

**AMENDMENT TO AND RESTATEMENT OF
DECLARATION OF RESIDENTIAL COVENANTS,
CONDITIONS AND RESTRICTIONS**

This Amendment by Restatement of Declaration of Residential Covenants, Conditions and Restrictions is made by the undersigned owners constituting two-thirds or more of the owners of the property located in Rosewood Addition to the City of Wahpeton, County of Richland, State of North Dakota, platted as Rosewood Addition to the City of Wahpeton

RECITALS

WHEREAS, the undersigned are the owners of more than two-thirds of the property located in Rosewood Addition to the City of Wahpeton;

WHEREAS, the undersigned owners have determined that a substantial revision (amendment) by restatement to repeal and supersede the Declaration of Residential Covenants, Conditions and Restrictions dated May 23, 1995 and recorded May 25, 1995 as document number 278962 in the office of the County Recorder in and for Richland County, North Dakota is necessary and proper for the further development of Rosewood Addition to the City of Wahpeton.

WHEREAS, The Wahpeton Community Development Corporation, a North Dakota Nonprofit Corporation, has acquired more than sixty-six and two-thirds percent (66^{2/3}%) of Rosewood Addition and is in the process of marketing the aforementioned platted real property for individual and multi-family quality residential properties;

WHEREAS, the undersigned owners desire the subdivision to constitute a residential community with use, and rights and obligations towards the ownership, operation and maintenance of said lots and properties, and that all such properties be benefitted and burdened by the same land use restrictions and control;

WHEREAS, the total development of this subdivision as a residential community will take several years; and

WHEREAS, the undersigned owners desire to provide for minimum and maximum building restrictions to promote and assure the Subdivision is a quality residential community.

IN CONSIDERATION of the premises, the undersigned property owners hereby amend in their entirety the Declaration of Residential Covenants, Conditions and Restrictions dated May 23, 1995 and recorded May 25, 1995 as document number 278962 in the office of the Richland County Recorder, which are repealed and superseded in their entirety by the recording hereof and subject the following lots and properties in the addition known and platted as **ROSEWOOD ADDITION TO THE CITY OF WAHPETON**,

RICHLAND COUNTY, NORTH DAKOTA, to the following covenants, charges, assessments, conditions and restrictions subject to the limitations contained in this declaration:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15) and Sixteen (16) of Block One (1);

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12) and Thirteen (13) of Block Two (2);

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11) and Twelve (12) of Block Three (3); and

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7) and Eight (8) of Block Four (4) all in Rosewood Addition to the City of Wahpeton, Richland County, North Dakota.

RESTATEMENT OF DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS

SECTION I. DEFINITIONS

A. "Declaration" shall mean the covenants, conditions and restrictions and all other provisions herein set forth in this entire document, as may from time to time be amended.

B. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot, and excluding those having such interest merely as security for the performance of an obligation.

C. "Landscape" or "Landscaping" shall mean planting of trees, hedges or shrubbery AND/OR the construction of a fence or wall, all for the improvement of the aesthetic value of the subdivision and maintenance of the integrity and privacy of the individual lots.

D. aFamily Dwelling shall mean each single family residence and each individual family residence of a two-family residence also referred to as twin homes or town houses.

E. "Marketer" shall mean the Wahpeton Community Development Corporation, a North Dakota nonprofit corporation with its principal office in Wahpeton, North Dakota.

SECTION II. PROPERTY SUBJECT TO THIS DECLARATION

A. The covenants, conditions and restrictions contained within this declaration apply to all of that real property in Rosewood Addition to the City of Wahpeton, Richland County, North Dakota.

SECTION III. CONSTRUCTION OF IMPROVEMENTS

All of the property subject to this Declaration shall be single family residential or two family residential lots subject to the following conditions:

A. **LOTS**: Each lot shall be restricted to construction of one (1) single-family residence with either a two (2) or three (3) car attached garage or a two family residence with either a two (2) or three (3) car attached garage, except that Lots One (1) through Twelve (12) of Block One (1), Lots Two (2) though Nine (9) of Block Two (2) and Lots One (1) through Twelve (12) of Block Three (3) shall be restricted to the construction of one single family residence only.

- (1) **Finished Living Area**: Finished living area is considered to be the total floor area for residential use, measured from the outside face of the exterior walls, including halls, lobby, stairways, enclosed balconies and the below grade floor areas used for residential access. Open terraces, patios, enclosed porches, atriums, balconies, garages, breezeways, tool sheds, basement rooms, and similar areas are not considered habitable rooms, living accommodations, or living areas, for purposes of defining finished living area.
- (2) **Maximum Building Size**: Improvements located upon lots affected by these covenants shall be a maximum of two stories and not more than thirty (30) feet in height to the roof peak.
- (3) **Building Type**: No solar homes, geodesic dome homes, log homes, mobile homes, or earth shelter homes designs shall be permitted.
- (4) **Siding**: Siding shall be of appropriate material but in no event shall it be any kind of log siding, sheet siding, rolled siding or asphalt siding.
- (5) **Roof Pitch and Material**: The roof pitch shall be at least 5 to 12, with no rolled roofing material allowed.
- (6) **No Used Homes**: No dwelling constructed in any other location shall be moved on to any lot within this area except a new home, specifically constructed to be moved to a new site shall be allowed. All homes to be moved onto a lot must be located and designed in accordance with these covenants.
- (7) **Garages**: All the residences shall include an attached two or three stall

garage having a minimum width of 22 feet to a maximum width of 38 feet.

