

DECLARATION OF RESTRICTIONS AND OBLIGATIONS

THIS Declaration of Restrictions, Obligations, and Architectural Control is made this 9 day of August, 2006, by SouthBay Development LLC., hereinafter referred to as "Developer", and is also consented to by the owners of the various lots per the signatures attached hereto.

WITNESSETH

WHEREAS, Developer is the owner of the following described Real Property located in Burleigh County, North Dakota, which is hereinafter referred to as the "Real Property":

SOUTHBAY FIRST ADDITION TO THE CITY OF BISMARCK,

Lot 1, Block 1;
Lot 1, Block 2;
Lot 1, Block 3;
Lots 1 through 13, Block 4;
Lots 1 through 9, Block 5;
Lots 1 through 9, Block 6;
Lots 1 through 73, Block 7;

and

WHEREAS, this Real Property has been platted into lots which are presently known as "SouthBay First Addition" development to the City of Bismarck, County of Burleigh, North Dakota.

WHEREAS, Developer is about to sell and convey some or all of said lots, located within said plat, and before selling or conveying any of the said lots, desires to subject all of the said lots to certain conditions, restrictions, and obligations for the protection and benefit of Developer and any and all future owners of the said lots or any of them.

NOW, THEREFORE, in consideration of the premises, Developer hereby certifies and declares that it has established and does hereby establish the following covenants and restrictions for the protection and benefit of all of the said Real Property, and has fixed and does hereby fix the following additional protective conditions, restrictions, and obligations upon and subject to which each and all of the lots in the said Real Property shall be hereafter held, used, occupied, leased, sold and/or conveyed. Each and all of which the said conditions and restrictions shall inure to the benefit of, be

binding upon and pass with said Real Property, and each and every lot and/or parcel thereof, and shall inure to the benefit of, apply to, and bind the respective successors in title or interest of Developer.

THE SAID CONDITIONS AND RESTRICTIONS ARE AS FOLLOWS, TOWIT:

1. **PURPOSES:** The said lots within the Real Property shall be used for residential purposes as set out on the development plan of Developer, including as Developer may hereafter amend such development plan. In this regard, Developer shall have the absolute right and ability to amend and change the development plan without notice, in the sole discretion of Developer. Every person who purchases a lot in the above-described Real Property waives any and all objection to such development, and consents to such development, as well as all amendments and changes thereto. Such waiver and consent shall bind all transferees and future owners of any lot in the said Real Property.

2. **ARCHITECTURAL REVIEW COMMITTEE:** There shall be an Architectural Review Committee ("Committee") consisting of three (3) persons to be appointed by Developer. Each of the said persons so appointed shall be subject to removal at the direction of Developer at any time and from time to time, and all vacancies on the said Committee shall be filled by appointment of Developer. In the event of the failure of Developer to appoint such Committee or to fill any vacancies therein, then in such event, the owners of a majority in number of the lots in the said Real Property shall have the right by written document to appoint members of the said Committee or to fill any vacancies therein, until such time as Developer shall appoint other members to such Committee. The initial members of the Committee shall be Kevin Turnbow, Leann Turnbow and Dave Patience.

3. **RESPONSIBILITIES OF ARCHITECTURAL REVIEW COMMITTEE:**

A. The Committee shall be responsible for reviewing the plans for all proposed new construction, additions, or modifications. The Committee shall be responsible to ascertain that the plans and subsequent construction meet the minimum building requirements set forth in this Declaration. The primary purpose of the Committee shall be to assist property owners in achieving compliance with the building restrictions.

B. Any property owner seeking to construct a new home or other appurtenant structure, or to add to or modify any portion of the exterior of an existing home, shall submit the plans to the Committee for review. A modification of the home exterior will include decks, hot tubs, patios, pools, and similar

alterations. Construction of new structures includes equipment and material housing, dog runs, gazebos, arbors associated with landscaping, and other similar construction.

C. No construction, change, modification, or alteration for which plans are to be submitted to the Committee pursuant to Paragraph B immediately above, shall commence until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted and approved in writing by the Committee as to the harmony of external design and location in relation to surrounding structures and topography, size, estimates of costs, and such other factors as the Committee considers necessary, appropriate, and relevant to maintain property values of nearby properties. In the event the Committee fails to approve or disapprove the design and location plan within thirty (30) days after the plans and specification have been submitted to it, approval will not be required and full compliance with this section of the Declaration will be deemed to have occurred.

D. Without limiting the generality of the factors to be considered by the Committee, the following restrictions shall apply:

(1) All roofing material shall be limited to either cedar shakes, cedar shingles, or earth toned colored shingles approved by the Committee. Flat roofs will be permitted.

(2) All driveways and parking bays shall be constructed of concrete, concrete aggregate, or pavers.

(3) Heat pumps, propane tanks, solar devices, chimney flues, hot tub pumps, swimming pools, pumps and filtration systems, satellite dishes, and similarly exposed mechanical equipment shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety concerns. Irrigation pumps are encouraged for lawn watering and will only be permitted if the pumps are installed below grade with a cover or the pumps are actually submerged.

(4) Siding shall be of wood, brick, stucco, dryvit, vinyl, or metal siding or combinations of those materials as approved by the Committee in writing and the colors shall be either white or earth tones.

E. In spite of the above provisions, the Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this Declaration, and no member of the Committee shall have any liability, responsibility, or obligation, whatever, for any decision or lack of a decision, in the carrying out of duties as a member of the Committee. The Committee and

its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this Declaration shall rest with the homeowner. Each homeowner agrees to save, defend, and hold harmless the Committee and each of its members on account of any activities of the Committee relating to the owner's property or buildings to be constructed on his or her property.

4. **BUILDING RESTRICTION:**

A. Any home constructed on a lot shall have a minimum main floor area of the main structure, exclusive of one-story open porches and garages, of not less than one thousand five hundred (1,500) square feet for a one-story dwelling. In the case of a two story (not including basement) dwelling, the above ground floor living level shall be not less than one thousand two hundred (1,200) square feet and the total finished square footage area, excluding the basement, shall not be less than one thousand, eight hundred (1,800) square feet. In the case of a split-level dwelling, the total above ground level shall not have less than one thousand five hundred (1,500) square feet. All buildings are subject to the requirements of the Bismarck City Building Code.

B. The setback line for construction of a house shall be in conformity with the restrictions reflected on the Master Plan or in the event no restriction is reflected on the Master Plan, then the setback shall be in conformity with the decision of the Architectural Review Committee or in conformity with existing adjoining homes or city ordinance

C. No trailer, tent, shack, garage, barn, or other outbuildings shall at any time be used as a residence, temporarily or permanently, on any building site. No modular, manufactured, or mobile homes to be used as a residence, temporarily or permanently, may be placed on any lot.

D. Any construction commenced on any house as provided in this Declaration shall be substantially completed, including, but not limited to, all staining and painting, within twelve (12) months from the date the construction is commenced.

E. No sign of any kind shall be displayed to public view on any building site, except for one sign limited to the builder or advertising the property for sale. There shall be no restriction on signs used by Developer during the period of development of this addition.

F. All lines or wires for telephone, power, cable television, or otherwise shall be placed underground and no such wires shall be shown on the exterior of any building unless the same shall be underground or in a conduit attached to a building. No television or radio antenna or aerial shall be installed. Television satellite disks may be installed but not to exceed eighteen (18) inches in diameter. Flagpoles may not be constructed or placed on the property that exceed twenty (20) feet in height and may only be placed in the backyard. No flagpoles may be erected in the front yards.

G. No sculptures, railings, monuments, or any other non-vegetation objects shall be placed or erected in the front yards, except mail boxes as approved by the Committee.

H. No fences shall be constructed, however, chain-link fences for animal containment purposes may be permitted, with proper screening from neighbors and public view, if approved by the Committee, and however, the fence may not exceed six (6) feet in height.

