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RECORDER'S OFFICE, CASS COUNTY, ND 11/12/2020 2:05 PM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
DEBORAH A. MOELLER, COUNTY RECORDER

by Sheva Garcia, Dep 1612175
Recorded Electronically



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

ROSE CREEK DEVELOPMENT CORPORATION, whose post office address is 4440 Carrie Rose LN, Fargo, North Dakota 58104, as the owner of:

**Lots 1 through 11, inclusive, in Block 1;
Lots 1 through 11, inclusive, in Block 2;
Lots 1 through 14, inclusive, in Block 3;
Lots 1 and 2, in Block 4; and
Lots 1 through 5, inclusive, in Block 5;
All in Selkirk Place First Addition to the City of Fargo, Cass County, North Dakota
according to the certified plat thereof (herein "the Premises"),**

hereby declares that in order to protect the community and the individual land owners, all of said Premises 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 Premises 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.

1. **DEFINITIONS.** For purposes of this declaration of restrictive covenants and reservation of public utility easements, the following definitions shall apply:

- (a) **"Developer"** - shall refer to **Rose Creek Development Corporation**, a North Dakota corporation, its successors and assigns.
- (b) **"Selkirk Place First Addition"** - shall refer to the land that is described on the **Plat of Selkirk Place First Addition** to the City of Fargo, Cass County, North Dakota recorded on May 27, 2020 as Document **1591800**.
- (c) **"Architectural Control Agent"** - shall refer to **RS Carey Land Co., 1615 SE Main Ave, Moorhead, MN 56560** or a successor person or entity appointed by Developer.
- (d) **"Lot"** refers to each lot which is a part of the Premises and **"Lots"** refers to all lots which are a part of the Premises.

2. **LAND USE AND BUILDING TYPE.**

The use of all Lots included in the Premises shall conform to zoning ordinances of the City of Fargo. All Lots are zoned SR, a part of a Single-Dwelling district and are intended for individual households including traditional single-family dwellings, twin-homes and townhomes, all of the plans and specifications for which are subject to approval by Developer.

Developer reserves the right to seek a change in zoning on Lot 11, Block 1, of Selkirk First Addition at any time prior to the sale of all other Lots included in the Premises or five years from and after the date this Declaration is recorded, whichever occurs first.

3. **CONSTRUCTION**

- a. No dwelling shall be erected on any Lot unless the design, location, materials and workmanship are in harmony with existing dwellings in the residential portions of the Premises and all such dwellings must conform to these restrictive covenants.
- b. All single-family dwellings constructed on the following described Lots shall meet the following *minimum* square footage requirements, unless waived in writing by Developer:

<u>TIER</u>	<u>Lots</u>	<u>Split Level</u>	<u>Single Level</u>	<u>Two Story</u>
I	Lots 1-10, Block 1	2600 total sf for top 3 levels	2100 sf	2800 total sf
II	Lots 1-8, Block 2; Lots 1-14, Block 3; Lots 1 & 2, Block 4; Lots 1-4, Block 5	2250 total sf for top 3 levels	1600 sf	2400 total sf

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

- c. Minimum finished insulation required for dwelling structures on all Lots shall be R-50 ceilings, R-22 walls and R-10 basement walls.
- d. All single-family dwellings shall have a garage capable of storing a minimum of three conventional automobiles vehicles. All townhomes and twin-homes shall have a garage capable of storing a minimum of two conventional automobiles. No detached garage, lean-to, or car-port is permitted on any Lot.
- e. **ARCHITECTURAL CONTROL.** All plans and specifications for the proposed construction or alteration of a dwelling, garage, driveway, sidewalk, structure or any other improvement on any Lot, including proposed landscaping require approval of the Developer. No construction shall be commenced without Developer approval. Two hard copies of the plans and specifications must be submitted to the Architectural Control Agent at its address and one set shall be submitted to the Architectural Control Agent electronically. Developer may grant variances from literal compliance with these restrictive covenants in writing. In

the event that Developer does not disapprove any plan within thirty (30) working days from the day the Architectural Control Agent has acknowledged, in writing, receipt of said plans, said plans shall be considered as approved. No construction shall be permitted during the thirty (30) day review period. The requirements related to Developer's architectural control and approval of plans by the Developer shall cease when a certificate of occupancy has been issued for all Lots in Selkirk Place First Addition that are included in the Premises or Developer has assigned or relinquished such control in writing which has been recorded in the Office of the Recorder for Cass County, North Dakota, whichever occurs first. It shall be conclusively presumed that a certificate of occupancy has not been issued for all Lots or that Developer has not assigned or relinquished architectural control unless there is a sworn affidavit of record signed on behalf of the Developer that one of said factual circumstances exists.

