

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

Osgood Investments, LLC, a North Dakota limited liability company whose post office address is 4620 Amber Valley Parkway, Fargo, North Dakota 58104, (the "Developer") the owner of Osgood Farms First Addition to the City of Fargo, Cass County, North Dakota (the "Development") 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, 2024, 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 TO WHICH THESE COVENANTS APPLY.** These covenants shall apply to all lots in the Osgood Farms First Addition to the City of Fargo, Cass County, North Dakota and any subsequent re-plats of Osgood Farms First Addition.

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 Development and such building must conform to these restrictive covenants.
- (b) All structures shall be erected or altered with front yard and side yard set backs in compliance with the zoning ordinance of the City of Fargo as existing on the date thereof.
- (c) Any dwelling structure located on the lots within the Development (excluding porches, decks, basements and garages) shall have a minimum structural area outlined as follows:

<u>1200 sq. ft.</u>	Standard one story (rambler) and one and a half story home.
<u>1800 sq. ft.</u>	Standard two story
<u>1800 sq. ft.</u>	Bilevel (including both floors)
<u>1800 sq. ft.</u>	Splitlevel (excluding lowest basement level)
<u>1150 sq. ft.</u>	Per side for twin homes on those lots designated by the Developer for twin home use.
<u>1000 sq. ft.</u>	Per housing unit for town houses on those lots designated by the Developer for town house use.

- (d) Within twelve (12) months of occupancy, all lots in the Development 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 one (1) tree in the front of the lot and shall have a sodded or seeded yard with sidewalks where required by the City of Fargo.
- (e) All plans and specifications for the erection or alteration of each dwelling house require approval of the Developer. Developer may grant variances from literal compliance with these restrictive conveyances 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 Osgood

Farms First Addition are improved and occupied or not later than the filing of a sworn statement by the Developer delegating this authority to a homeowner's association, whichever occurs first.

- (f) Plans submitted for approval shall include the following:
 - (i) One complete set of floor plans, elevations and sections, one site plan and, if requested, material samples.
 - (ii) The dwelling plans should indicate construction materials and specifications, roofing material, exterior finishes and colors.
 - (iii) The site plans should indicate the basement outline with projections shown as a dotted line. The garage "footprint" and exterior steps or decks should be indicated. The site plan should indicate sidewalks, walkways, and driveway locations and sizes. Accessory structures such as pools, pool houses, gazebos, decks and play structures and kennels should be indicated on the site plan.
- (g) The top of foundation or lowest opening of all residential structures within the Development shall be not less than 907.5 feet above sea level or 2 ½ feet above the top of the curb directly in front of the structure, whichever is higher.

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 substantial completion of the primary structure, but in any event, within twelve (12) months of issuance of the Building Permit. No outside storage of building materials shall be permitted on any lot after the six (6) month construction period.

New Construction: All improvements constructed on Lots shall be new construction and no buildings or other structures shall be moved from other locations onto any Lot. Construction of improvements on any Lot must commence within twenty-four (24) months of conveyance of the Lot by Developer. In the event construction of improvements does not commence within this time frame, the Developer will have the option to purchase the lot back from the Owner upon payment to the Owner of ninety (90%) percent of the price originally paid to Developer for the Lot.

4. **GARAGE AND OUTBUILDINGS**. All homes shall have an attached garage capable of storing a minimum of 2 conventional automobiles. Outbuildings shall be permitted if they are constructed in harmony with the existing dwelling and are 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, Fargo, 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 or 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 standard 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 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 boxes for the U.S. Mail shall be permitted on any lot or abutting such lot without written authorization of the Developer.

9. **VEHICLE PARKING, STORAGE.** No commercial vehicles or construction equipment shall be permitted on any lot in the Addition except in the normal course of business provided by such vehicles. Motor homes, travel trailers and like vehicles shall be temporarily permitted on the lots for the purpose of loading and unloading such vehicles or for temporary visits by visitors to the lots. Recreation vehicles, boats, travel trailers and like vehicles may be stored on the lots only if they are stored behind the front dwelling line and are completely screened from public view. Any vehicle over six feet in height must be stored in a garage. All motor vehicles kept on or about a property shall be currently licensed and shall be maintained in an operable condition at all times, temporary mechanical difficulties and breakdowns excepted.

10. **TANKS AND OTHER STORAGE.** No elevated tanks of any kind shall be erected, placed or permitted on any part of the Development 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 the golf course, neighboring lots, roads or streets. All clotheslines, garbage cans, equipment, coolers, woodpiles or storage piles shall be walled in to conceal them from view from the golf course, neighboring lots, roads or streets. The Developer, prior to construction, must approve plans for all enclosures of this nature.

11. **HORSES AND PETS.** No horses shall be kept or stabled on any of the lots within the Development. No animals of any kind other than customary household pets (including birds) shall be kept or allowed on any part of the Development 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 free standing antennae and any antennae attached to a roof shall be not more than three (3) feet above the roof, not including the height of the chimney. Satellite dishes over 20" in diameter are not permitted unless approved by the Developer.

