

**DECLARATION OF RESTRICTIVE COVENANTS**

Rivers Bend Development Corporation, a North Dakota corporation, whose post office address is P.O. Box 145, Arthur, ND owner of:

**Lots 1-21, Block 1; and Lots 1-5 and Lot 7, Block 2; Lots 1-5 and Lots 8-17, Block 3; Lots 1-15, Block 4; Lots 1-16, Block 5; Lots 1-32, Block 6; Lot 1, Block 7; Lot 1, Block 8; and Lots 1-10, Block 9; all in River's Bend at the Preserve First Addition to the City of West Fargo, Cass County, North Dakota (all such lots, collectively, the "Property"),**

hereby declares that in order to protect the community and future individual land owners, all of said Property 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 property 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 Property 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 Property 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) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association as they may exist from time to time
  - (b) "Association" shall mean River's Bend at the Preserve Homeowner's Association, a nonprofit corporation which has been created pursuant to the laws of the State of North Dakota and North Dakota Century Code Chapter 10-33, whose members consist of all Owners as defined.
  - (c) "Board" shall mean the Board of Directors of the Association as provided for in the Bylaws.
  - (d) "Bylaws" shall mean the bylaws governing the operation of the Association, as amended from time to time. A copy of the Bylaws as in effect on the date hereof is attached hereto as **Exhibit A.**
  - (e) "Common Elements" shall mean the Common Area Lots and any landscaping, drives, mail box clusters, improvements, fences any other items located on the Common Area Lots and any other areas of the

Property owned by or to be maintained by the Association pursuant to this Declaration.

- (f) "Common Expense" shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation of the Association and operation, repair and maintenance of the Common Elements, including, without limitation, allocations to reserves and any items specifically identified as Common Expenses in this Declaration or the Bylaws.
- (g) "Developer" shall refer to Rivers Bend Development Corporation, a North Dakota corporation, or its successors and assigns under instrument expressly conveying the rights of Developer hereunder herein.
- (h) "Eligible Mortgagee" shall mean any person or entity owning a mortgage on any Lot, which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Lot, and which has requested the Association, in writing, to notify it regarding any proposed action which requires approval by a specified percentage of Eligible Mortgagees.
- (i) "Governing Documents" shall mean this Declaration, the Articles of Incorporation and the Bylaws, as amended from time to time, all of which shall govern the use and operation of the Property.
- (j) "Lot" shall refer to any parcel of real property referred to as a numbered or lettered lot per the subdivision plat of the Property, or any replat thereof. The Public Lots shall not be considered a "Lot" for any purpose under this Declaration. "Common Area Lots" shall refer to Lot 1, Block 1; Lot 32, Block 6; Lot 1, Block 7; and Lot 1, Block 8; all in the Property. "Single Family Lots" shall refer to all Lots other than the Common Area Lots.
- (k) "Member" shall mean all persons who are members of the Association by virtue of being Owners as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.
- (l) "Owner" shall mean a person or entity who owns a Lot, but excluding contract for deed vendors, mortgagees and other secured parties. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate. The words "Owner" and "Lot Owner" may be used interchangeably in the Governing Documents.
- (m) "Property" shall refer to all real property defined as the Property on page 1 hereof, and shall specifically include all Lots. Any Restriction herein created as to the Property shall also expressly apply to all Lots within the Property.
- (n) "Rules and Regulations" shall mean the Rules and Regulations of the Association as amended and approved from time to time pursuant to Section 22(a)(i).

2. **LAND USE AND BUILDING TYPE.** The use of all Single Family Lots shall conform to the R1-A zoning ordinances of the City of West Fargo, North Dakota ("City"), and unless expressly prohibited under these Restrictions, such further uses as may be allowed by variance or special/conditional use permit permitted thereunder.

3. **DWELLING SIZE AND OTHER CHARACTERISTICS.**

- (a) The Single Family Lots shall be used solely for single family residences and residential dwellings constructed on the Single Family Lots shall meet the following minimum square footage requirements, unless waived in writing by Developer:

Lots	Three or More Level Split	Rambler or Single Level	Two Story	Bi-Level
A. Lots 2-12, Block 1.	Not Permitted	1,800 sq. ft. on level entirely above grade	Not Permitted	Not- Permitted
B. Lots 13-21, Block 1; Lots 15-31, Block 6; and Lots 3-10, Block 9.	2,400 sq. ft. total for top 3 levels	1,800 sq. ft. on level entirely above grade	1,200 sq. ft. on first level entirely above ground grade or 2,400 sq. ft. on all levels entirely above grade	2,600 sq. ft. total on both levels
C. Lots 1-5 and Lot 7, Block 2; Lots 1-5 and Lots 15-17, Block 3; and Lots 8-14, Block 4.	2,500 sq. ft. for top 3 levels	1,900 sq. ft. on level entirely above grade	1,150 sq. ft. on first level entirely above ground grade or total of 2,200 sq. ft. on all levels entirely above grade	2,700 sq. ft. total on both levels
D. Lots 2-15, Block 5; and Lots 1-14, Block 6.	2,200 sq. ft. for top 3 levels	1,600 sq. ft. on level entirely above grade	1,150 sq. ft. on first level entirely above ground grade or total of 2,000 sq. ft. on all levels entirely above grade	2,300 sq. ft. total on both levels

E. Lots 8-14, Block 3; Lots 1-7 and Lot 15, Block 4; Lots 1 and 16, Block 5; and Lots 1 and 2, Block 9.	2,700 sq. ft. for top 3 levels	2,000 sq. ft. on level entirely above grade	1,300 sq. ft. on first level entirely above ground grade or total of 2,400 sq. ft. on all levels entirely above grade	Not- Permitted
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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 for any outbuildings shall match that on the home.
- (f) Driveways shall be constructed of concrete, paver stones or similar "hard-surfaced" material. Asphalt, clay, gravel or like materials shall not be permitted for driveway surfaces.