I. No noxious, illegal, or offensive use of property shall be carried on any lot, nor shall anything be done on it that may be, or become, an annoyance or nuisance to the neighborhood. No grantee or grantees, under any conveyance, nor purchasers, shall at any time conduct or permit to be conducted on any residential lot any trade or business of any description, either commercial or noncommercial, religious or otherwise, including day schools, nurseries, or church schools, nor shall the premises be used for any other purpose whatever except for the purpose of providing a private, single-family or two family dwelling or residence.

J. No trash, garbage, ashes, or other refuse, junk, vehicles in disrepair, underbrush, or other unsightly growths or objects shall be maintained or allowed on any lot. All fences and buildings shall be kept in a state of repair. All residences, garages, and accessory buildings shall be painted or stained, from time to time, so as to maintain a reasonable state of repair. All vacant lots shall be mowed at least three (3) times per year, with each mowing to occur by June 30, August 30, and October 15 of each year and shall be maintained in accordance with the rules adopted by the Architectural Review Committee.

K. No boat, boat trailer, house trailer, horse trailer, automobile, recreational vehicle, truck, or other vehicle, or any part thereof shall be stored or permitted to remain on any residential lot unless the same is stored or placed in a garage or fully-enclosed space.

L. Each property owner shall exercise as much care as is possible to retain natural vegetation, trees, shrubs, and other similar growth. Prior to the removal of any such growth, the plans referred to above shall be submitted to the Committee for the Committee's review and comments. Such plans shall include the location of all trees that are four (4) inches or more in diameter, measured two (2) feet above the ground. The design of all structures shall attempt to save such trees, except to the extent that they may become dangerous or hazardous or impede proper drainage of the lot. If any such tree is removed without approval of the Committee, the property owner, on order of the Committee will replace the tree with a similar tree specified by the Committee. If the property owner fails to replace the tree within thirty (30) days of the date of the Committee's order, the obligation will become a lien on the land, accruing interest and subject to enforcement under the provisions of this Declaration, including fees and costs. No landscaping may be commenced, changed, or modified until plans have been submitted in writing to the Committee for approval. In the event the Committee fails to approve or disapprove the landscaping proposal within thirty (30) days after the plan has been submitted, approval will not be required. Each property owner, within sixty (60) days of the completion of a residence, shall landscape all yards fronting a street, provided, however, that a right to extend the time period for completion of the landscaping may be sought, in writing, and obtained at the sole discretion of the Committee in the case of extenuating circumstances.

M. All mailboxes and mailbox holders shall be of a standard design accepted by the Committee and adhering to the applicable specifications of the U.S. Postal Service. All mailboxes shall be located as directed by the U.S. Postal Service. Each lot owner shall be responsible for the maintenance and replacement of his or her mailbox so as to keep it in a state of repair at all times.

N. No animal, livestock, or poultry shall be raised, bred, or kept on any lot of the subdivision for commercial purposes. All dogs, cats, or other household pets must be kept on a leash, unless they are within a fenced area approved in writing by the Committee.

O. No storage shed or freestanding garage may be constructed on any lot.

P. **CAMPERS, BOATS, ETC:** No camper, boat, trailer, or pontoon may be parked in a driveway or on the street for more than forty-eight (48) continuous hours unless approved by the Architectural Review Committee.

Q... **ELEVATION:** The minimum elevation of the basement which is not a walk-out basement shall be one thousand six hundred thirty-two (1632) feet. The minimum elevation of the basement floor for a basement with a walk-out shall be one thousand six hundred thirty-six (1,636) feet.

5. **PARTITION AND SUBDIVISION PROHIBITED:** Each of the owners of lots or parcels in said Real Property, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way wavering or separating such ownership from any of the other ownerships in said Real Property. None of the lots may be subdivided, except by the Developer. In the case of a two-family dwelling, a lot or that portion of an additional lot, combined with an existing lot may be split to provide individual ownership of a twin home or duplex..

6. **NOTICE OF CLAIM OF BREACH:** Developer, or the Committee may at any time that Developer or the Committee deems a breach of these Restrictions and Obligations has occurred, execute, acknowledge and record in the Office of the Recorder of Burleigh County, a Notice of Claim of Breach setting forth the facts of such breach, describing the lot or lots upon which such breach has occurred and setting forth the name of the owner or owners thereof. Such notice upon being recorded, shall be notice to all persons of such breach, provided an action has been commenced within sixty (60) days after the recording of such notice to establish such breach, and if no such action has been commenced within such sixty (60) day period, then and in that event such notice shall be of no force and effect whatsoever and the breach set forth in said notice shall be presumed to have been remedied.

7. **MASTER PLAN:** Developer has provided to the public a proposed master plan or plans of the "SouthBay Area". Said master plan is not binding on the Developer nor has the master plan been zoned or platted and the public is informed that said master plan may be changed by Developer at his discretion. Any documents reflecting a proposed master plan are only a general reflection of development possibilities and the public is hereby informed that is should not rely on such documents in making investment decisions. In addition, Developer may add additional land and waterways to the proposed "SouthBay Area".

8. **DIRT REMOVAL:** Any and all dirt, debris, or vegetation that is removed, moved, or excavated from each lot may only be stored on the front portion (portion of the lot adjacent to the street) of the lot. The dirt store on this front portion of the lot shall be removed in a timely manner as construction of the house permits.

9. **DOCKS AND SIMILAR STRUCTURES:** No dock, swim platform, or other structure shall be placed on or under the water until the construction plans and specifications have been approved in writing by the Architectural Review Committee ("Committee") as to quality, workmanship, material, harmony (including color) of existing structures, and location. All docks are limited to aluminum construction with plastic floats. No decking shall be placed on the docks until the decking has been approved by the Committee. Only one boat dock structure is permitted per lot with a maximum configuration of four (4) boats per lot. Combined lot use will be encouraged. No structure will be allowed to impede boat traffic flow. Docks may be limited to a configuration parallel with the shoreline if traffic flow is a concern. The Homeowners Association or the Architectural Review Committee may require docks to be relocated or modified at the owner's expense. The Committee in consultation with Developer shall develop strict guidelines for all structures of every kind, whether temporary or permanent, to be placed in or near the water areas on the above-described Real Property. Such guidelines shall assure that all such structures are uniform in appearance and are aesthetically pleasing. The Committee shall have the absolute right to select only one company from whom such docks and similar structures are purchased in order to assure such uniformity. No owner of any lots may lease, assign, or in any manner transfer any ownership or possessor rights in said docks or similar structures.

10. **BOATS:** All watercraft shall be electric powered or gas powered with a 25 HP engine or less. The parking of guest boats is limited to a forty-eight (48) hour period. Lot owners and their guests shall abide by the guidelines for usage of the water area for various activities. Boat and all other watercraft speeds shall be minimal as set specifically by the SouthBay Homeowners Association ("Association"). There shall be no racing of watercraft and no skiing allowed on the water areas on the above-described Real Property. The SouthBay Homeowners Association shall develop strict rules to govern all water activities on the above-described Real Property and such rules shall control all such activities, including the levy of fines against any violations thereof. Due to the fact that SouthBay water areas are ground water source, any and all watercraft brought in from other areas must be power sprayed and all bacteria removed before such watercraft can be placed in the SouthBay water areas.

11. **USAGE OF WATERWAY AND CLEANING OF WATERCRAFT:** The waterways and ramps adjacent to the waterways can only be used by lot owners and their family members who reside with the lot owner. The waterways and ramps are not public and shall not be used by anyone other than the lot owners and their family members who reside with them.

12. **LIGHT FIXTURE AND UTILITIES:** Developer shall choose a light fixture that will be paid for by the lot owner and that will be installed by the owner

in the rear of each owner's lot in a location approved by the Committee. The light fixture shall be the same for all lots and shall contain an electronic photo eye.

13. **AREA ADJACENT TO WATER:** The lot owner shall construct a concrete curb according to the Engineer's detail adjacent to the water area as directed by the Committee. In the area between the curb and the water line, the lot owner shall cover that area with landscaping fabric and sand or fabric and washed pea rock. Said improvements shall be constructed and completed at the same time that the residence construction is completed. The Committee will determine the type of fabric and the depth of sand or pea rock. **THE DEVELOPER IS NOT RESPONSIBLE FOR ANY OF THE COSTS FOR THE CONCRETE CURB, FABRIC, SAND, OR PEA ROCK.**

On all lots the owner shall be responsible for maintaining and repairing the area adjacent to the water including but not limited to all bank stabilization, erosion damage, and any and all damage to the curb and the sand or washed pea rock. The owner shall maintain the sand or pea rock free of weeds and all debris.

