camper or recreation vehicle on a Lot for use by occupants or guests of a Lot for a period not to exceed 72 hours consecutively and 120 hours in any calendar month.

6. **ALTERATIONS.**

No residential dwelling shall be constructed elsewhere and moved in or on any of the Lots, and no structure when once erected shall be at any time altered or changed so as to:



permit its use in any manner which would be in violation of these Restrictions.

7. **DRAINAGE**

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

8. **TANKS AND OTHER STORAGE**

No above or below ground tanks of any kind shall be erected, placed or permitted on any part of the Premises, except as may be located inside a residential dwelling. All clotheslines, garbage cans or other trash receptacles, equipment, coolers, wood piles or storage piles shall be screened to completely conceal them from view of neighboring Lot owners, roads, streets and sidewalks.

9. **UTILITY LINES, RADIO AND TELEVISION ANTENNAE**

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, television, radio, Internet or other electronic media towers or antennas, except two antennas/dishes each less than 24 inches in diameter are allowed outside of residential dwellings or outbuildings on each Lot. Notwithstanding the foregoing, electric transmission lines of utility companies (and additions to and replacements of same) existing as of the date hereof shall be permitted.

10. **COMMERCIAL VEHICLES**

Except as to contractors, subcontractors and materialmen during construction on a Lot, no commercial vehicles, construction equipment, boats, recreational vehicles, campers, snowmobiles, buses, motorcycles, wagons, sleighs, mobile homes, trailers of any kind or the like shall be permitted on the Premises, unless kept in a garage or other completely screened and enclosed area so as to be out of view of neighboring Lot owners, roads, streets and sidewalks. Notwithstanding



the foregoing, such items are permitted on the Premises and not subject to the foregoing Restriction for the purpose of loading and unloading and for temporary, non-regular storage for less than 72 consecutive hours. A Lot owner may not regularly store or permit the storage of any such item on the Premises and evade the foregoing Restriction by moving or removing the item periodically within the 72 hour temporary storage exception.

11. **HORSES AND PETS.**

No horses shall be kept or stabled 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. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be maintained on any portion of the Premises.

12. **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 part of the Premises nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any part of the Premises.



13. LOT 1, BLOCK 5. This Lot has or will be deeded to the City of Fargo. The Park District may use such Lot, in part, for the construction and maintenance of a water retention pond, playground, and bike paths. The City of Fargo may assess benefited property owners for all or portion of improvements it makes to this Lot.

14. LOT 28, BLOCK 1 and LOTS 35 and 36, BLOCK 6.

These Lots have or will be conveyed to the City of Fargo. Developer shall, at its expense, landscape and plant this area in accordance with a plan approved by the Park District and relevant utility companies. Once Developer has completed said landscaping and planting, the Park District shall be responsible for maintaining this Lot and for the snow removal on any bike trail or sidewalk on these Lots.

15. FENCES.

Subject to the following paragraph, a Lot owner may construct a fence or fences on any part of his/her Lot. If any such fence is of a type where the posts or rails are exposed on only one side of the fence, all such posts or rails shall face inward towards the Lot owner constructing the fence.

Developer may install fences on Lots 13-27, Block 1, and Lots 10-17, Block 6, on or near the boundaries thereof adjacent to streets or roads. If Developer does so, the owner of any Lot on which a part of any such fence is located shall, at the owner's expense, maintain that part of such fence, using the same materials of the same quality and dimensions as originally constructed. These fences shall be allowed to weather naturally, and shall not be treated, painted or stained.

16. BOULEVARD TREES/CERTAIN TREES AND PLANTINGS.

Except as provided in the following paragraph, a Lot owner shall plant boulevard

trees within twelve months of occupying his/her residential dwelling. The type, size and location of trees shall be as directed by the City of Fargo.

17. SIDEWALKS.

Owners of all Lots over which sidewalks pass, or which are adjacent to any sidewalks, shall be responsible for removing snow and debris from such sidewalks over or adjacent to their Lots. The sidewalk along and on the north side of 49th Avenue South is likely to be constructed to a width of 8 feet; owners of Lots in front which this sidewalk passes shall be responsible only for removing snow to a width of four feet. The owners of all Lots acknowledge that they will be assessed by the City of Fargo for the costs of installing sidewalks on and/or adjacent to their Lots.

18. NUISANCES.

Except temporarily prior to the next weekly trash removal day, and then only in compliance with Section 7 above, no part of the Premises shall be used in whole or in part for storage of rubbish or debris of any kind whatsoever. No part of the Premises shall be used for the storage of any property or things that will cause it to appear untidy, unclean or obnoxious to an average and reasonable surrounding property owner. No substance, thing or material may be kept on any part of the Premises 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 an average and reasonable surrounding property owner. The Restrictions set forth in this Section shall not apply during any construction activities, so long as such construction activities conform to the Restrictions set out at Section 4 above.