B. BUILDING SIZE AND TYPE:

The following requirements for the ground-floor space, not including basements, porches, decks, or garages apply per family dwelling unit:

- (1) **One (1) Story:** A one story residence shall be a family dwelling with a main floor finished living area of at least 1,100 square feet.
- (2) **Two (2) Story:** A two story residence shall be a family dwelling with a finished living area of at least 1,500 square feet, with a main floor finished area of at least 850 square feet.
- (3) **Bi-Level/Split-Entry:** A bi-level/split-entry residence shall be a family dwelling with a living area of at least 1,040 square feet minimum on the lowest level.
- (4) **Split-Level/Tri-Level:** A split-level or tri-level residence shall be a family dwelling with at least 624 square feet of living area on all levels and 672 square feet of finished living area on the upper level of such dwellings.

C. SET-BACK REQUIREMENTS:

(1) **No Subdividing:** Except for lots utilized for twin homes or town houses and/or lots used exclusively for one house, no lots may be subdivided nor may a partial transfer of a lot

be made, unless the same are being utilized for twin homes or town houses and/or lots used exclusively for one house.

(2) **Orientation of Improvements:** All improvements, consisting of the residence and garage, shall be orientated towards the street as reflected and shown upon Exhibit "A" attached hereto. All driveways located upon lots shall enter and exit only onto the street in the same direction as the respective improvement situated upon the lot is required to be orientated.

(3) **Front Yard, Side Yard and Rear Yard Set Backs:** Shall be in accordance with the zoning ordinances of the City of Wahpeton, Richland County, North Dakota.

D. DRAINAGE CONTROL: In order to provide grading which will divert water away from buildings and prevent standing water and soil saturation detrimental to structures and lot use, the following elevation and grade standards have been set.

(1) **Building Foundation:** The top of all foundations shall be 27 inches (no more,

nor less) above the top of the curb located at the front of the property, with the elevation line to be determined and provided by a registered land surveyor engaged by the owner.

(2) Grade:

(1) Front Yard: With respect to the front yard a straight line grade shall be maintained from 8 inches (no more, nor less) below the top of the improvement foundation to the top of the curb.

(2) Side Yard: With respect to the side yard, except the northerly lot line of Lot 12, Block 1; Westerly lot line of Lot 6, Block 3; Westerly lot line of Lot 21, Block 3; common lot line to Lots 4 and 5 of Block 4, Southerly lot line of Lot 9 of Block 4; Easterly lot line of Lot 10, Block 4; and Easterly lot line of Lot 14, Block 4; a straight line grade shall be maintained from 8 inches (no more, no less) below the top of the improvement foundation to the side property line.

(2a) With respect to those side yard exceptions referred to in paragraph (2) above, a straight line grade shall be maintained from 8 inches (no more, no less) below the top of the improvement foundation to the intersection of the required side grade lines shown on the rear yard grade plan. A straight line grade shall be maintained between the proposed elevations indicated on the rear yard grade plan prepared by Interstate Engineering of Wahpeton, North Dakota, and filed with the Register of Deeds for Richland County, North Dakota. The elevation lines for the above mentioned side yard boundaries shall be determined and provided by a registered land surveyor engaged by the owner.

(3) Rear Yard: With respect to all rear yard grades, a straight line grade shall be maintained from 8 inches (no more, no less) below the top of the improvement foundation to the intersection of the required grade lines shown on the rear yard grade plan. A straight line grade shall be maintained between the proposed elevations indicated on the rear yard grade plan prepared by Interstate Engineering of Wahpeton, North Dakota, and filed in the office of the Richland County Register of Deeds. The elevation lines for all rear yard boundaries shall be determined and provided by a registered land surveyor engaged by the owner.

(4) Occupancy: No basement shall be constructed for temporary residential purposes and no basement shall be used for residential purposes unless and until the primary structure has been completed. All exteriors of dwellings, including garages, and yards, shall be substantially completed within six (6) months after the completion of the foundation. No outside storage of building material shall be permitted on any lot six (6) months after the completion of the foundation.

No dwelling erected on any lot shall be occupied in any manner during the course of construction, nor at any time prior to full completion of the exterior. No temporary house, temporary dwelling, temporary garage, temporary out-building, trailer homes, or other

temporary structure shall be placed or erected upon any lot.

E. LANDSCAPING AND YARD MAINTENANCE:

(1) **Exterior Maintenance:** Each lot shall at all times be maintained in a neat condition and appearance.