14. **WORK ON BACK SLOPES:** If the lot owner desires to change, repair, or landscape the back slope area above the concrete curb, the lot owner must obtain the written approval of the Committee.

15. **ASSESSMENTS FOR MAINTENANCE AND IMPROVEMENTS TO WATER AREAS:** Developer will be developing a large contiguous area described as the "SouthBay Area". Developer intends to develop water areas throughout the SouthBay Area. It will be the responsibility of the SouthBay Homeowners Association to maintain and improve all of the water areas. Each lot in the SouthBay Development will be a member of the SouthBay Homeowners Association.

Maintenance shall also include installing aerators, circulation pipes or other equipment required for water quality needs and shall also include the costs of maintaining all pipes and pumps that are required for maintaining water quality. Since all lot owners will be members of Association, all costs will be assessed on a pro rata basis regardless of which addition, subdivision, or lot owner is benefited. Off water lots will be assessed at a rate of 1/2 the assessment of a water front lot.

Initially, Developer will stock fish in the waterway. Thereafter, it will be the Homeowners Association's responsibility to regulate and control the amount and type of fish in the waterways.

Water quality shall be tested at least once each year and may be more often if directed by the North Dakota Health Department. The cost to be the responsibility of the Homeowners Association.

16. **SOUTHBAY HOMEOWNERS ASSOCIATION**
("ASSOCIATION"): The water, sand, pea rock and concrete curb area of and adjacent to each lot shall require maintenance in order to insure the quality of the development and subdivision involving the Real Property. Each owner of a lot, in the Real Property, shall be obligated to pay the cost of any repair or maintenance related to the Real Property described herein and the Real Property described as the SouthBay Area. All water and off water lot owners shall share the costs to repair or maintain the boat ramp, park and planting areas. Off water lots will be assessed at a rate equal to ½ the assessment of a water front lot. This shall specifically include the repair or maintenance of the water areas, the concrete curb, and the sand area, or any other activities or elements that will enhance or maintain the quality of the said Real Property as determined solely by the Association. Such activities and costs shall be determined by the Association which has already been established. Each owner of a lot in the property above-described shall be a regular member of the Association, a corporation not for profit, which said membership shall be appurtenant to such lot, and the transfer of title to such lot shall automatically transfer the regular membership appurtenant to such lot to the transferee or transferees. Each such owner and/or owners are obligated to promptly, fully, and faithfully comply with and conform to the By-Laws of the Association, and the rules and regulations from time to time prescribed thereunder by the Board of Directors of said corporation or its officers and to promptly pay in full all dues, fees or assessments levied by said corporation on its members whether such dues, fees or assessments were levied prior or subsequent to the date of acquisition of title, except that the purchaser of any such unit at a Trustee's Sale on foreclosure or a lender who acquires title by deed in lieu of foreclosure shall not be liable for any dues, fees or assessments levied prior to such sale or acquisition of title. Although the Association may require the owner of an off water lot to pay dues, fees, and assessments, such dues, fees, and assessments shall not be more or less than ½ that paid by a water front lot. Initially, the Association dues shall be Fifty Dollars (\$50.00) per year payable commencing on the day that the lot is purchased from SouthBay Development, LLC. SouthBay Development, LLC. shall not at any time be responsible for dues or assessments on those lots owned by Riverfront Properties, Inc. The initial Fifty Dollars (\$50.00) annual dues amount shall be on a prorated basis for the number of days for which the buyer of the lot owned the property for that year. Annual dues shall be due on January 15th of each year. Any assessment that is not paid within thirty (30) days after the due date shall bear interest at the rate on one and one-half percent (1 ½%) per month (eighteen percent (18%) annual percentage rate.) Developer shall not be required to pay any dues on any vacant lots or spec homes owned by Developer.

17. **LIEN IN FAVOR OF SOUTHBAY HOMEOWNERS ASSOCIATION**: The Association shall have a lien against each of the lots in the said Real Property to secure the full and faithful performance of these Restrictions and Obligations, and in the event of the non-performance or default hereunder by any of the owners of a lot in the said Real Property, the interest of such defaulting owner may be

foreclosed by said corporation in the same manner as a realty mortgage and any redemption thereafter shall be subject to the lien herein created as to other or future events of non-performance or default, and the lien hereby created shall likewise apply to the Grantee of any Sheriff's Deed after foreclosure as to other or future events of non-performance or default; or the said lien may be foreclosed as a mortgage with power of sale, provided however, that it is specifically understood that the lien herein created shall, at all times, be subordinate and inferior to the lien of any bona fide lending institution which now exists or is hereafter placed against the interest of such defaulting individual owner in the above-described property or any part or parcel thereof.

18. **POWERS AND DUTIES OF SOUTHBAY HOMEOWNERS ASSOCIATION:** The Association, acting through its Board of Directors and officers, shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the areas consisting of the water area described above, all as more fully set forth in the Articles of Incorporation or the By-Lays of said Association.

The Association shall also have the duty and obligation to establish, construct, maintain and repair all property described above and related matters.

The Association, in its sole discretion, shall also have the absolute power and authority to levy assessments against each lot owner for such care.

In the event an owner of any lot shall fail to maintain the premises and the improvement situated thereon in a manner satisfactory to the Association, it, after approval by two-thirds (2/3rds) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said lot and to repair, maintain, and restore the lot and water area.

19. **SOUTHBAY DEVELOPMENT:** All lot owners in the SouthBay Development shall become members of the SouthBay Homeowners Association.

20. **MERGER POWERS OF SOUTHBAY HOMEOWNERS ASSOCIATION:** The Association shall have the specific power and authority to merge, combine, or otherwise cooperate with any other homeowners association or similar organization that may share common concerns or interest as the Homeowners Association.

21. **INVALIDITY OF ANY PROVISION:** In the event any restriction or obligation herein contained by invalid or held invalid or void by any court

of competent jurisdiction, such invalidity or nullity shall in no way affect any other condition or restriction herein contained.

22. **NO WAIVER:** A waiver of a breach of any of the foregoing conditions or restrictions shall not be construed as a waiver of any succeeding breach of violation thereof or of any other restriction or obligation.

23. **EASEMENTS OF USAGE OF WATER AREAS:** All lots are subject to an access and usage easement of the water areas for the benefit of all lot owners in the "SouthBay Area", and their guests and invitees. Said lot owners shall only have an access and usage easement to those water areas that are connected by water and easements between the dominant and servient water areas.

24. **LEGAL ACTION IN THE EVENT OF BREACH:** As to Developer and the owner or owners of any of said lot or lots, including any bona fide purchaser under contract, the foregoing restrictions and obligations shall operate as covenants running with the land and a breach of any of them or a continuance of any such breach may be enjoined, abated, or remedied by appropriate proceedings by Developer, by the Committee, or by the Association as the case may be.

25. **INTERPRETATION OF RESTRICTIONS:** All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Committee or the Association and their decision shall be final, binding and conclusive on all of the parties affected.

26. **FAILURE TO COMPLY WITH ORDER OF COMMITTEE:** In the event of the failure of any individual lot owner to comply with a written directive or order from the Committee or Association, then, in such event, the Committee or Association shall have the right and authority to perform the subject matter of such direction or order and the cost of such performance shall be charged to the owner of the lot in question and may be recovered by the committee or Association in an action at law against such individual lot owner.

27. **ASSIGNMENT BY DEVELOPER:** Developer may sell or assign its rights under these Covenants of Restrictions and Obligations, and, any successor or subsequent assignee shall have all the powers and duties of Developer.