#### 4. CONSTRUCTION TIME AND REQUIREMENTS.

- (a) Construction of all residential dwellings on a Single Family 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 Single Family Lot in a neat and clean manner, and shall keep the Single Family Lot and all surrounding property free of debris, trash, and discarded building materials from their work. No soil shall be removed from the development without the written consent of Developer. Sodding and/or seeding of the entire Single Family 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 Single Family Lot shall maintain the property in a condition free of noxious weeds.

- (b) No storage of building materials on a Single Family 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 Single Family Lot owner or his/her family. Should construction on, or maintenance of, any Single Family Lot be undertaken in a manner inconsistent with the Restrictions imposed in this Section, Developer may, but shall not be obligated to, immediately undertake such action as is necessary to render any Single Family Lot consistent with this Section and thereafter bill the owner of any such Single Family 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 City. Nor shall any trailer, tent, shack, garage, barn, outbuilding or the like erected on any Single Family Lot at any time be used as a residence, temporary or permanent. The foregoing Restrictions shall not prohibit a Single Family Lot owner from erecting a tent or placing a camper or recreation vehicle on a Single Family Lot for use by occupants or guests of a Lot for a period not to exceed 96 hours consecutively and 120 hours in any calendar month.
6. **HOMES BUILT ON SITE/ALTERATIONS.** Unless waived in writing by Developer, all residential dwellings shall be "stick-built" on site, and no residential dwelling shall be constructed elsewhere and moved in or onto any of the Single Family Lots. 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, drainage ways and drainage easements shall at all times conform to requirements of City and/or Cass County and of all lawful public authorities, including the engineer or other appropriate governmental authority having jurisdiction thereof. No outbuildings, gardens, play areas or other permanent features shall be placed within drainage easements as shown on the plat for the Single Family Lots.
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 Property, except for propane tanks associated with and connected to a gas grill or any tanks located inside a residential dwelling or permitted outbuilding. All clotheslines, garbage

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cans or other trash receptacles, equipment, coolers, wood piles or storage piles shall be screened to completely conceal them from view of neighboring Lots, 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 that a maximum of two antennas/dishes, each less than 30 inches in diameter, are allowed outside of residential dwellings or outbuildings.
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 Property, 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 Property 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 Property 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, and no live chickens or other fowl shall be permitted, on the Property. Only customary household pets shall be kept or allowed on any part of the Property, and only in compliance with all City requirements. Breeding, raising or boarding of animals for commercial purposes on the Property is prohibited.
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 Property nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or minerals of any kind be produced or extracted anywhere in the Property. No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted on any part of the Property nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any part of the Property.
13. **PARK AND CITY-DEDICATED LOTS.** Lots 22 and 23, Block 1; Lot 6, Block 2; and Lots 6 and 7, Block 3; all in the Property (collectively, the "Public Lots") have been or will be deeded to The West Fargo Park District, a political subdivision of the State of North Dakota or The City of West Fargo, Cass County, North Dakota, a political subdivision of the State of North Dakota (the "Governmental Entities"). The Governmental Entities may use the Public Lots, in part, but not limited to, for the construction and maintenance of a water retention pond, a lift station, park areas and/or bike paths. The Governmental Entities may assess benefitted property owners for all or a portion of improvements it makes to the Public Lots.

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14. **FENCES.** A Single Family Lot owner may construct a fence or fences on portions of a Lot to the rear of the two corners of the residential dwelling that are closest to the front and side yards of a Single Family Lot. The Association may construct such fences as it deems reasonable or necessary on the Common Area Lots. Any/all fences shall be constructed only of synthetic material (no cedar, treated wood or other wood fences allowed), and shall at all times consist of only white or earth tone colors. Notwithstanding the foregoing, fences may incorporate powder coated ornamental aluminum or iron, or black or brown vinyl coated chain link, elements. Any broken or fallen portions of fences shall be promptly repaired with matching materials. If any 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 on which the fence is constructed. Notwithstanding anything in this Section to the contrary, Developer shall install a fence along the rear lots lines of Lots 2-21, Block 1, and Lots 1-5 and Lot 7, Block 2, and, following such installation, the Owner of any such Lot shall be responsible to promptly repair, maintain and, if and as necessary, replace the portion of such fence located on the Owner's Lot to keep such fence in good operating condition, structurally sound and neat in appearance; all elements of materials requiring replacement shall be new materials, of similar or better quality and substantially identical in appearance to the materials requiring replacement.
15. **BOULEVARD TREES/CERTAIN TREES AND PLANTINGS.** The owners of all Lots shall plant, water, trim, maintain and replace such boulevard trees on his/her Lot pursuant to City requirements.
16. **SIDEWALKS.** Owners of all Single Family 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; provided, however, the Association shall be responsible for removing snow from any sidewalk within the Property adjacent to 26<sup>th</sup> Avenue East that is wider than 54 inches. Further, if Governmental Entities cease to remove snow from any sidewalk within or adjacent to the Property immediately adjacent to 4<sup>th</sup> Street East and/or the trails located Southerly of Blocks 1 and 2, the Association may (but shall not be obligated to) assume full or partial responsibility for same. The owners of all Single Family Lots acknowledge they must install sidewalks on the fronts of their Single Family Lots, and if they fail to do so, will be assessed by City for the costs of installing such sidewalks. Owners of Single Family Lots acknowledge and agree they will be assessed for sidewalks installed by City on and/or otherwise benefitting their Single Family Lots.
17. **NUISANCES.** Except temporarily prior to the next weekly trash removal day, and then only in compliance with other Restrictions, no part of the Property shall be used in whole or in part for storage of rubbish or debris of any kind whatsoever. No Part of the Property 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 Property 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 pertaining thereto.