19. UTILITY EASEMENTS.

Perpetual (or the longest period allowed by law) easements are hereby dedicated,



created and established for the installation and maintenance of electricity, gas, water, sanitary sewer, storm sewer, cable television, Internet access and any other like public utility services, now contemplated or hereafter first available. The location of such easements shall be in the areas designated as "drainage and utility easement" on the plat of the Premises. If any portion of the Premises is replatted, the easements hereby dedicated terminate or "shift" consistent with "drainage and utility easements" designated on such replat. These easements are hereby dedicated and made a part hereof as easements and restrictions on the use of property in the Premises. Within these easements, lawns are allowed, but no structure, planting or other materials shall be placed or permitted to remain that interfere with the installation and maintenance of utilities except as permitted by the entity using such easement. The easement area and all improvements thereon shall be maintained continuously by the owner of the Lot, except for those structures or improvements for which a public authority or utility provider is responsible.

- (a) All claims for damages, if any, arising out of the construction, maintenance and repair of the utilities or on account of temporary or other inconvenience caused thereby against the Developer or any utility company or municipality or any of its agents or servants are waived by Lot owners; provided such utility provider or municipality shall restore soil and grass affected, but shall not be obligated to restore any items placed in an easement area in violation of the Restrictions hereby imposed.
- (b) Developer reserves the right to change, lay out, create new or discontinue any street, avenue, or way shown on the plats of the Premises not essential for ingress and egress from a Lot it does not own or the Premises, subject to the approval of the appropriate governmental authority.

20. WATER ISSUES.

All Lot owners acknowledge that certain drainage ditches or retention ponds may be constructed on the Premises and areas surrounding the Premises. By accepting



conveyance of a Lot, all Lot owners assume the risk of hazards, foreseen and unforeseen, associated with such drainage ditches or retention ponds, including without limitation, risks associated with them as they relate to the safety of adults and children. All Lot owners for themselves, their children, guests, invitees, trespassers, successors, assigns, agents, employees and the like, hold the City of Fargo, Cass County, and Developer harmless from and against any damage, claim, suit, injury, cost or expense (including attorney's fees), as pertains to injury to person or damage to property, arising out of or in any way related to any such drainage ditch or retention pond, except as to any governmental authority responsible for the normal maintenance thereof.

21. MORTGAGES.

The breach of any of the foregoing 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 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.

22. RIGHT TO ENFORCE.

The Restrictions set forth herein shall run with the Lots and all property within the Premises and shall bind the present owner or owners of Lots and any property within the Premises, their heirs, executors, administrators, successors and assigns and all parties claiming by, through or under them. No Restriction, however, shall be personally binding on any person except in respect to breaches committed or continued during his, her or their ownership of the particular property upon which such violations occurred. Except where the right to enforce a Restriction is reserved to Developer (e.g. certain



portions of Sections 3 and 4 above), for any violation of the Restrictions herein set forth, the owner of any Lot shall have the right to sue for and obtain an injunction, preventive or mandatory, to prevent the breach of an obligation, or to enforce the performance of an obligation, or to maintain a legal action for damages against the offender. No Lot owner or other party may bring an action against Developer for Developer's failure to enforce a Restriction. Further, the City of Fargo may, but shall not be obligated to, remedy the violation of any Restriction, in which case the cost thereof shall be immediately due and payable to the City and the City may undertake to collect such sum in any manner, including the imposition of an assessment(s) against the applicable Lot.

23. WAIVER.

No delay or omission on the part of 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 Restrictions, shall be construed as a waiver thereof or acquiescence therein and no right of action shall lapse. No action may be brought or maintained by anyone whatsoever against Developer for its failure to bring any action for any breach of these Restrictions.

24. COMPLIANCE WITH LAWS.

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. The Restrictions herein created shall be in addition to, and not in substitution or replacement for any zoning ordinance, land use law, building code or other applicable law of the City of Fargo, County of Cass, State of North Dakota or other like



municipality or governmental authority having jurisdiction over the Premises.

25. SEVERABILITY.

In the event any one or more of the foregoing 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 Restrictions not declared to be void or unenforceable, but all of the remaining Restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

Dated this 1st day of March, 2005.

WOODHAVEN DEVELOPMENT L.P.

By: Steve Stoner
Steve Stoner, Partner

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

The foregoing instrument was acknowledged before me this 1st day of March, 2005, by Steve Stoner, partner of Woodhaven Development L.P., a North Dakota limited liability partnership, on behalf of the limited liability partnership.

[Signature]
Notary Public

(SEAL) Notary Public
Commission Expires



1131097
Page: 12 of 12
03/09/2005 10:44

RECORDER'S OFFICE, CASS COUNTY, ND 03/09/2005 10:44AM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEDIMMO KERSLUD, COUNTY RECORDER
by Teresa A. Kurling Dep 1131097