28. **VIEWS:** No lot owner may obstruct or limit other lot owner's view of the water areas by placing any fence, trees, shrubs, or any other obstructions on said lot owners property. The Architectural Review Committee shall determine if a view obstruction will occur or has occurred, and such determination shall be considered an authorized interference with such right, and the lot owner, at his or her cost, shall remove obstruction on demand.

29. **CONSENT TO ASSESSMENTS FOR CONSTRUCTION AND MAINTENANCE OF TREES, GREEN AREAS, ETC.:** Developer will be developing a green area or areas in and around the SouthBay Development which shall include the landscape islands at the entrances of the SouthBay Development and in the interior of SouthBay Development. In addition, Developer may erect walking paths in and around the area, and also install light fixtures and irrigation sprinkler systems at various sites to the area. In addition, Developer intends to plant trees and various vegetation at the entrances and in the interior of SouthBay Development, green areas, and paths. The SouthBay Homeowners Association shall be responsible for the maintenance of the above-described improvements including but not limited to watering, trimming, replacing dead or undesirable vegetation, replacing any of the improvements, and maintaining and replacing signage and lighting. **NOTICE THAT THE OWNERS OF LOTS IN THIS DEVELOPMENT SHALL BE PERPETUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE ABOVE-DESCRIBED AREAS.** In the event that the SouthBay Homeowners Association does not maintain the above-described areas, a lot owner is consenting and agreeing that the City of Bismarck may place a special assessment(s) on their lot for the maintenance of the improvements described above.

30. **GREEN AREA EASEMENTS:** Either the Developer or the City of Bismarck or any utility company may use the green area for easement purposes to install and maintain utility services including cable and telephone and also for storm water conveyance and/or detention.



DECLARATION OF RESTRICTIONS AND OBLIGATIONS

THIS Declaration of Restrictions, Obligations, and Architectural Control is made this 24th day of July, 2007, by Southbay Development LLC, hereinafter referred to as "Developer".

WITNESSETH

WHEREAS, Developer is the owner of the following described Real Property located in Burleigh County, North Dakota, which is hereinafter referred to as the "Real Property":

SOUTHBAY SECOND ADDITION TO THE CITY OF BISMARCK

- Lots 1 through 7, Block 1;
- Lots 1 through 14, Block 2;
- Lots 1 through 130, Block 3;
- Lot 1, Block 4;
- Lot 1, Block 5;
- Lots 1 through 12, Block 6;
- Lots 1 through 7, Block 7;

and

WHEREAS, this Real Property has been platted into lots which are presently known as "Southbay Second Addition" development to the City of Bismarck, County of Burleigh, North Dakota; and

WHEREAS, Developer is about to sell and convey some or all of said lots, located within said plat, and before selling or conveying any of the said lots, desires to subject all of the said lots to certain conditions, restrictions, and obligations for the protection and benefit of Developer and any and all future owners of the said lots or any of them;

NOW, THEREFORE, in consideration of the premises, Developer hereby certifies and declares that it has established and does hereby establish the following covenants and restrictions for the protection and benefit of all of the said Real Property, and has fixed and does hereby fix the following additional protective conditions, restrictions, and obligations upon and subject to which each and all of the lots in the said Real Property shall be hereafter held, used, occupied, leased,

sold and/or conveyed. Each and all of which the said conditions and restrictions shall inure to the benefit of, be binding upon and pass with said Real Property, and each and every lot and/or parcel thereof, and shall inure to the benefit of, apply to, and bind the respective successors in title or interest of Developer.

THE SAID CONDITIONS AND RESTRICTIONS ARE AS FOLLOWS, TO-WIT:

1. **PURPOSES:** The said lots within the Real Property shall be used for residential purposes as set out on the development plan of Developer, including as Developer may hereafter amend such development plan. In this regard, Developer shall have the absolute right and ability to amend and change the development plan without notice, in the sole discretion of Developer. Every person who purchases a lot in the above-described Real Property waives any and all objection to such development, and consents to such development, as well as all amendments and changes thereto. Such waiver and consent shall bind all transferees and future owners of any lot in the said Real Property.

2. **ARCHITECTURAL REVIEW COMMITTEE:** There shall be an Architectural Review Committee ("Committee") consisting of three (3) persons to be appointed by Developer. Each of the said persons so appointed shall be subject to removal at the direction of Developer at any time and from time to time, and all vacancies on the said Committee shall be filled by appointment of Developer. In the event of the failure of Developer to appoint such Committee or to fill any vacancies therein, then in such event, the owners of a majority in number of the lots in the said Real Property shall have the right by written document to appoint members of the said Committee or to fill any vacancies therein, until such time as Developer shall appoint other members to such Committee. The initial members of the Committee shall be Kevin Turnbow, Leann Turnbow, and Dave Patience.

3. **RESPONSIBILITIES OF ARCHITECTURAL REVIEW COMMITTEE:**

A. The Committee shall be responsible for reviewing the plans for all proposed new construction, additions, or modifications. The Committee shall be responsible to ascertain that the plans and subsequent construction meet the minimum building requirements set forth in this Declaration. The primary purpose of the Committee shall be to assist property owners in achieving compliance with the building restrictions.



675855

Page: 2 of 15
07/24/2007 02:12P

2

B. Any property owner seeking to construct a new home or other appurtenant structure, or to add to or modify any portion of the exterior of an existing home, shall submit the plans to the Committee for review. A modification of the home exterior will include decks, hot tubs, patios, pools, and similar alterations. Construction of new structures includes equipment and material housing, dog runs, gazebos, arbors associated with landscaping, and other similar construction.

C. No construction, change, modification, or alteration for which plans are to be submitted to the Committee pursuant to Paragraph B immediately above, shall commence until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted and approved in writing by the Committee as to the harmony of external design and location in relation to surrounding structures and topography, size, estimates of costs, and such other factors as the Committee considers necessary, appropriate, and relevant to maintain property values of nearby properties. In the event the Committee fails to approve or disapprove the design and location plan within thirty (30) days after the plans and specification have been submitted to it, approval will not be required and full compliance with this section of the Declaration will be deemed to have occurred.

D. Without limiting the generality of the factors to be considered by the Committee, the following restrictions shall apply:

(1) All roofing material shall be limited to either cedar shakes, cedar shingles, or earth toned colored shingles approved by the Committee. Flat roofs will be permitted.

(2) All driveways and parking bays shall be constructed of concrete, concrete aggregate, or pavers.

(3) Heat pumps, propane tanks, solar devices, chimney flues, hot tub pumps, swimming pools, pumps and filtration systems, satellite dishes, and similarly exposed mechanical equipment shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety concerns. Irrigation pumps are encouraged for lawn watering and will only be permitted if the pumps are installed below grade with a cover or the pumps are actually submerged.



675855

3

Page: 3 of 15
07/24/2007 02:12P

GREGORY W TSCHIDER

DECRES

52.00 Burleigh County

(4) Siding shall be of wood, brick, stucco, dryvit, vinyl, or metal siding or combinations of those materials as approved by the Committee in writing and the colors shall be either white or earth tones.

E. In spite of the above provisions, the Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this Declaration, and no member of the Committee shall have any liability, responsibility, or obligation, whatever, for any decision or lack of a decision, in the carrying out of duties as a member of the Committee. The Committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this Declaration shall rest with the homeowner. Each homeowner agrees to save, defend, and hold harmless the Committee and each of its members on account of any activities of the Committee relating to the owner's property or buildings to be constructed on his or her property.

4. **BUILDING RESTRICTION:**

A. Any home constructed on a lot shall have a minimum main floor area of the main structure, exclusive of one-story open porches and garages, of not less than one thousand five hundred (1,500) square feet for a one-story dwelling. In the case of a two story (not including basement) dwelling, the above ground floor living level shall be not less than one thousand two hundred (1,200) square feet and the total finished square footage area, excluding the basement, shall not be less than one thousand, eight hundred (1,800) square feet. In the case of a split-level dwelling, the total above ground level shall not have less than one thousand five hundred (1,500) square feet. All buildings are subject to the requirements of the Bismarck City Building Code.