18. **UTILITY EASEMENTS.** Lot owners acknowledge and recognize certain portions of their Lots may be subject to easements for, among other things, drainage, pond access, storm water storage and utilities, including the installation and maintenance of electricity, gas, water, sanitary sewer, storm sewer, cable television, internet access and any other like public utility services, currently or later available. The location of such easements shall be of record by existing or future plats or replats or separate instrument. Within any such easements, lawns are allowed, but, except with respect to tree planting as may be required by City, no structure, planting or other materials shall be placed or permitted to remain that interfere with the purpose of, or installation and maintenance of infrastructure within, such easements. The surface area of a Lot subject to any such easement 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 of its agents or servants are waived by Lot owners.
- (b) Developer reserves the right to change, lay out, create new or discontinue any street or road, or any easement on a Lot owned by Developer, all as may be shown on the plats of the Property, so long as the same is not reasonably necessary for servicing a Lot owned by someone other than Developer, subject to the approval of the appropriate governmental authority.
19. **WATER ISSUES.** All Lot owners acknowledge that certain drainage ditches, detention ponds or retention ponds may be constructed on or near the Property. 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 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 ditches or ponds. Lot owners acknowledge and accept that such ditches and ponds are for the purpose of holding storm water during rainfall periods to allow for a controlled impact on and handling by the storm sewer system. Accordingly, the water levels of such ditches and ponds may fluctuate from time to time and may, at times, cover portions of an Owner's Lot.
20. **COMMON EXPENSES GENERALLY.** All maintenance, repair, replacement, management, and operation of the Common Area Lots shall be the responsibility of the Association. Common Expenses for the maintenance, repair, replacement,



management and operation of the Common Elements shall be assessed and collected from the Owners of Single Family Lots in accordance with Section 23.

**21. ASSOCIATION MEMBERSHIP/RIGHTS AND OBLIGATIONS.**

Membership in the Association, and the allocation to each Single Family Lot of a portion of the votes in the Association and a portion of the Common Expenses of the Association, shall be governed by the following provisions:

- (a) Each Owner of a Single Family Lot shall be a Member of the Association by virtue of a Single Family Lot ownership, and the membership shall be transferred with the conveyance of the Owner's interest in the Single Family Lot. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one person is an Owner of a Single Family Lot, all such persons shall be Members of the Association, but multiple ownership of a Single Family Lot shall not increase the voting rights allocated to such Single Family Lot nor authorize the division of the voting rights.
- (b) Voting rights and Common Expense obligations are allocated equally among the Single Family Lots, each Single Family Lot shall be entitled to one vote and every Single Family Lot shall, unless specially assessed or charged as provided for in certain instances under this Declaration, be charged the same Common Expense assessment. The ownership of a Single Family Lot shall include the voting rights and Common Expense obligations described in this Section. Said rights, obligations and interests, and the title to the Single Family Lots, shall not be separated or conveyed separately. The allocation of the rights, obligations, and interests described in this Section may not be changed, except in accordance with the Governing Documents.
- (c) The Owner (or in some instances, other natural persons designated to act as proxy on behalf of the Owner), may cast the vote allocated to such Single Family Lot at meetings of the Association, as is more fully described in the Bylaws.
- (d) Notwithstanding the vote of any Single Family Lot Owner to the contrary, the Developer hereby reserves a period of Developer control of the Association during which the Developer, or person designated by the Developer, may appoint and remove the officers and directors of the Association. Said reservation of Developer control is subject to the following:
  - (i) The period of Developer control shall terminate not later than the earliest to occur of (i) voluntary surrender of control by the Developer, (ii) four months after 75% of the Single Family Lots have been conveyed to Single Family Lot Owners other than Developer, or (iii) three years after the first conveyance of a single Family Lot to an Owner other than Developer.

- (ii) Not later than the termination of Developer control, the Single Family Lot Owners shall elect a Board of Directors of at least three members. Thereafter, a majority of the directors shall be Single Family Lot Owners other than Developer or an affiliate of Developer. The remaining directors must also be Single Family Lot Owners. All Single Family Lot Owners, including the Developer or its affiliates, may cast the vote allocated to any Single Family Lot owned by them. The Board shall elect the officers. The directors and officers shall take office upon Election.
- (iii) In determining whether the period of Developer control has terminated under this Section, the percentage of the Single Family Lots which have been conveyed shall be calculated based upon the assumption that all Single Family Lots which the Developer has platted and added to the Property, or reserved the right to plat and add to the Property, in this Declaration are included.
- (iv) Except as otherwise provided in this subsection, meetings of the Board of Directors must be open to all Single Family Lot Owners. To the extent practicable, the Board shall give reasonable notice to the Single Family Lot Owners of the date, time, and place of a Board meeting. If the date, time, and place of meetings as provided for in the Governing Documents were announced at a previous meeting of the Board, posted in a location accessible to the Single Family Lot Owners and designated by the Board from time to time, or if an emergency requires immediate consideration of a matter by the Board, notice is not required. "Notice" has the meaning given in North Dakota Century Code Chapter 10-33. Nothing in this subsection imposes a duty upon the Board to provide special facilities for meetings. The failure to give notice as required by this subsection shall not invalidate the Board meeting or any action taken at the meeting. Meetings may be closed to discuss the following: personnel matters; pending or potential litigation, arbitration, or other potentially adversarial proceedings between Single Family Lot Owners, between the Board or Association and Single Family Lot Owners, or other matters in which any Single Family Lot Owner may have an adversarial interest, if the Board determines that closing the meeting is necessary to discuss strategy or to otherwise protect the position of the Board or Association or the privacy of a Single Family Lot Owner or occupant of a Single Family Lot; or criminal activity arising within the planned community if the Board determines that closing the meeting is necessary to protect the privacy of the victim or that opening the meeting would jeopardize the investigation of the activity.

22. **ADMINISTRATION.** The administration and operation of the Association and the Property, including, but not limited to, the acts required of the Association, shall be governed by the following provisions:
- (a) The operation and administration of the Association and the Property shall be governed by the Governing Documents. The Association shall, subject to the rights of the Single Family Lot Owners set forth in the Governing Documents, be responsible for the operation, management and control of the Property. The Association shall have all powers described in this Declaration, the Articles of Incorporation, the Bylaws and the statute under which it is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Single Family Lot Owners is specifically required by this Declaration, the Articles of Incorporation or the Bylaws. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary. The Association shall have the power to:
    - (i) adopt, amend and revoke rules and regulations not inconsistent with the Governing Documents, as follows: [a] regulating the use of the Common Elements; [b] regulating the use of the Lots, and conduct of Single Family Lot Owners and occupants, which may jeopardize the health, safety or welfare of other Owners and occupants, which involves noise or other disturbing activity, or which may damage the Common Elements or other Single Family Lots; [c] regulating or prohibiting animals; [d] regulating changes in the appearance of the Common Elements and conduct which may damage the planned community; [e] regulating the leasing of the Single Family Lot as provided in this Declaration and the Rules and Regulations; [f] implementing the Governing Documents, and exercising the powers granted by this Section; and [g] otherwise facilitating the operation of the development.
    - (ii) Adopt and amend budgets for revenues, expenditures and reserves, and levy and collect assessments for Common Expenses from Single Family Lot Owners.
    - (iii) Hire and discharge managing agents and other employees, agents, and independent contractors.
    - (iv) Hire defend, or intervene in litigation or administrative proceedings (i) in its own name on behalf of itself or two or more Single Family Lot Owners on matters affecting the Common Elements or other matters affecting the development, or (ii) with the consent of the Owners of the affected Single Family Lots on matters affecting only those Single Family Lots.
    - (v) Make contracts and incur liabilities.