- f. No white or light-colored roofs will be allowed on any structure in the Premises.
- g. All Lots shall be graded to the finished design grades as designed by the engineering firm appointed by the City of Fargo and approved by Developer. Positive drainage is required to divert water away from the residence and to prevent standing water and soil saturation which may be detrimental to structures and enjoyment of use of the property. 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. Sump pump discharge lines shall be installed underground and connected to rear yard catch basins, if available. If not available, discharge lines shall be installed under ground to the front of the Lot and connected to the existing PVC tile line behind the curb using a water tight connection.
- h. No heating, ventilating, air conditioning or evaporative cooler unit shall be placed, installed or maintained on the roof or wall of any dwelling, garage or other structure unless they are concealed from view.
- i. Flood Plain Elevation Requirements. All window wells shall be constructed with cement and the following minimum standards shall apply to all Lots subject to this Declaration unless a written variance from these minimum standards is granted by the Developer or the City of Fargo's Engineering Department:

<i>Minimum elevation of lowest opening including area walls</i>	<u>908.6 feet</u>
<i>Minimum fill around dwelling</i>	<u>908.3 feet</u>
<i>Minimum fill fifteen (15) feet from dwelling</i>	<u>906.8 feet</u>
<i>Minimum elevation of finished floor for structures other than dwelling and garage</i>	<u>907.8 feet</u>

- i. No topsoil or excavation material may be removed from any Lot without the prior written approval of the Developer. Excess topsoil and excavation material shall be disposed of only in accordance with the Developer's directions.

- j. All driveways on all Lots in the Premises shall have a hard surface. Permitted materials for driveway construction include interlocking paving stones and cast in place concrete.

4. **CONSTRUCTION TIME**

Construction of all primary dwelling 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. Until the landscaping is completed, the owner of the Lot shall maintain the property in a condition free of noxious weeds and if the owner fails to do so, the Developer may maintain the property and the cost of such work shall be paid by the owner. No building materials shall be stored outside on any Lot after the six (6) month construction period. All construction activities shall comply with all 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 family. If any portion of any Lot is stripped of natural vegetation during the course of any construction activities on the Lot or during landscaping, the owner shall take reasonable and appropriate steps to prevent erosion and minimize blowing soil from the Premises.

5. **RESTRICTIONS.**

- a. **ACCESSORY STRUCTURES.** No accessory structures such as storage buildings, utility buildings, additional garages, decks, play structures, pools, pool houses, cabanas or gazebos shall be permitted without the Developer's prior written approval.
- b. **FENCING.** No fencing shall be permitted unless approved by the Developer in writing. If the Developer does approve fencing, it shall be constructed in such locations and using such materials as the Developer approves. No fence shall be constructed to extend beyond the front of the primary structure facing the front of the Lot (ie, that side of the Lot facing a street).
- c. **BASKETBALL BACKBOARDS AND HOOPS.** No basketball backboard or hoop shall be attached to any house, townhome or other dwelling on any Lot. Portable basketball poles and hoops are prohibited and shall not be maintained on

any Lot. No basketball courts or other sport courts shall be permitted. A free-standing basketball pole and hoop may be installed on a Lot only with the prior written approval of the Developer.

- d. **OCCUPANCY.** No dwelling shall be occupied until construction is completed and a certificate of occupancy has been issued. No temporary housing shall be placed on any Lot without the Developer's written approval.
- e. **VEHICLES.** No commercial vehicles, motor homes, boats, travel trailers, personal watercraft, recreational vehicles, flat bed trailers, storage trailers, storage containers, car trailers, or construction equipment shall be permitted on any Lot unless they are stored in the garage and concealed from view. The foregoing notwithstanding, construction equipment is permitted for reasonable times during the course of construction activities; and motor homes, travel trailers and similar vehicles are permitted for the purpose of loading and unloading but they shall not be stored or parked on any Lot for more than 48 consecutive hours unless they are stored or parked in the garage and concealed from view. All motor vehicles parked on a Lot shall be currently licensed and maintained in an operable condition.
- f. **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 and streets. All garbage cans, recycling containers, wood piles and other storage piles shall be concealed from view of neighboring Lots, roads and streets. All proposed enclosures must be approved by the Developer prior to construction.
- g. **RENTALS.** No dwelling constructed on any Lot shall be occupied by any person as a tenant.
- h. **ANIMALS.** Other than customary household pets such as dogs, cats and birds, kept for non-commercial purposes, no animals, livestock, poultry or insects of any kind shall be kept or maintained on any Lot. No outdoor kennels or pet

enclosures of any kind shall be allowed or maintained on any portion of any Lot, not even for customary household pets.