B. The setback line for construction of a house shall be in conformity with the restrictions reflected on the Master Plan or in the event no restriction is reflected on the Master Plan, then the setback shall be in conformity with the decision of the Architectural Review Committee or in conformity with existing adjoining homes or city ordinance.

C. No trailer, tent, shack, garage, barn, or other outbuildings shall at any time be used as a residence, temporarily or permanently, on any building site. No modular, manufactured, or mobile homes to be used as a residence, temporarily or permanently, may be placed on any lot.



675855

Page: 4 of 15

07/24/2007 02:12P

GREGORY W TSCHIDER

DECRES

52.00 Burleigh County

D. Any construction commenced on any house as provided in this Declaration shall be substantially completed, including, but not limited to, all staining and painting, within twelve (12) months from the date the construction is commenced.

E. No sign of any kind shall be displayed to public view on any building site, except for one sign limited to the builder or advertising the property for sale. There shall be no restriction on signs used by Developer during the period of development of this addition.

F. All lines or wires for telephone, power, cable television, or otherwise shall be placed underground and no such wires shall be shown on the exterior of any building unless the same shall be underground or in a conduit attached to a building. No television or radio antenna or aerial shall be installed. Television satellite disks may be installed but not to exceed eighteen (18) inches in diameter. Flagpoles may not be constructed or placed on the property that exceed twenty (20) feet in height and may only be placed in the backyard. No flagpoles may be erected in the front yards.

G. No sculptures, railings, monuments, or any other non-vegetation objects shall be placed or erected in the front yards, except mail boxes as approved by the Committee.

H. No fences shall be constructed, however, chain-link fences adjacent to the home for animal containment purposes may be permitted with proper screening from neighbors and public view, if approved by the Committee, however, the fence may not exceed six (6) feet in height.

I. No noxious, illegal, or offensive use of property shall be carried on any lot, nor shall anything be done on it that may be, or become, an annoyance or nuisance to the neighborhood. No grantee or grantees, under any conveyance, nor purchasers, shall at any time conduct or permit to be conducted on any residential lot any trade or business of any description, either commercial or noncommercial, religious or otherwise, including day schools, nurseries, or church schools, nor shall the premises be used for any other purpose whatever except for the purpose of providing a private, single-family or two family dwelling or residence.

J. No trash, garbage, ashes, or other refuse, junk, vehicles in disrepair, underbrush, or other unsightly growths or objects shall be maintained or allowed on any lot. All fences and buildings shall be kept in a state of repair. All residences, garages, and accessory buildings shall be painted or stained, from time to time, so as to maintain a reasonable state of



675855

5

Page: 5 of 15

07/24/2007 02:12F

GREGORY W TSCHIDER

DECRES

52.00 Burleigh County

repair. All vacant lots shall be mowed at least three (3) times per year, with each mowing to occur by June 30th, August 30th, and October 15th of each year and shall be maintained in accordance with the rules adopted by the Architectural Review Committee.

K. No boat, boat trailer, house trailer, horse trailer, automobile, recreational vehicle, truck, or other vehicle, or any part thereof shall be stored or permitted to remain on any residential lot unless the same is stored or placed in a garage or fully-enclosed space.

L. Each property owner shall exercise as much care as is possible to retain natural vegetation, trees, shrubs, and other similar growth. Prior to the removal of any such growth, the plans referred to above shall be submitted to the Committee for the Committee's review and comments. Such plans shall include the location of all trees that are four (4) inches or more in diameter, measured two (2) feet above the ground. The design of all structures shall attempt to save such trees, except to the extent that they may become dangerous or hazardous or impede proper drainage of the lot. If any such tree is removed without approval of the Committee, the property owner, on order of the Committee will replace the tree with a similar tree specified by the Committee. If the property owner fails to replace the tree within thirty (30) days of the date of the Committee's order, the obligation will become a lien on the land, accruing interest and subject to enforcement under the provisions of this Declaration, including fees and costs. No landscaping may be commenced, changed, or modified until plans have been submitted in writing to the Committee for approval. In the event the Committee fails to approve or disapprove the landscaping proposal within thirty (30) days after the plan has been submitted, approval will not be required. Each property owner, within sixty (60) days of the completion of a residence, shall landscape all yards fronting a street, provided, however, that a right to extend the time period for completion of the landscaping may be sought, in writing, and obtained at the sole discretion of the Committee in the case of extenuating circumstances. If the home is completed during the winter months, then the home owner must complete the landscaping within sixty (60) days after the completion of the residence or within thirty (30) days after the frost is out of the ground, whichever is later.

M. All mailboxes and mailbox holders shall be of a standard design accepted by the Committee and adhering to the applicable specifications of the U.S. Postal Service. All mailboxes shall be located as directed by the U.S. Postal Service. Each lot owner shall be responsible for the maintenance and replacement of his or her mailbox so as to keep it in a state of repair at all times.



675855

Page: 6 of 15

07/24/2007 02:12F

6

GREGORY W TSCHIDER

DECRES

52.00 Burleigh County

N. No animal, livestock, or poultry shall be raised, bred, or kept on any lot of the subdivision for commercial purposes. All dogs, cats, or other household pets must be kept on a leash, unless they are within a fenced area approved in writing by the Committee.

O. No storage shed or freestanding garage may be constructed on any lot.

P. **CAMPERS, BOATS, ETC:** No camper, boat, trailer, or pontoon may be parked in a driveway or on the street for more than forty-eight (48) continuous hours unless approved by the Architectural Review Committee.

Q. **ELEVATION:** The minimum elevation of the basement which is not a walk-out basement shall be one thousand six hundred thirty-two (1632) feet. The minimum elevation of the basement floor for a basement with a walk-out shall be one thousand six hundred thirty-six (1,636) feet.

5. **PARTITION AND SUBDIVISION PROHIBITED:** Each of the owners of lots or parcels in said Real Property, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way wavering or separating such ownership from any of the other ownerships in said Real Property. None of the lots may be subdivided, except by the Developer. In the case of a two-family dwelling, a lot or that portion of an additional lot, combined with an existing lot may be split to provide individual ownership of a twin home or duplex. Developer shall have the right to change lot lines as Developer sees fit.

6. **NOTICE OF CLAIM OF BREACH:** Developer, or the Committee may at any time that Developer or the Committee deems a breach of these Restrictions and Obligations has occurred, execute, acknowledge and record in the Office of the Recorder of Burleigh County, a Notice of Claim of Breach setting forth the facts of such breach, describing the lot or lots upon which such breach has occurred and setting forth the name of the owner or owners thereof. Such notice upon being recorded, shall be notice to all persons of such breach, provided an action has been commenced within sixty (60) days after the recording of such notice to establish such breach, and if no such action has been commenced within such sixty (60) day period, then and in that event such notice shall be of no force and effect whatsoever and the breach set forth in said notice shall be presumed to have been remedied.



675855

Page: 7 of 15
07/24/2007 02:12F

7

GREGORY W TSCHIDER

DECRES

52.00 Burleigh County

7. **MASTER PLAN:** Developer has provided to the public a proposed master plan or plans of the "Southbay Area". Said master plan is not binding on the Developer nor has the master plan been zoned or platted and the public is informed that said master plan may be changed by Developer at his discretion. Any documents reflecting a proposed master plan are only a general reflection of development possibilities and the public is hereby informed that is should not rely on such documents in making investment decisions. (In addition, Developer may add additional land and waterways to the proposed "Southbay Area".)

8. **DIRT REMOVAL:** Any and all dirt, debris, or vegetation that is removed, moved, or excavated from each lot may only be stored on the front portion (portion of the lot adjacent to the street) of the lot. The dirt store on this front portion of the lot shall be removed in a timely manner as construction of the house permits.