- (vi) Regulate the use, maintenance, repair, replacement and modification of the Common Elements.
  - (vii) Cause improvements to be made as a part of the Common Elements.
  - (viii) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property.
  - (ix) Grant public utility easements through, over or under the Common Elements, and, subject to approval by resolution of Single Family Lot Owners at a meeting duly called, grant other public or private easements, leases and licenses through, over or under the Common Elements.
  - (x) Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Single Family Lot Owners.
  - (xi) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Governing Documents.
  - (xii) Impose reasonable charges for the review, preparation and recordation of amendments to this Declaration, resale certificates if requested by a single Family Lot Owner, statements of unpaid assessments, or furnishing copies of Association records.
  - (xiii) Provide for the indemnification of its officers and directors, and maintain directors' and officers' liability insurance.
  - (xiv) Provide for reasonable procedures governing the conduct of meetings and election of directors.
  - (xv) Exercise any other powers conferred by law, or by the Governing Documents.
  - (xvi) Exercise any of the powers necessary and proper for the governance and operation of the Association.
- (b) The Association shall operate and manage the Property for the purposes of
- (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents; and
  - (ii) maintaining, repairing and replacing those portions of the Property for which it is responsible, and (iii) preserving the value and architectural uniformity and character of the Property.
- (c) All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Governing

Documents shall be binding upon all Owners and occupants, and their lessees, guests, heirs, personal representatives, successors and assigns and all secured parties.

- (d) The Association shall have Bylaws. The Bylaws and any amendments thereto shall govern the operation and administration of the Association.
- (e) The Board may delegate to a manager or managing agent the management duties imposed upon the Association's officers and directors by the Governing Documents; provided, however, that such delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents and by law.
- (f) The Board shall have exclusive authority to approve and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property; provided that the Rules and Regulations shall not be inconsistent with the Governing Documents. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.
- (g) All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents. Surplus funds remaining after payment of or provision for Common Expenses and reserves shall be credited against future assessments or added to reserves, as determined by the Board.

## 23. ASSESSMENTS FOR COMMON EXPENSES.

- (a) Assessments for Common Expenses shall be determined and assessed against the Single Family Lots subject to the limitations set forth in this Section, and the requirements of the Bylaws. Assessments for Common Expenses shall include annual assessments, payable by the Owners of the Single Family Lots in equal installments (not more frequently than monthly), and may include special assessments. Assessments shall be allocated among the Single Family Lots according to the Common Expense allocations set forth in Section 21 above, subject to the following qualifications:
  - (i) Reasonable attorneys fees and other costs incurred by the Association in connection with (i) the collection of assessments, and (ii) the enforcement of Governing Documents against a Single Family Lot Owner or occupant or their guests, may be assessed against the Owner's Single Family Lot.

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- (ii) Fees, charges, late charges, fines, and interest pertaining to a Single Family Lot may be assessed exclusively against the Single Family Lot.
  - (iii) Assessments levied to pay a judgment against the Association may be levied only against the Single Family Lots existing at the time the judgment was entered, in proportion to their Common Expense liabilities.
  - (iv) If any damage to the Common Elements or another Single Family Lot is caused by the act or omission of any Single Family Lot Owner or occupant of another Single Family Lot, or their guests, the costs of repairing the damage may be assessed exclusively against the other's Single Family Lot to the extent not covered by insurance.
  - (v) If any installment of an assessment becomes more than 30 days past due, then the Association may, upon 10 days written notice to the Single Family Lot Owner, declare the entire amount of the assessment immediately due and payable in full.
  - (vi) If Common Expense liabilities are reallocated for any purpose authorized by the Governing Documents, Common Expense assessments and any installments thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.
  - (vii) Assessments under this Subsection (a) shall not be considered special assessments as described in Section (c).
- (b) Subject to the limitations set forth in this Subsection (b) and Subsection (c) of this Declaration, annual assessments shall be established and levied by the Board. Each such annual assessment shall cover all of the anticipated Common Expenses of the Association for that year. Annual assessments shall provide, among other things, for contributions to a separate reserve fund sufficient to cover the periodic cost of maintenance, repair, and replacement of the Common Elements. The annual assessments shall be paid by the Owner(s) of each Single Family Lot in equal installments (not more frequently than monthly), on the first day of each particular period. Until a Common Expense assessment is levied, Developer shall pay all accrued Common Expenses of the Development. After a Common Expense assessment is levied, the annual assessment may be subsequently increased by the Board.
- (c) In addition to annual assessments, and subject to the limitations set forth in this Declaration, the Board may levy in any assessment year a special assessment against all Single Family Lots for the purpose of defraying in whole or in part (i) the cost of any foreseen, unforeseen, or unbudgeted Common Expense, (ii) general or specific reserves for maintenance,

repair, or replacement, and (iii) the maintenance, repair, or replacement of any part of the Property, and any fixtures or other property related thereto.