(2) **Lawns:** All yards shall be fully sodded or seeded as soon after completion of construction as weather permits.

(3) **Fences and Walls:** No fence or wall shall be allowed over three (3) feet in height from the front property line to the building set-back line. No fence or wall shall be allowed over 72 inches in height in any rear yard or side yard. The top grade of each fence or wall shall be on a straight line, point to point, with the finished side of the fence or wall facing out from the subject property improvements.

(4) **Unobstructed View:** Decks, patios, tanks of any kind, solar devices, clotheslines, swingsets, towers, structures, dishes, or free standing antennas, wood piles and storage piles shall not be permitted in the front or side yard areas. And no garbage cans, ashes, or refuse or trash receptacle shall be allowed on a lot exposed to view, except as required to facilitate garbage pick up.

(5) **Vehicle Storage:** Except while in transit, loading or unloading, no motor vehicle not in regular use, commercial vehicle, construction or like equipment, recreational vehicles, including without limitation, motor homes, campers, boats, snowmobiles or motorcycles shall be left standing on any driveway or yard, unless aesthetically concealed to prevent view from the roads and street.

(6) **Accessory Structures:** Accessory structures are not permitted in the front yard or side yard. The height of such accessory structure shall be limited to 15 feet or the height of the primary structure located upon the lot, whichever is less. No construction of an accessory structure shall be commenced until the residence to be located upon the same lot shall be completed.

(7) **Driveways:** All driveways shall be constructed only of concrete or paving brick and no other material. All driveways shall follow the orientation guidelines as set forth in attached Exhibit "B".

(8) **Signs:** No commercial signs of any kind shall be displayed to the public view on any lot except one professional sign of not more than nine (9) square feet advertising the property for sale or rent, or signs used by the Marketer to advertise the property during construction and sales.

(9) **Reserve Lots A and C:** Located within this subdivision are lots platted as Reserve Lot A and Reserve Lot C as are more fully outlined on attached Exhibit AA@, which

is incorporated herein by reference. The owners of all or portions of Reserve Lots A and/or C shall be responsible for maintenance including replacement of all improvements thereon (including landscaping material) and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

SECTION IV. MISCELLANEOUS

(1) **Utilities:** Temporary telephone, electrical and cable television overhead lines shall be permitted until permanent underground facilities are installed. Otherwise, all overhead lines shall be prohibited except during emergencies and repairs. Utility easements shall be provided for each lot.

(2) **Animals:** No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats and other household pets may be kept provided they are not bred for commercial purposes.

(3) **No Towers:** No derrick or other structures designed for oil or gas boring shall be erected, placed or permitted on any lot on said subdivision.

(4) **Prohibited Activities:** No noxious or offensive trade or activity shall be carried on or upon any residential lot that may become an annoyance to the neighborhood. No lot shall be used in whole or in part for the storage of any trash or rubbish.

SECTION V. GENERAL PROVISIONS

A. **SEVERABILITY:** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

B. **DURATION:** The covenants and restrictions of this declaration shall run with and bind the land for a term of thirty (30) years from the date this declaration was recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

C. **AMENDMENT:** This declaration may be amended at any time by an instrument signed by two-thirds (2/3) of the owners of the property located in Rosewood Addition to the City of Wahpeton. Any amendment must be recorded in the office of the Richland County Register of Deeds.

D. **ENFORCEMENT:** Any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration and of any supplementary declarations. Failure to enforce any covenant and restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

IN WITNESS WHEREOF, the undersigned owners have caused this Amendment to

and Restatement of Declaration of Residential Covenants, Conditions and Restrictions to be executed on the day and year first above written.

WAHPETON COMMUNITY DEVELOPMENT CORPORATION

By _____
Its:

By _____
Its:

STATE OF NORTH DAKOTA)
)SS
COUNTY OF RICHLAND)

On this _____ day of _____, 2003, before me, a notary public, personally appeared _____ and _____, known to me to be the _____ and _____, respectively, of the Wahpeton Community Development Corporation that is described in and who executed the within and foregoing instrument and acknowledged that such corporation executed the same.

Notary Public

EXHIBIT A

1" = 200'

LANDSCAPE EASEMENTS
STRUCTURE ORIENTATION
FRONT YARD SETBACKS

SETBACKS FROM PROPERTY LINES
FRONT YARD = 35 FT.
REAR YARD = 25 FT.
SIDE YARD 7 FT.
IF SIDE YARD ABUTS STREET = 25 FT.

NOTE: CONSULT THE OFFICIAL PLAT OF
ROSEWOOD ADDITION FOR EXACT DIMENSION
AND LOCATIONS OF THE INTERIOR
LANDSCAPE EASEMENTS



EXHIBIT B

INTERIOR LANDSCAPE EASEMENTS

NOTE: CONSULT THE OFFICAL PLAT OF ROSEWOOD ADDITION FOR EXACT DIMENSION AND LOCATIONS OF THE INTERIOR LANDSCAPE EASEMENTS