9. **DOCKS AND SIMILAR STRUCTURES:** No dock, swim platform, or other structure shall be placed on or under the water until the construction plans and specifications have been approved in writing by the Architectural Review Committee ("Committee") as to quality, workmanship, material, harmony (including color) of existing structures, and location. All docks are limited to aluminum construction with plastic floats. No decking shall be placed on the docks until the decking has been approved by the Committee. Only one boat dock structure is permitted per lot with a maximum configuration of four (4) boats per lot. Combined lot use will be encouraged. No structure will be allowed to impede boat traffic flow. Docks may be limited to a configuration parallel with the shoreline if traffic flow is a concern. The Homeowners Association or the Architectural Review Committee may require docks to be relocated or modified at the owner's expense. The Committee in consultation with Developer shall develop strict guidelines for all structures of every kind, whether temporary or permanent, to be placed in or near the water areas on the above-described Real Property. Such guidelines shall assure that all such structures are uniform in appearance and are aesthetically pleasing. The Committee shall have the absolute right to select only one company from whom such docks and similar structures are purchased in order to assure such uniformity. No owner of any lots may lease, assign, or in any manner transfer any ownership or possessor rights in said docks or similar structures.

10. **BOATS:** All watercraft shall be electric powered or gas powered with a 25 HP engine or less. The parking of guest boats is limited to a forty-eight (48) hour period. Lot owners and their guests shall abide by the guidelines for usage of the water area for various activities. Boat and all other watercraft speeds shall be minimal as set specifically by the Southbay Homeowners Association ("Association"). There shall be no racing of watercraft and no skiing allowed on the water areas on the above-described Real Property. The Southbay Homeowners Association shall develop strict rules to govern all water activities on the above-



675855

8

Page: 8 of 15

07/24/2007 02:12F

GREGORY W TSCHIDER

DECRES

52.00 Burleigh County

described Real Property and such rules shall control all such activities, including the levy of fines against any violations thereof. Due to the fact that Southbay water areas are ground water source, any and all watercraft brought in from other areas must be power sprayed and all bacteria removed before such watercraft can be placed in the Southbay water areas.

11. USAGE OF WATERWAY AND CLEANING OF WATERCRAFT:

The waterways and ramps adjacent to the waterways can only be used by lot owners and their family members who reside with the lot owner. The waterways and ramps are not public and shall not be used by anyone other than the lot owners and their family members who reside with them.

No watercraft may be placed in the waterway until the watercraft has been power-sprayed to clean the boat and trailer and to kill bacteria, vegetation, etc. before placing the watercraft in the water. The Homeowners Association shall be responsible for maintaining and repairing the power sprayer and the chemicals for the power sprayer, however, it is the responsibility of the owner of the watercraft to actually do the power spraying.

12. LIGHT FIXTURE AND UTILITIES: Developer shall choose a light fixture that will be paid for by the lot owner and that will be installed by the owner in the rear of each owner's lot in a location approved by the Committee. The light fixture shall be the same for all lots and shall contain an electronic photo eye.

13. AREA ADJACENT TO WATER: The lot owner shall construct a concrete curb according to the Engineer's detail adjacent to the water area as directed by the Committee. In the area between the curb and the water line, the lot owner shall cover that area with landscaping fabric and sand or fabric and washed pea rock. Said improvements shall be constructed and completed at the same time that the residence construction is completed. The Committee will determine the type of fabric and the depth of sand or pea rock. **THE DEVELOPER IS NOT RESPONSIBLE FOR ANY OF THE COSTS FOR THE CONCRETE CURB, FABRIC, SAND, OR PEA ROCK.**

On all lots the owner shall be responsible for maintaining and repairing the area adjacent to the water including but not limited to all bank stabilization, erosion damage, and any and all damage to the curb and the sand or washed pea rock. The owner shall maintain the sand or pea rock free of weeds and all debris.

14. WORK ON BACK SLOPES: If the lot owner desires to change, repair, or landscape the back slope area above the concrete curb, the lot owner must obtain the written approval of the Committee.



675855

9

Page: 9 of 15
07/24/2007 02:12F

GREGORY W TSCHIDER

DECRES

52.00 Burleigh Count

15. **ASSESSMENTS FOR MAINTENANCE AND IMPROVEMENTS TO WATER AREAS:** Developer will be developing a large contiguous area described as the "Southbay Area". Developer intends to develop water areas throughout the Southbay Area. It will be the responsibility of the Southbay Homeowners Association to maintain and improve all of the water areas. Each lot in the Southbay Development will be a member of the Southbay Homeowners Association.

Maintenance shall also include installing aerators, circulation pipes or other equipment required for water quality needs and shall also include the costs of maintaining all pipes and pumps that are required for maintaining water quality. Since all lot owners will be members of Association, all costs will be assessed on a pro rata basis regardless of which addition, subdivision, or lot owner is benefited. Off water lots will be assessed at a rate of 1/2 the assessment of a water front lot.

Initially, Developer will stock fish in the waterway. Thereafter, it will be the Homeowners Association's responsibility to regulate and control the amount and type of fish in the waterways.

Water quality shall be tested at least once each year and may be more often if directed by the North Dakota Health Department. The cost to be the responsibility of the Homeowners Association.

16. **SOUTHBAY HOMEOWNERS ASSOCIATION ("ASSOCIATION"):** The water, sand, pea rock and concrete curb area of and adjacent to each lot shall require maintenance in order to insure the quality of the development and subdivision involving the Real Property. Each owner of a lot, in the Real Property, shall be obligated to pay the cost of any repair or maintenance related to the concrete curb, sand, fabric, and pea rock for their lot. All lot owners shall equally share the costs to repair or maintain the boat ramp, park, planting areas and all other costs for Association activities as determined solely by the Association. Such activities and costs shall be determined by the Association which has already been established. Each owner of a lot in the property above-described shall be a regular member of the Association, a corporation not for profit, which said membership shall be appurtenant to such lot, and the transfer of title to such lot shall automatically transfer the regular membership appurtenant to such lot to the transferee or transferees. However, Developer shall have the right to elect all of the members of the Board of Directors of the Association until Developer has transferred or sold (excluding the common and limited common areas) ninety percent (90%) of the lots in the Southbay Development. Each such owner and/or owners are obligated to promptly, fully, and faithfully comply with and conform to the By-Laws of the Association, and the rules and regulations from time to time prescribed thereunder by the Board of Directors of said corporation or its officers and to promptly pay in full all dues, fees or assessments levied by said corporation



675855

10

Page: 10 of 15

07/24/2007 02:12P

GREGORY W TSCHIDER

DECRES

52.00 Burleigh County

on its members whether such dues, fees or assessments were levied prior or subsequent to the date of acquisition of title, except that the purchaser of any such unit at a Trustee's Sale on foreclosure or a lender who acquires title by deed in lieu of foreclosure shall not be liable for any dues, fees or assessments levied prior to such sale or acquisition of title. Although the Association may require the owner of an off water lot to pay dues, fees, and assessments, such dues, fees, and assessments shall not be more or less than ½ that paid by a water front lot. Initially, the Association dues shall be Fifty Dollars (\$50.00) per year payable commencing on the day that the lot is purchased from Southbay Development, LLC. Southbay Development, LLC shall not at any time be responsible for dues or assessments on those lots owned by Southbay Development, LLC. The initial Fifty Dollars (\$50.00) annual dues amount shall be on a prorated basis for the number of days for which the buyer of the lot owned the property for that year. Annual dues shall be due on January 15th of each year. Any assessment that is not paid within thirty (30) days after the due date shall bear interest at the rate on one and one-half percent (1½%) per month (eighteen percent (18%) annual percentage rate). Developer shall not be required to pay any dues on any vacant lots or spec homes owned by Developer.

17. LIEN IN FAVOR OF SOUTHBAY HOMEOWNERS ASSOCIATION: The Association shall have a lien against each of the lots in the said Real Property to secure the full and faithful performance of these Restrictions and Obligations, and in the event of the non-performance or default hereunder by any of the owners of a lot in the said Real Property, the interest of such defaulting owner may be foreclosed by said corporation in the same manner as a realty mortgage and any redemption thereafter shall be subject to the lien herein created as to other or future events of non-performance or default, and the lien hereby created shall likewise apply to the Grantee of any Sheriff's Deed after foreclosure as to other or future events of non-performance or default; or the said lien may be foreclosed as a mortgage with power of sale, provided however, that it is specifically understood that the lien herein created shall, at all times, be subordinate and inferior to the lien of any bona fide lending institution which now exists or is hereafter placed against the interest of such defaulting individual owner in the above-described property or any part or parcel thereof.