- (d) The obligation of a single Family Lot Owner to pay assessments shall commence at the later of (i) the recording of this Declaration or amendment thereto which creates the Owner's Single Family Lot, or (ii) the time at which the Owner acquires title to the Single Family Lot. The Owner at the time an assessment is payable with respect to the Single Family Lot shall be personally liable for the share of the Common Expenses assessed against such Single Family Lot. Such liability shall be joint and several where there are multiple Owners of the Single Family Lot. The liability is absolute and unconditional. No Single Family Owner is exempt from liability for payment of his or her share of Common Expenses by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Single Family Lot, by the waiver of any other rights, or by reason of any claim against the Association or its officers, directors, or agents, or for their failure to fulfill any duties under the Governing Documents. The Association may invoke the charges, sanctions and remedies set forth in this Declaration, in addition to any remedies provided elsewhere in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.
- (e) The Association has a lien on a Single Family Lot for any assessment levied against that Single Family Lot from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines, and interest charges imposed by the Association are liens, and are enforceable as assessments, under this Section. Recording of this Declaration constitutes record notice and perfection of any lien under this Section, and no further recordation of any notice of or claim for the lien is required.
- (f) A lien for Common Expenses may be foreclosed against a Single Family Lot in the manner provided for the foreclosure of mortgages by action or under a power of sale in the State of North Dakota. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Single Family Lot so acquired. The Owner and any other Person claiming an interest in the Single Family Lot, by the acceptance or assertion of any interest in the Single Family Lot, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any assessment or charge against the Single Family Lot.
- (g) A lien under this Section is prior to all other liens and encumbrances on a Single Family Lot except (i) liens and encumbrances recorded before this Declaration, (ii) any first mortgage on the Single Family Lot, and (iii) liens for real estate taxes and other governmental assessments or charges

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against the Single Family Lot. Notwithstanding the foregoing, if a first mortgage on a Single Family Lot is foreclosed and no Owner redeems during any Owner's period of redemption provided by law, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Single Family Lot subject to unpaid assessments for Common Expenses, which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption.

- (h) In a voluntary conveyance of a Single Family Lot, the buyer shall not be personally liable for any unpaid assessments and other charges made by the Association against the seller or the seller's Single Family Lot prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. However, the lien of such assessments shall remain against the Single Family Lot until satisfied. Any seller or buyer shall be entitled to a statement, in recordable form, from the Association setting forth the amount of the unpaid assessments against the Single Family Lot, including all assessments payable in the Association's current fiscal year, which statement shall be binding on the Association, seller and buyer.

24. **SPECIAL DEVELOPER RESERVED RIGHTS.** Developer hereby reserves exclusive and unconditional authority to exercise the following special rights for as long as it owns a Single Family Lot: (a) to complete, or cause to be completed, all of the improvements indicated on the plat, or otherwise included in Developer's development plans or allowed by this Declaration, and to make alterations in the Single Family Lots and Common Elements to accommodate same; (b) to create or relocate Single Family Lots, rights of ways, Common Elements and the like; (c) to subdivide Single Family Lots or convert Single Family Lots into Common Elements; (d) to merge or consolidate the Property with another development of the same form of ownership or to add property adjacent to the Property and owned by Developer to the Association and the scope of Property to be benefitted and burdened by the Governing Documents; (e) to erect and maintain signs and other sales displays offering the Single Family Lots for sale or lease, in or on the Property; (f) to control the operation and administration of the Association, including, without limitation the power to appoint and remove the members of the Board, until Developer no longer controls the Association pursuant to Section 21(d)(i); and (g) as long as Developer owns any unsold single Family Lot, Developer's written consent shall be required for any amendment to Governing Documents which directly or indirectly affects or may affect Developer's rights under the Governing Documents
25. **MORTGAGES.** The breach of any restriction or obligation 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 Property, 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.



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26. **RIGHT TO ENFORCE.** The Restrictions set forth herein shall run with the Lots and all property within the Property and shall bind the present owner or owners of Lots and any property within the Property, 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, 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, City 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 City and City may undertake to collect such sum in any manner, including the imposition of an assessment(s) against the applicable Lot.
27. **AMENDMENTS.** This Declaration may be amended by Developer at any time until Developer no longer owns any of the Lots; provided, however, the Developer may not amend this Declaration to add or expand any easement or restriction on any Lot, the fee title to which has been previously transferred by the Developer, unless the then Owner of such Lot consents in writing to the amendment. After Developer has divested itself of all Lots, this Declaration may be amended by an instrument signed by the owners of not less than 80% of the Lots, and any such amendment shall not be effective until recorded against the Lots at the Office of the Recorder for Cass County, North Dakota. In addition, at any time until Developer no longer owns any of the Lots; Developer may unilaterally waive any particular restriction or performance criteria as to any Lot, or remove any Lots owned by Developer from the scope of this Declaration, by instrument recorded in the Office of the Recorder for Cass County, North Dakota. Should any of the Lots be re-platted by Developer after the date this Declaration is recorded, any Lots resulting from the re-plat shall be automatically released and removed from this Declaration.
28. **WAIVER.** No delay or omission on the part of Developer or the owners of any Lots in the Property 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.
29. **COMPLIANCE WITH LAWS.** The Property shall be subject to any and all rights and privileges City or Cass County or State of North Dakota may have acquired through dedication or the filing or recording of 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, County of Cass, State of North Dakota or



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other like municipality or governmental authority having jurisdiction over the Property.

30. **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 3<sup>rd</sup> day of October, 2013.

**RIVERS BEND DEVELOPMENT  
CORPORATION**

By:  
Its:

*Steve Stoner*  
Sec / VP Pres

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

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of October, 2013, by Steve Stoner, the Secretary, of Rivers Bend Development Corporation, a North Dakota corporation, on behalf of the corporation.

(SEAL) **KELLY L SEILER**  
Notary Public  
State of North Dakota  
My Commission Expires Jan. 30, 2014

*[Signature]*  
Notary Public

# EXHIBIT A

## BYLAWS

### RIVER'S BEND AT THE PRESERVE HOMEOWNER'S ASSOCIATION a North Dakota nonprofit corporation

These are the Bylaws of River's Bend at the Preserve Homeowner's Association, a North Dakota nonprofit corporation (the "Association") organized under Chapter 10-33, North Dakota Century Code (the "Act"), the Articles of Incorporation (the "Articles") of which have been filed in the office of the North Dakota Secretary of State.