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.

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 occupants may be placed on the lot by said occupants provided the design of the sign is approved by the Developer prior to installation. The provisions of this paragraph may be waived by the Developer when in its discretion the same is necessary to promote the sale of property in the Development. The Developer may erect, place and maintain such sign structure or structures, as it deems necessary for the operation or identification of the Development.

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 installation. 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) except on corner lots as approved by the Developer. No such fence shall exceed six feet in height. Any Development Fencing located within the fencing easement on a lot shall be maintained by the Developer. However, the cost of maintenance and repair to the Development Fencing will be the responsibility of the lot owner.

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 Development 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 Development nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or minerals of any kind be produced or extracted anywhere in the Development. 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 Development nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted on any part of the Development.

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 any time 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 Development and no structure, when once erected, shall be at any time altered or changed so as to permit its use in any manner that would be in violation of these restrictions and conditions.

21. **EASEMENTS.** Easements are established for the installation and maintenance of public utilities, as well as perimeter fencing ("Development Fencing"). The easements for public utilities in the Development are hereby dedicated and made a part hereof as easements and restrictions on the use of property in the Development. 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 Development are granted over, across and under the respective lots and parcels of land in the locations set forth on the plat of Osgood Farms First Addition filed and recorded with the office of the Cass County Recorder on April 14, 2003 and recorded as Document Number 1052635, which is made a part hereof as if fully set forth herein. Easements for the installation and maintenance of Development Fencing, as well as the cost of maintaining the same are more fully described in Paragraph 16. 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 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 premise 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, private or community wells shall be permitted in the Development or on any lot constituting a part thereof.

23. **DRIVEWAYS.** All driveways must be hard surfaced. Permitted materials for driveway construction include interlocking paving stones and cast in place concrete. No precast concrete slab pavers are permitted as the city approach or front yard sidewalk.

24. **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 Development but these covenants, conditions, reservations and restrictions shall be binding upon and effective against any mortgagee or trustee or owner, whose title or whose grantors title is or was acquired by foreclosure, trustee sale or otherwise.

25. **WAIVER.** No delay or omission on the part of the Developer or the owners of any lots in the Development 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.

26. **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 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 to prevent the breach of or to enforce any of the restrictions herein set forth at the time of the violation. Any delay in doing so shall in no event be deemed a waiver of the right to do so thereafter.

27. **SEVERABILITY.** In the event any one 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.

28. **DEDICATED RIGHT.** The Development 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 addition 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 or other applicable law of the City of Fargo, County of Cass or State of North Dakota.

29. **AMENDMENTS.** This Declaration of Restrictive Covenants, and Reservation of Public Utility Easements may be amended by Developer at any time until it divests itself of the responsibility for architectural control. It shall be conclusively presumed that the Developer has not divested itself of responsibility for architectural control unless there is a sworn affidavit of record so stating. After that time, this Declaration may be amended by an instrument signed by the owners of not less than eighty (80%) percent of the lots. Any instrument amending, modifying or canceling this Declaration must be properly recorded before it shall be effective.

30. **DEVELOPER RIGHTS.**

(a) **ENFORCEMENT OF COVENANTS.** The Developer, its successors and assigns 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 Development are sold or on January 31, 2023, whichever occurs last.

(b) **DEVELOPMENT ASSESSMENTS.** The Developer, its successors and assigns shall have the right to assess the lots within the Development annual general assessments or charges, and special assessments for capital improvements to be used exclusively to promote the improvement, maintenance, and operation of the signage, mailboxes, common areas, parks, perimeter landscape, Development Fencing, and entrance to the Development. Each lot, whether improved or unimproved, shall be assessed at a uniform rate based on the number of residential units existing on the lot. For example, a lot containing ten residential units will be charged an assessment equal to ten times the assessment to a lot containing one residential unit. The above notwithstanding, if a residential unit is situated upon more than one lot, the two or more lots upon which the residential unit is situated shall be assessed according to the actual number of individual lots for purposes of this paragraph.

(c) **ENFORCEMENT OF LIEN.** All delinquent assessments, together with interest thereon (at an interest rate equal to that rate charged by the Cass County

Treasurer for delinquent taxes), and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. If the Developer, its successors or assigns elects to claim a lien for non-payment of assessments, it may do so by the recordation of a duly executed and acknowledged original writing setting forth such information as may be required by the Recorder of Cass County, North Dakota. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by law for the foreclosure of real estate mortgages pursuant to the statutes of the State of North Dakota. The lien of the assessments provided for above shall be subordinate to the lien of any first mortgage, representing a first lien on said property.

IN WITNESS of its terms and conditions, the undersigned, being the Developer, have caused this Declaration to be executed on May _____, 2003.

OSGOOD INVESTMENTS, LLC

By: _____
Kevin Christianson, President

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

On this _____ day of May, 2003 before me personally appeared Kevin Christianson, known to me to be the president of the limited liability company that is described in and that executed the within instrument, and acknowledged to me that such limited liability company executed the same.

(SEAL)

Notary Public