18. POWERS AND DUTIES OF SOUTHBAY HOMEOWNERS ASSOCIATION: The Association, acting through its Board of Directors and officers, shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the areas consisting of the water area described above, all as more fully set forth in the Articles of Incorporation or the By-Laws of said Association.

The Association shall also have the duty and obligation to establish, construct, maintain and repair all property described above and related matters.



675855

Page: 11 of 15
07/24/2007 02:12F

11

GREGORY W TSCHIDER

DECRES

52.00 Burlleigh Count

The Association, in its sole discretion, shall also have the absolute power and authority to levy assessments against each lot owner for such care.

In the event an owner of any lot shall fail to maintain the premises and the improvement situated thereon in a manner satisfactory to the Association, it, after approval by two-thirds (2/3rds) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said lot and to repair, maintain, and restore the lot and water area.

19. **SOUTHBAY DEVELOPMENT**: All lot owners in the Southbay Development shall become members of the Southbay Homeowners Association. Developer shall have the right to expand the Southbay Development, area and waterways as he sees fit and any additional lots will also become members of the Southbay Homeowners Association.

20. **MERGER POWERS OF SOUTHBAY HOMEOWNERS ASSOCIATION**: The Association shall have the specific power and authority to merge, combine, or otherwise cooperate with any other homeowners association or similar organization that may share common concerns or interest as the Homeowners Association.

21. **INVALIDITY OF ANY PROVISION**: In the event any restriction or obligation herein contained by invalid or held invalid or void by any court of competent jurisdiction, such invalidity or nullity shall in no way affect any other condition or restriction herein contained.

22. **NO WAIVER**: A waiver of a breach of any of the foregoing conditions or restrictions shall not be construed as a waiver of any succeeding breach of violation thereof or of any other restriction or obligation.

23. **EASEMENTS OF USAGE OF WATER AREAS**: All lots are subject to an access and usage easement of the water areas for the benefit of all lot owners in the "Southbay Area", and their guests and invitees. Said lot owners shall only have an access and usage easement to those water areas that are connected by water and easements between the dominant and servient water areas.

24. **LEGAL ACTION IN THE EVENT OF BREACH**: As to Developer and the owner or owners of any of said lot or lots, including any bona fide purchaser under contract, the foregoing restrictions and obligations shall operate as covenants running with the land and a breach of any of them or a continuance of any such breach may be enjoined, abated, or remedied by appropriate proceedings by Developer, by the Committee, or by the Association as the case may be.



675855
Page: 12 of 15
07/24/2007 02:12F

12

25. **INTERPRETATION OF RESTRICTIONS:** All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Committee or the Association and their decision shall be final, binding and conclusive on all of the parties affected.

26. **FAILURE TO COMPLY WITH ORDER OF COMMITTEE:** In the event of the failure of any individual lot owner to comply with a written directive or order from the Committee or Association, then, in such event, the Committee or Association shall have the right and authority to perform the subject matter of such direction or order and the cost of such performance shall be charged to the owner of the lot in question and may be recovered by the committee or Association in an action at law against such individual lot owner.

27. **ASSIGNMENT BY DEVELOPER:** Developer may sell or assign its rights under these Covenants of Restrictions and Obligations, and, any successor or subsequent assignee shall have all the powers and duties of Developer.

28. **VIEWS:** No lot owner may obstruct or limit other lot owner's view of the water areas by placing any fence, trees, shrubs, or any other obstructions on said lot owners property. The Architectural Review Committee shall determine if a view obstruction will occur or has occurred, and such determination shall be considered an authorized interference with such right, and the lot owner, at his or her cost, shall remove obstruction on demand.

29. **CONSENT TO ASSESSMENTS FOR CONSTRUCTION AND MAINTENANCE OF TREES, GREEN AREAS, ETC.:** Developer will be developing a green area or areas in and around the Southbay Development which shall include the landscape islands at the entrances of the Southbay Development and in the interior of Southbay Development. In addition, Developer may erect walking paths in and around the area, and also install light fixtures and irrigation sprinkler systems at various sites in the area. In addition, Developer intends to plant trees and various vegetation at the entrances and in the interior of Southbay Development, green areas, and paths. The Southbay Homeowners Association shall be responsible for the maintenance of the above-described improvements including but not limited to watering, trimming, replacing dead or undesirable vegetation, replacing any of the improvements, and maintaining and replacing signage and lighting. **NOTICE: THE OWNERS OF LOTS IN THIS DEVELOPMENT SHALL BE PERPETUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE ABOVE-DESCRIBED AREAS.** In the event that the Southbay Homeowners Association does not maintain the above-described areas, a lot owner is consenting and agreeing that the City of Bismarck may place a special assessment(s) on their lot for the maintenance of the improvements described above.



675855

Page: 13 of 15
07/24/2007 02:12P

13

30. **GREEN AREA EASEMENTS**: Either the Developer or the City of Bismarck or any utility company may use the green area for easement purposes to install and maintain utility services including cable and telephone and also for storm water conveyance and/or detention.

31. **WAIVER OF LIABILITY OF CITY OF BISMARCK**: All lot owners and the Developer waive all claims or demands against the City of Bismarck resulting from damage to the landscape islands by the City of Bismarck during roadway maintenance activities.

32. **COMMON AREAS**: Common areas shall be defined as the following lots:

Lot 1, Block 1;
Lot 14, Block 2;
Lot 1, Block 4;
Lot 1, Block 5;

a. Such lots shall be for the benefit of all lots in Southbay Second Addition. Maintenance of said common area lots shall be the responsibility of the Southbay Homeowners Association. All of such costs, including, but not limited to maintenance expenses, insurance, and all other expenses shall be paid by the Association and assessed by the Association against the various lot owners in the same manner as other assessments described herein.

All lot owners shall pay their prorata share of said common area expenses based on the ratio of their lots to the total lots (excluding the common areas lots) in Southbay Second Addition. The Association shall have the same rights and obligations in regards to the common areas as are described for the Association herein.

b. All of the lot owners of Southbay Second Addition, individually, or as members of the Southbay Homeowners Association shall be perpetually responsible for the maintenance of the areas described as "Common Areas" herein.

c. If the owners fail to maintain the areas, the City of Bismarck, may, but is not required to, maintain the areas and assess all of the costs relating to such maintenance against all of the lots in Southbay Second Addition.



675855

Page: 14 of 15

67/24/2007 02:12P

14

GREGORY W TSCHIDER

DECRES

52.00 Burleigh County

DECLARATION OF RESTRICTIONS AND OBLIGATIONS

THIS Declaration of Restrictions, Obligations, and Architectural Control is made this 28th day of April, 2017, by Southbay Development LLC, hereinafter referred to as "Developer"

WITNESSETH

WHEREAS, Developer is the owner of the following described Real Property located in Burleigh County, North Dakota, which is hereinafter referred to as the "Real Property"

SOUTHBAY FIFTH ADDITION TO THE CITY OF BISMARCK

Lots 1 through 26, Block 1,
Lots 1 through 3, Block 2,
Lots 1 through 9, Block 3,
Lots 1 through 40, Block 4,

and

WHEREAS, this Real Property has been platted into lots which are presently known as "Southbay ~~Second~~ ^{Fifth} Addition" development to the City of Bismarck, County of Burleigh, North Dakota, and

WHEREAS, Developer is about to sell and convey some or all of said lots, located within said plat, and before selling or conveying any of the said lots, desires to subject all of the said lots to certain conditions, restrictions, and obligations for the protection and benefit of Developer and any and all future owners of the said lots or any of them,

NOW, THEREFORE, in consideration of the premises, Developer hereby certifies and declares that it has established and does hereby establish the following covenants and restrictions for the protection and benefit of all of the said Real Property, and has fixed and does hereby fix the following additional protective conditions, restrictions, and obligations upon and subject to which each and all of the lots in the said Real Property shall be hereafter held, used, occupied, leased, sold and/or conveyed. Each and all of which the said conditions and restrictions shall inure to the benefit of, be binding upon and pass with said Real Property and each and every lot and/or parcel thereof, and shall inure to the benefit of apply to, and bind the respective successors in title or interest of Developer



GREGORY TSCHIDER

DECRES

856128

\$49.00
Page 1 of 14
4/28/2017 1:50 PM
Burleigh County



856128

DECRES

\$49.00
Page 2 of 14
4/20/2017 1:58 PM
Burleigh County

THE SAID CONDITIONS AND RESTRICTIONS ARE AS FOLLOWS, TO-WIT:

1 **PURPOSES:** The said lots within the Real Property shall be used for residential purposes as set out on the development plan of Developer, including as Developer may hereafter amend such development plan. In this regard, Developer shall have the absolute right and ability to amend and change the development plan without notice, in the sole discretion of Developer. Every person who purchases a lot in the above-described Real Property waives any and all objection to such development, and consents to such development, as well as all amendments and changes thereto. Such waiver and consent shall bind all transferees and future owners of any lot in the said Real Property.