## DEFINITIONS

Bylaw 1. Definitions. Any words or terms used in these Bylaws which are defined in the Declaration of Restrictive Covenants of River's Bend at the Preserve First Addition, filed for record in the office of the County Recorder for Cass County, North Dakota (the "Declaration"), shall have the meaning there ascribed to them.

## MEMBERS AND VOTING

Bylaw 2. Membership. Each Owner of a Single Family Lot in the Property shall be a Member of the Association, and no other person or entity shall be entitled to membership. The Declarant, or its successors in interest or assigns, shall be entitled to membership in the Association only so long as the same is the Owner of one or more Single Family Lots in the Property.

Bylaw 3. Transfer of Membership. Each membership is appurtenant to the Single Family Lot on which it is based and shall transfer automatically by voluntary or involuntary conveyance of the ownership of that Single Family Lot. It shall be the responsibility of each Owner, upon becoming entitled to membership, so to notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a Member, in its sole discretion. In the event the Owner of any Single Family Lot should fail or refuse to transfer the membership to the transferee of title of such Single Family Lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

Bylaw 4. Multiple Owners. When more than one person holds an ownership interest in a Single Family Lot, the vote for such Single Family Lot shall be exercised as they between or among themselves determine and jointly signify in writing to the Secretary of the Association, but in no event shall more than the assigned voting power be cast with respect to any Single Family Lot nor shall the voting power allocated to a Single Family Lot be split or otherwise cast separately by the several Single Family Lot Owners. In the event multiple Owners of a Single Family Lot cannot agree on the exercise of voting power for such Single Family Lot, any one of the Owners may apply to the Board of Directors of the Association, which, after hearing all parties at a special meeting, shall determine the manner of exercise of the



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voting power for said Single Family Lot by a majority vote of the Directors voting at the special meeting. A Director shall not vote upon such determination with respect to a Single Family Lot of which said Director is one of the multiple Owners.

Bylaw 5. Voting. Each Single Family Lot shall be entitled to the voting power set forth in Section 21 of the Declaration. Cumulative voting shall not be permitted. A majority of those voting shall govern all determinations of the Single Family Lot Owners, except where a greater vote is required by the Declaration, or these Bylaws. No vote shall be cast with respect to any Single Family Lot while it is owned by the Association. During any period when the assessments against a Single Family Lot are unpaid for more than 60 days after due and payable, the Single Family Lot's voting rights may be suspended by the Association.

Bylaw 6. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Owners representing 50% of the voting power of the Association shall constitute a quorum. If the voting power of a Single Family Lot is suspended by reason of delinquency in payment of assessments, such voting power shall be deducted from the quorum requirement.

Bylaw 7. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting. A person designated by a proxy to act for a Member need not be a Member.

### MEETINGS

Bylaw 8. Place of Meetings. Meetings of the Association shall be held at the Property or such other suitable place within the City of West Fargo, North Dakota, and convenient to the Single Family Lot Owners as may be designated by the Board of Directors.

Bylaw 9. Annual Meetings. The first annual meeting shall be set by the Board of Directors. At such first annual meeting of the Members, the Members may designate a regular date for successive annual meetings. If the Members fail to designate such a regular date, the Board of Directors may continue to designate the date of the next annual meeting until such a designation is made by the Members. If any designated date falls upon a legal holiday, it shall be understood that the actual date of the meeting shall be the next business day succeeding such designated date. At such meetings in accordance with the requirements of Bylaw 18 of these Bylaws, Directors shall be elected by ballot of the Single Family Lot Owners. The Single Family Lot Owners also may transact such other business of the Association as properly may come before them. In all events, a meeting of the Members shall be held at least once each year. If a regular meeting of the Members has not been held during the preceding 15 months, ten percent or more of the Members with voting rights may demand a meeting.

Bylaw 10. Special Meetings. It shall be the duty of the President to call a special meeting of the Members as directed by resolution of the Board of Directors or upon the presentation to the Secretary of the Association of a petition therefor signed by ten percent or more of the Members with voting rights or by two Directors. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless all of the Members with



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voting rights have waived notice of the meeting under the Act. One or more special meetings may be held before there has been a first annual meeting.

Bylaw 11. Notice of Meetings. It shall be the duty of the Secretary of the Association to send to each Single Family Lot Owner, at least 21 days, and not more than 60 days, in advance of an annual meeting of the Single Family Lot Owners, and not less than 7 days and not more than 30 days in advance of any other meeting, notice of the date, time, place, and complete agenda of the meeting and the procedures for appointing proxies. The notice shall be hand-delivered or sent by United States mail, postage prepaid, to all Single Family Lot Owners of record at the address of their respective Single Family Lots or to such other address or addresses as any of them may have designated in writing to the Secretary.

Bylaw 12. Adjourned Meetings. If any meeting of Single Family Lot Owners cannot be organized because a quorum is not present, the Single Family Lot Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than 48 hours nor more than 60 days from the time the original meeting was called, with no further notice than that given at such adjourned meeting, and the quorum at such adjourned meeting shall be one-half of the ordinary quorum.

Bylaw 13. Order of Business. The order of business at all annual meetings of the Single Family Lot Owners shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of committees.
- (f) Designation of regular date for annual meetings (if necessary).
- (g) Election of Board of Directors.
- (h) Unfinished business.
- (i) New business.
- (j) Open forum.
- (k) Announcement of date, time and place of organization meeting of new Board of Directors.
- (l) Announcement of members of Nominating Committee.
- (m) Adjournment.

Bylaw 14. Fair Voting Procedures. The following shall be considered minimum standards to assure fair voting procedures:

- (a) All proxies should be available for inspection prior to and during a meeting of the Members, so that a reasonable opportunity is afforded to challenge and count proxies.
- (b) All mail ballots and all proxies cast at a meeting should be first opened at the time the votes on an election or issue are counted and tallied.
- (c) In the case of an election of a Director, every candidate or designee of a candidate may observe the counting and tallying of votes; and on any other issue, a reasonable number of observers from both sides of each issue shall observe the counting and tallying of votes.
- (d) The vote count on each election and issue shall be announced before adjournment of the meeting, and shall be available to all Members in written form, signed by the Secretary of the Association, within seven days of the meeting.
- (e) A Member who is delinquent in the payment of assessments may reinstate voting rights for a meeting by payment of the delinquency by delivering a check to the Secretary, Treasurer or President of the Association before the meeting is called to order, unless a different requirement is adopted by the Board and the delinquent Member is given written notice thereof at least 15 days before the meeting.