- i. **ANTENNAE, SATELLITE DISHES, SOLAR PANELS AND CLOTHESLINES.** The installation and location of all television antennae, radio antennae, satellite dishes, solar panels, solar equipment, and clotheslines must be approved by the Developer in writing.
- j. **SIGNS.** Except for signage advertising the Lot for sale either by owner or a realtor, no signs, billboards or advertisements of any kind or character shall be erected, placed, permitted or maintained on any Lot or improvement unless approved in writing by the Developer. A name and address sign used solely for the purpose of identification of dwelling house occupants may be placed on the Lot by its occupants provided the sign is no more than two feet square and the design is approved by Developer prior to installation. No flashing or moving signs shall be permitted. The Developer may erect, place and maintain such sign structure or structures as it deems appropriate for identification of the subdivision.
- k. **HAZARDOUS ACTIVITIES.** No activities shall be conducted on any Lot and no improvements shall be constructed on any Lot which creates an unreasonable risk of harm to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot; and no outdoor or indoor fires shall be lighted or permitted on any part of any Lot except in a contained barbecue unit used according to its directions for cooking purposes, or in an outdoor fire pit used in accordance with all applicable laws, or in permitted and well maintained indoor fireplace used in accordance with all applicable laws.
- l. **NUISANCE.** No Lot shall be used in whole or in part for storage of rubbish or debris 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. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used

exclusively for security purposes) shall be located, used or placed on any Lot without the prior written approval of the Developer.

- m. **NOXIOUS WEEDS, INFECTIOUS PLANT DISEASES AND INSECTS.** No owner shall permit any condition to exist on the owner's Lot which induces or breeds noxious weeds, infectious plant diseases or noxious insects.
 - n. **RELOCATED HOUSES; AND STRUCTURAL CHANGES.** No existing dwelling or structure shall be relocated and moved onto any Lot without written approval of the Developer. After a dwelling or other structure is erected on any Lot or moved onto the Lot after prior approval, the dwelling or structure shall not be altered or changed in any way which does not conform to applicable law and this Declaration and the Developer's prior approvals.
 - o. **PRIVATE WATER AND SEWER.** No private septic tanks, drain fields, private wells or community wells shall be permitted on any Lot without Developer's written approval.
6. **MAIL BOXES.**

The Developer shall designate 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, including one or more community mailboxes. Failure of the Developer to make the designation 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 boxes for the U.S. mail shall be permitted on any Lot or abutting such Lot without written authorization of the Developer.

7. **DIVISION OF LOTS OR USE OF MORE THAN ONE LOT.**

No Lots shall be subdivided except as approved in writing 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 Lots thus used shall thereafter be considered a single Lot for all purposes. If one Lot and some fractional portion of an adjacent Lot are used for erection of a single primary structure, the expanded Lot thus used shall thereafter be considered a single Lot for all purposes.

8. **EASEMENTS.**

The Lots are subject to the easements dedicated and reserved in the Plat of Selkirk Place First Addition filed and recorded with the office of the Cass County Register of Deeds on **May 27, 2020** as **Document No. 1591800** including, but not limited to: the utility easements; the 20 foot wide storm sewer easement on Lots 9 and 10 in Block 1 of Selkirk Place First Addition; the landscape easement in Lots 1 through 11, inclusive, in Block 2 of Selkirk Place First Addition; and the landscape and sign easements in Lots 12 and 13, Block 1, and Lots 1 and 9 in Block 2, and in Lot 1 of Block 6, all in Selkirk Place First Addition. Within these easements, no structure, planting or other materials shall be placed or permitted to remain or interfere with the easements except as permitted by the public utility, person, or entity entitled to use the easement. The easement areas 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 plat of Selkirk, and which are made a part hereof as is fully set forth herein. 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, lay out 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.

9. **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.

10. **DEVELOPER ASSESSMENTS.**

The Developer, its successors and assigns shall have the right to assess the Lots for all costs incurred for maintenance of the **Landscape Easement** and **Sign Easement** areas shown on the Plat, entry signage, private storm water facilities, if any, landscaping, fencing installed by the

Developer, group mailboxes, and any other non-public improvements or appurtenances not commonly associated with individual lot maintenance responsibilities. The costs for which Lots may be assessed, include, but are not limited to, planting, mowing, turf repair, sign maintenance, maintenance of group mailboxes and snow removal adjacent to group mailboxes.

