

Smoking
Tree

Arthur - Julie
Nelson

Declaration of Restrictive Covenants

The undersigned, being the owner of the property described herein, does prescribe and declare that in order to protect both the community and the individual homeowners, this property shall be subject to the applicable restrictions and conditions as hereinafter set forth, and that such applicable 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; that 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, personal representatives, successors and assigns of any person to whom said land may have been conveyed until 30 years from the date these covenants are recorded, at which time said covenants shall be automatically extended for successive periods of ten years unless by a vote of the majority of the then owners, it is agreed to change such covenants.

Any actual or attempted violation or omission to perform any of the conditions and restrictions as hereinafter set forth shall entitle, and it shall be lawful for any person owning real estate in said development, which is subject to the restrictions or conditions in respect to which the default is made, to institute and prosecute appropriate proceedings, at law or in equity, for the wrong done or attempted. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other covenants which shall remain in full force and effect.

The property subject to these restrictive covenants is described as: Lots 1, 2, 3, 4 and 5 in Block 1, Lots 1, 2 and 3 in Block 2 and Lot 1 in Block 3, all in Smoking Tree Addition to the City of Arthur, Cass County, North Dakota.

1. Land Use and Building Type: All lots described herein shall be known, described and used solely as residential lots, and no structure shall be erected, altered, placed or permitted on any residential lot other than one detached single-family dwelling, not to exceed two and one-half stories in height, and attached private garage for not more than three cars and up to two accessory structures such as a swimming pool and pool house, detached garage, storage or utility building, provided that such accessory structure is constructed with the same materials and architectural style as the dwelling. Duplexes or twin homes shall not be allowed.
2. Building Location: No building shall be erected on any residential lot unless side lot clearances and front lot line setbacks are fully in compliance with city zoning ordinances. Notwithstanding any lesser requirements in such ordinances, if any, each residence shall at a minimum have a side yard setback from the property line of 8', a front and rear yard setback from the property line of 25', and lot coverage of no more than 40%.
3. Lot Area and Width: No lot within the addition shall be subdivided into smaller building lots.

4. Temporary Structures: No basement shall be constructed for residential purposes and no basement structure shall be used for residential purposes unless and until the entire superstructure has been erected thereon: nor shall any trailer, recreational vehicle, basement tent, shack, garage, barn or other outbuilding located or erected on the tract at any time be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted.

5. Dwelling Quality and Size

A. There is hereby established the Smoking Tree Addition Architectural Review Committee. The committee shall be composed of the Declarant until the time that residences have been constructed and completed on all of the lots or until the time that the Declarant decides to divest itself of the responsibility for architectural control. When such control is relinquished the responsibility shall be vested in a committee comprised of three lot owners who shall be elected by all lot owners of the addition. The elected committee, at that time, shall adopt a meeting schedule and rules of operation. It shall be conclusively presumed that there has been no completed construction on all of the lots or that the Declarant have not divested themselves of responsibility for architectural control unless there is a sworn affidavit of record stating that one or the other of said factual circumstances exists.

B. Two copies of plans (for which receipt must be acknowledged in writing) will be submitted to the Review Committee. Approval or disapproval will be made in writing within 10 days after the receipt of those plans. In the event the Review committee fails to approve or disapprove of the plans and related documents within this 10 day period, approval will not be required and the related covenants will be deemed to have been fully met. Approval shall not be arbitrarily withheld or delayed, it being the intention of the Review Committee to grant or withhold approval for the purpose of establishing a quality restricted residential district, free from objectionable or value-destroying features and in conformity with these covenants and the governing zoning and building codes and other regulations then in force.

C. No building shall be erected, altered, placed or permitted on any lot without the approval of the review Committee. No building shall be erected, altered, placed or permitted on any lot unless the design, location, materials, and workmanship are in harmony with existing structures and locations in the development and the building does not violate any protective covenants contained in this declaration. A one story dwelling must have a ground floor square foot area of no less than 1,500 square feet. Bi-level dwellings must have at least 3,000 square feet of (not including any basement below the lower level). All other multi-level dwellings, including but not limited to two story dwellings shall have 2,200 feet above grade (on the top two floors), not including the basement area. Previously used dwellings constructed in another location shall not be moved to any lot within this development. Any pre-built residence or structure shall not be moved in without written authorization by the Architectural Review Committee. The "automatic" approval of designs upon the lapse of ten days as provided for in 6(c) shall not apply to any pre-built construction.

D. Plans submitted for approval shall include floor plans, building elevations, construction materials, specifications, site layout and design – including grading and landscaping plans, and accessory structure plans.

6. Fences: Any fence built on a lot shall be constructed of well made materials, harmonious and consistent with the contour of the land and buildings located on the lots and shall thereafter be maintained in a neat appearing condition and shall not exceed 6 feet in height.
7. Clear view at intersections: No trees, shrubs, walls or fences shall be permitted to block the view of vehicle traffic at intersections.
8. Nuisances: No noxious or offensive activity shall be carried on about any lot nor shall anything be done thereon which may be or will become an annoyance or nuisance to the neighborhood.
9. Livestock and Poultry: No animal, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes.
10. Easements: Easements for installation and maintenance of utilities are reserved as shown on the final recorded plat. Within these easements, no structures, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which the city or utility company is responsible. No utility shall be placed on the boundary line of the easement, as shown on the plat on record in the office of the Register of Deeds, Cass County, North Dakota.
11. Surface water drainage: No driveways, culverts, structures, planting or other material shall be placed or permitted to remain which may damage or interfere with the drainage, or which may change the direction or rate of flow of drainage channels or which may obstruct or retard the flow of water through drainage channels. The street right of way area not paved shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.
12. Telephone, Cable Television and Power Lines: Temporary overhead distribution and service lines shall be permitted until permanent underground facilities are installed. Otherwise, overhead lines shall be prohibited except during emergencies and repairs.
13. Oil and Mining Operations: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No

derrick or other structure designed for use in boring for oil or natural gas shall be erected maintained or located upon any property.

14. Signs: No signs of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale, or sign used by a builder to advertise the property during the construction and sales period. The developer may erect a sign advertising the development and the lots for sale within.

15. Garbage and Refuse Disposal: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All sanitary containers (and by extension all garbage, trash or other waste) must be kept out of sight, except on garbage collection day.

16. Landscaping: Within six months after the completion of the construction of any dwelling on any building lot and as soon as weather permits, the following landscaping work shall occur:

- A. All front, side and rear lots shall be fully sodded or seeded;
- B. All trees planted by the developer shall be maintained in accordance with North Dakota Forest Service recommendations.
- C. On all unimproved lots all vegetation shall be regularly mowed and weeds controlled.

17. Antenna: There shall be no free standing antennae in the front or side yards and any antennae, free standing or attached to a roof, shall not be more than fifteen feet high above the highest point of the roof, not including the height of any chimney.

18. Satellite Dish: No satellite dishes shall be installed or permitted on the front or side yards of building lots in the development.

19. Vehicles: No mobile homes, trailers, campers or boats shall be left standing in any driveway or stored on any driveway or exterior portion of any building lot, except during the months of May, June, July, August, and September. No motor vehicle not in regular use shall be stored upon the driveway of any building lot, and in no instance shall any motor vehicle be left standing or stored on the non-driveway exterior portion of any building lot. The residential occupants in this development shall not regularly park any motor vehicle, mobile home, trailer, camper or boat on the street.

20. Exceptions or Variances: Any exception or variance to the provisions in these covenants may only be approved by the consent of all owners of the property covered