#### BOARD OF DIRECTORS

Bylaw 15. First Board of Directors. The first Board of Directors shall consist of three persons designated in the Articles, who need not be Single Family Lot Owners, and who shall serve until the first annual meeting of the Members or until their successors are elected and qualified. Should any vacancy occur in the first Board of Directors it shall be filled by Declarant. The first Board of Directors shall have the power to adopt the Bylaws of the Association, to elect officers, to establish a schedule of assessments which shall be effective until December 31st of the year in which the first annual meeting of the Association occurs, and shall have generally the powers and duties as set forth in Bylaw 19.

Bylaw 16. Number and Qualification. The number of Directors constituting the Board of Directors after the first Board of Directors shall be three; provided, however, that the number of Directors may be increased to five (or thereafter decreased back to three) by affirmative vote of the majority of all Owners of Single Family Lots at any annual meeting of the Members, subject to any limitations in the Articles. All Directors elected by the Single Family Lot Owners shall themselves be Single Family Lot Owners, officers or employees of a corporate Single Family Lot Owner, partners or employees of a partnership Single Family Lot Owner, or members or employees of a limited liability company Single Family Lot Owner.

Bylaw 17. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations also may be made by any two Members in a written nomination to the Secretary of the Association or by motion and second from the floor at

the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Bylaw 18. Term and Election. The term of office of each Director shall be fixed at one year. Directors shall be elected by plurality. Each Director shall hold office until his or her respective successor has been elected.

Bylaw 19. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the planned community known as RIVER'S BEND AT THE PRESERVE FIRST ADDITION, and may act on behalf of the Association and do all such acts and things except as by the Act or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Single Family Lot Owners.

Bylaw 20. Vacancies. Any vacancy in the Board arising by death or resignation of a Director elected or appointed by Declarant shall be filled only by appointment made by Declarant. Any other vacancy shall be filled by act of the remaining directors, whether or not constituting a quorum, and a Director so appointed shall serve for the unexpired term of his predecessor in office.

Bylaw 21. Removal of Directors. At any regular or special meeting of the Single Family Lot Owners duly called, any one or more of the Directors may be removed with or without cause by a majority of the Single Family Lot Owners authorized to elect such Director present in person or by proxy, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Single Family Lot Owners shall be given an opportunity to be heard at the meeting.

Bylaw 22. Organization Meeting. The first meeting of the Board of Directors each year following the annual meeting of Single Family Lot Owners shall be held within 10 days after the annual Owners' meeting, and if the date, time and place are announced at the annual Owners' meeting, no further notice shall be necessary.

Bylaw 23. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place within the City of West Fargo, State of North Dakota, as shall be determined, from time to time, by a majority of the Directors, but at least two such meetings shall be held during each calendar year. Written notice of regular meetings of the Board of Directors shall be given to each Director, at least 10 days prior to the day named for such meeting.

Bylaw 24. Special Meetings. Special meetings of the Board of Directors may be called by the President on not less than seven days' written notice to each Director, which notice shall state the time, place within the City of West Fargo, State of North Dakota, and purpose of



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the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two Directors.

Bylaw 25. Open Meetings. Except as otherwise provided in the Act or the Declaration, meetings of the Board of Directors must be open to the Single Family Lot Owners. To the extent practicable, the Board shall give reasonable notice to the Single Family Lot Owners of the date, time, and place of a board meeting. If the date, time, and place of meetings are announced at a previous meeting of the Board, posted in a location accessible to the Single Family Lot Owners and designated by the Board from time to time, or if an emergency requires immediate consideration of a matter by the Board, notice is not required.

Bylaw 26. Telephone Conference. A meeting of the Directors or any committee of the Board may be conducted by a telephone conference or any means of communication through which the participants may simultaneously hear each other during the meeting, if notice of the meeting has been given as would be required for a meeting and if the number of persons participating in the conference is sufficient to constitute a quorum. Participating in a conference constitutes personal presence at the meeting. A Director may participate in a Board meeting by means of communication through which the Director, other Directors participating, and all other Directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by this means constitutes personal presence at the meeting.

Bylaw 27. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving and receipt of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by such Director of the time, place and purpose thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Bylaw 28. Board of Directors Quorum and Voting. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there is less than a quorum present, the meeting may be adjourned from time to time until a quorum is present. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Bylaw 29. No Proxies. Directors shall not vote by proxy.

Bylaw 30. Action Without a Meeting. Any action that could be taken at a meeting of the Board of Directors may be taken without a meeting when authorized in a writing signed by all of the Directors.

Bylaw 31. Compensation. The Directors will receive no compensation for their services as Directors. However, when authorized by the Board, Directors and officers may be reimbursed for actual expenses incurred in connection with the business of the Association, and officers may be compensated for bookkeeping or recordkeeping functions.



OFFICERS

Bylaw 32. Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer. All principal officers shall be elected by and from the Board of Directors. Any two or more of the offices of Vice President, Treasurer and/or Secretary may be filled by the same person. The Board may from time to time appoint an Assistant Secretary and such other officers, with such duties, as in their judgment may be desirable, and such officers need not be Directors.

Bylaw 33. Election of Officers. The principal officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board. All officers shall hold office at the pleasure of the Board.

Bylaw 34. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall see that all orders and resolutions of the Board are carried out, and shall sign all leases, mortgages, deeds and other written instruments (except to the extent that the Board of Directors authorizes or mandates the delegation of such authority otherwise).

Bylaw 35. Vice President. The Vice President shall act in the place of the President and perform the President's duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other Director to act on an interim basis. The Vice President also shall perform such other duties as shall from time to time be required by the Board of Directors.

Bylaw 36. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association. If the Association adopts a seal, the Secretary shall keep the corporate seal of the Association and affix it on all papers requiring said seal. The Secretary shall give notice of all meetings of the Board and of the Members, shall keep appropriate current records showing the Members of the Association, together with their addresses, and shall perform such other duties as may be required by the Board.