Snow removal on 64th Ave S sidewalks adjacent to Blocks 1 and 2 of Selkirk Place First Addition are the responsibility of the City of Fargo.

Turf maintenance of the boulevard along 64th Ave S adjacent to the rear yards of Lots 1 through 8 of Block 2, shall be the responsibility of the owners of the Lots abutting the boulevard along 64th Ave S.

Turf maintenance of the boulevard and snow removal of the easterly sidewalk along 33rd Street shall be the responsibility of the Owners of Lots 9, 10 and 11 in Block 2 of Selkirk Place First Addition which have rear yards abutting said boulevard and sidewalk.

11. **HOMEOWNERS ASSOCIATION.**

Rose Creek Development Corporation and its successors and assigns is the Developer described herein. The Developer shall have the right, at any time, to incorporate a homeowners' association whose membership shall consist of all persons owning one or more Lots in Selkirk Place First Addition and any replats therein, or any specifically described part thereof. Upon incorporation, the Developer shall have the right to appoint an initial Board of Directors consisting of at least three persons, each of whom shall own Lots in the Premises, who shall be responsible for adopting bylaws, establishing dues, and the election of officers for the association. The initial Board of Directors shall not serve more than six months unless reelected at a regular or special meeting of homeowners held within six months following the initial organizational meeting of the initial Board of Directors. Following the Board of Director's initial organizational meeting, the homeowner's association shall have all of the Developer's rights and obligations under this Declaration EXCEPT Developer shall retain its rights and responsibilities relating to Architectural Control as to all Lots for which a Certificate of Occupancy has not been issued. If no such homeowner's association is incorporated within 10 years of the date that this Declaration is recorded, an unincorporated homeowners' association shall automatically arise in which all persons owning a Lot in Selkirk Place First shall be a member. Each member of the unincorporated association shall have one vote for each Lot that the member owns in Selkirk Place First Addition and the rights and obligations of the Developer

shall vest in the owners of the Lots in Selkirk Place First Addition EXCEPT Developer shall retain its rights and responsibilities relating to Architectural Control as to all Lots for which a Certificate of Occupancy has not been issued. After reasonable notice, not less than 10 days prior to a meeting called for such purpose, and upon majority vote of all Lot owners attending the meeting, the unincorporated homeowners' association shall have the right to adopt such provisions for the association's governance including the assessment of dues that the majority deems appropriate EXCEPT the Association may not assess any Lot for which a Certificate of Occupancy has not been issued.

It is anticipated that there will be some future development by the Developer or the Developer's successors and/or assigns of the land adjacent and South of Selkirk Place First Addition and nothing herein should be construed to preclude a future merger of the Homeowners Association contemplated by this Declaration with a Homeowners Association established in connection with such future development. In addition, at any time before all Lots are sold and a certificate of occupancy is issued for all Lots, Developer reserves the right to amend this Declaration to add additional lots and subject such lots to the terms of this Declaration.

12. **WAIVER.**

No delay or omission 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 acquiescence 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.

13. **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, 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 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.

14. **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.

15. **DURATION.**

The covenants, restrictions and conditions of this Declaration shall run with and bind the Premises for a term of thirty (30) years from the date this Declaration is recorded. The term of this Declaration shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by a majority of the then Owners has been recorded terminating the Declaration in its entirety prior to the commencement of an extended ten (10) year term. 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 survive such expiration.

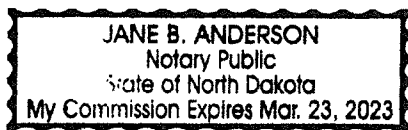
16. **AMENDMENT.**

This Declaration may be amended by the Developer at any time before a certificate of occupancy has been issued for all Lots in Selkirk Place First Addition that are subject to this Declaration or at any time before Developer has relinquished its rights and responsibilities concerning architectural control in writing which has been recorded in the Office of the Recorder for Cass County, North Dakota, whichever occurs first. If Developer assigns all of its rights and responsibilities under this Declaration to another person or another entity and a certificate of occupancy has not been issued for all Lots included in the Premises, the assignment shall be

Dated this 11th day of Nov., 2020.

By: Earlyne L. Hector
Earlyne L. Hector, its President

The foregoing instrument was acknowledged before me this 11th day of November, 2020, by Earlyne L. Hector, known to me to be the President of **ROSE CREEK DEVELOPMENT CORPORATION**, a North Dakota corporation, Developer.



Jane B. Anderson
Notary Public