Bylaw 37. Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall sign all checks and shall be responsible for the deposit of all monies and valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors, except to the extent that the Board of Directors authorizes or mandates the delegation of such authority to a manager or agent.

Bylaw 38. Committees. The Board shall appoint members of a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors may establish other committees and appoint their members as deemed appropriate in carrying out its purposes.

ANNUAL REPORT

Bylaw 39. Annual Report. The Association shall prepare and provide to each Single Family Lot Owner at or prior to each annual meeting a report of the affairs of the Association including at least the following information:

- (a) A statement of any capital expenditures in excess of two percent of the current budget or \$5,000.00 (whichever is greater) approved by the Association for the current year or succeeding two fiscal years;
- (b) A statement of the balance of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board of Directors;
- (c) A copy of the statement of revenues and expenses for the Association's last fiscal year and a balance sheet as of the end of said fiscal year;
- (d) A statement of the status of any pending litigation or judgments to which the Association is a party;
- (e) A statement of the insurance coverage provided by the Association; and
- (f) A statement of the total past due assessments on all Single Family Lots, current as of not more than 60 days prior to the date of the meeting.

#### MISCELLANEOUS

Bylaw 40. Right of Corporate or Partnership or Limited Liability Company Single Family Lot Owner to Substitute. Whenever a Director or officer of the Association is an officer or employee of a corporate Single Family Lot Owner or a partner or employee of a partnership Single Family Lot Owner or a member or employee of a limited liability company Single Family Lot Owner, the respective corporation, partnership or limited liability company may by written notice to the Association remove such Director or officer of the Association and designate another such person to serve the unexpired balance of the term.

Bylaw 41. Indemnification of Officers and Directors. To the full extent permitted by the Act, as amended from time to time, or by other provisions of law, each person who was or is a party or is threatened to be made a party to any proceeding by reason of a former or present official capacity in the Association shall be indemnified.

Bylaw 42. Notice. "Notice" has the meaning given in Section 10-33-01 of the Act.

Bylaw 43. Amendments to Articles and Bylaws. Until the second Board has been constituted pursuant to these Bylaws, an amendment to the Articles and these Bylaws shall be considered adopted upon its receiving an unanimous vote of the Directors constituting the first Board at a meeting thereof, notice of which containing the proposed amendment having been given to each of said Directors at least one (1) day prior to said meeting. After the second Board has been constituted pursuant to these Bylaws, an amendment to the Articles or these Bylaws shall be adopted upon its receiving an affirmative vote of the Members who have authority to cast at least seventy-five percent (75%) of the total votes in the Association, in writing, at any regular, special or annual meeting of the Association. The provisions of this Bylaw 43 are

subject to any approval rights of Eligible Mortgagees and the Declarant as provided in the Declaration.

Bylaw 44. Conflicts. In case any of these Bylaws conflicts with the provisions of the Act, the provisions of the Act will apply. In case any of these Bylaws conflicts with the provisions of the Declaration or the Articles, the provisions of the Declaration or Articles will apply.

Bylaw 45. Inspection of Books and Records. Current copies of the Declaration, Bylaws, other rules concerning the Association and the planned community, and the books, records, and financial statements of the Association shall at all times, during reasonable and normal business hours, be available for inspection by any Single Family Lot Owner, prospective purchaser, Single Family Lot lender or the holder, insurer and guarantor of a mortgage on any Single Family Lot at the principal office of the Association, and copies of the same may be purchased at reasonable cost.

Bylaw 46. Financial Statements. The Association shall make a reviewed statement for the preceding fiscal year available to the holder, insurer or guarantor of any first mortgage that is secured by a Single Family Lot in the planned community upon submission of a written request for it. The reviewed financial statement shall be available within 120 days after the Association's fiscal year end. Any financial statement shall be furnished free of charge within a reasonable time upon request from any such Owner, lender, holder, insurer or guarantor or any prospective Owner, lender, holder, insurer or guarantor.

Bylaw 47. Notice to Association. An Owner who mortgages the Owner's Single Family Lot shall notify the Association through the management agent, if any, or the President or the Board of Directors in the event there is no management agent, of the name and address of the mortgagee and the Association shall maintain such information in a book entitled "Mortgagees of Single Family Lots."

Bylaw 48. Compliance. Each Single Family Lot Owner, and any lender or holder of any mortgage that is secured by a Single Family Lot, shall be governed by and shall comply with the terms, conditions, obligations, and provisions of the Act, the Declaration, the Articles, these Bylaws, and the Rules and Regulations of the Association, as any of the same may be amended from time to time.

Bylaw 49. Rules and Regulation. The Board may from time to time promulgate such rules and regulations as it deems reasonable and necessary, governing the administration, management, operation and use of the Common Elements and any other areas, facilities and improvements which Members of the Association are entitled to use, so as to promote the common use and enjoyment thereof by Single Family Lot Owners, and for the protection and preservation thereof, and may in addition adopt such reasonable rules and regulations as it may deem necessary with respect to Single Family Lots to provide for the common good and enjoyment of all Single Family Lot Owners, including, without limiting the generality of the foregoing, the right to adopt such rules and regulations with reference to children, animals and leases. Copies of all such rules and regulations and any amendments thereto shall be furnished to all Members, and a copy shall be posted or otherwise made available to Members at the office



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of the Association. However, failure to furnish or post such rules or regulations shall not affect their validity or enforceability. Subject to obtaining any required consent of Declarant pursuant to the Declaration, any such rule or regulation may be amended, modified or revoked, and new and additional rules and regulations may be adopted, by the Members at an annual or special meeting of the Members.

Bylaw 50. Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceedings when not in conflict with the Declaration, these Bylaws, the Articles, the Act, or applicable law. The chairman of any meeting shall have the authority to appoint a parliamentarian.

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RECORDER'S OFFICE, CASS COUNTY, ND 10/4/2013 9:57 AM  
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.  
JEWEL A. SPIES, COUNTY RECORDER

by Teressa A. Kirby, Dep. 1401422