2 **ARCHITECTURAL REVIEW COMMITTEE** There shall be an Architectural Review Committee ("Committee") consisting of three (3) persons to be appointed by Developer. Each of the said persons so appointed shall be subject to removal at the direction of Developer at any time and from time to time, and all vacancies on the said Committee shall be filled by appointment of Developer. In the event of the failure of Developer to appoint such Committee or to fill any vacancies therein, then in such event, the owners of a majority in number of the lots in the said Real Property shall have the right by written document to appoint members of the said Committee or to fill any vacancies therein, until such time as Developer shall appoint other members to such Committee. The initial members of the Committee shall be Kevin Turnbow, Rollin Mehlhoff, and Dave Massey.

3 **RESPONSIBILITIES OF ARCHITECTURAL REVIEW COMMITTEE**

A. The Committee shall be responsible for reviewing the plans for all proposed new construction, additions, or modifications. The Committee shall be responsible to ascertain that the plans and subsequent construction meet the minimum building requirements set forth in this Declaration. The primary purpose of the Committee shall be to assist property owners in achieving compliance with the building restrictions.

B. Any property owner seeking to construct a new home or other appurtenant structure, or to add to or modify any portion of the exterior of an existing home, shall submit the plans to the Committee for review. A modification of the home exterior will include decks, hot tubs, patios, pools, and similar alterations. Construction of new structures includes equipment and material housing, dog runs, gazebos, arbors associated with landscaping, and other similar construction.



C No construction, change, modification, or alteration for which plans are to be submitted to the Committee pursuant to Paragraph B immediately above, shall commence until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted and approved in writing by the Committee as to the harmony of external design and location in relation to surrounding structures and topography, size, estimates of costs, and such other factors as the Committee considers necessary, appropriate, and relevant to maintain property values of nearby properties. In the event the Committee fails to approve or disapprove the design and location plan within thirty (30) days after the plans and specification have been submitted to it, approval will not be required and full compliance with this section of the Declaration will be deemed to have occurred.

D Without limiting the generality of the factors to be considered by the Committee, the following restrictions shall apply:

(1) All roofing material shall be limited to either cedar shakes, cedar shingles, or earth toned colored shingles approved by the Committee. Flat roofs will be permitted.

(2) All driveways and parking bays shall be constructed of concrete, concrete aggregate, or pavers.

(3) Heat pumps, propane tanks, solar devices, chimney flues, hot tub pumps, swimming pools, pumps and filtration systems, satellite dishes, and similarly exposed mechanical equipment shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety concerns. Irrigation pumps are encouraged for lawn watering and will only be permitted if the pumps are installed below grade with a cover or the pumps are actually submerged.

(4) Siding shall be of wood, brick, stucco, dryvit, vinyl, or metal siding or combinations of those materials as approved by the Committee in writing and the colors shall be either white or earth tones.

E In spite of the above provisions, the Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this Declaration, and no member of the Committee shall have any liability, responsibility, or obligation, whatever, for any decision or lack of a decision, in the carrying out of duties as a member of the Committee. The Committee and its members shall have only an advisory



function, and the sole responsibility for compliance with all of the terms of this Declaration shall rest with the homeowner. Each homeowner agrees to save, defend, and hold harmless the Committee and each of its members on account of any activities of the Committee relating to the owner's property or buildings to be constructed on his or her property.

4 **BUILDING RESTRICTION**

A. Any home constructed on a lot shall have a minimum main floor area of the main structure, exclusive of one-story open porches and garages, of not less than one thousand five hundred (1,500) square feet for a one-story dwelling. In the case of a two-story (not including basement) dwelling, the above ground floor living level shall be not less than one thousand two hundred (1,200) square feet and the total finished square footage area, excluding the basement, shall not be less than one thousand, eight hundred (1,800) square feet. In the case of a split-level dwelling, the total above ground level shall not have less than one thousand five hundred (1,500) square feet. All buildings are subject to the requirements of the Bismarck City Building Code.

B. The setback line for construction of a house shall be in conformity with the restrictions reflected on the Master Plan or in the event no restriction is reflected on the Master Plan, then the setback shall be in conformity with the decision of the Architectural Review Committee or in conformity with existing adjoining homes or city ordinance.

C. No trailer, tent, shack, garage, barn, or other outbuildings shall at any time be used as a residence, temporarily or permanently, on any building site. No modular, manufactured, or mobile homes to be used as a residence, temporarily or permanently, may be placed on any lot.

D. Any construction commenced on any house as provided in this Declaration shall be substantially completed, including, but not limited to, all staining and painting, within twelve (12) months from the date the construction is commenced.

E. No sign of any kind shall be displayed to public view on any building site, except for one sign limited to the builder or advertising the property for sale. There shall be no restriction on signs used by Developer during the period of development of this addition.

F. All lines or wires for telephone, power, cable television, or otherwise shall be placed underground and no such wires shall be shown on the exterior of any building unless the same shall be underground or in a

conduit attached to a building No television or radio antenna or aerial shall be installed Television satellite disks may be installed but not to exceed eighteen (18) inches in diameter Flagpoles may not be constructed or placed on the property that exceed twenty (20) feet in height and may only be placed in the backyard No flagpoles may be erected in the front yards

G No sculptures, railings, monuments, or any other non-vegetation objects shall be placed or erected in the front yards, except mail boxes as approved by the Committee

H No fences shall be constructed, however, chain-link fences adjacent to the home for animal containment purposes may be permitted with proper screening from neighbors and public view, if approved by the Committee, however, the fence may not exceed six (6) feet in height

I No noxious, illegal, or offensive use of property shall be carried on any lot, nor shall anything be done on it that may be, or become, an annoyance or nuisance to the neighborhood No grantee or grantees, under any conveyance, nor purchasers, shall at any time conduct or permit to be conducted on any residential lot any trade or business of any description, either commercial or noncommercial, religious or otherwise, including day schools, nurseries, or church schools, nor shall the premises be used for any other purpose whatever except for the purpose of providing a private, single-family or two family dwelling or residence

J No trash, garbage, ashes, or other refuse, junk, vehicles in disrepair, underbrush, or other unsightly growths or objects shall be maintained or allowed on any lot All fences and buildings shall be kept in a state of repair All residences, garages, and accessory buildings shall be painted or stained, from time to time, so as to maintain a reasonable state of repair All vacant lots shall be mowed at least three (3) times per year, with each mowing to occur by June 30th, August 30th, and October 15th of each year and shall be maintained in accordance with the rules adopted by the Architectural Review Committee

K No boat, boat trailer, house trailer, horse trailer, automobile, recreational vehicle, truck, or other vehicle, or any part thereof shall be stored or permitted to remain on any residential lot unless the same is stored or placed in a garage or fully-enclosed space

L Each property owner shall exercise as much care as is possible to retain natural vegetation, trees, shrubs, and other similar growth Prior to the removal of any such growth, the plans referred to above shall be submitted to the Committee for the Committee's review and comments Such



856128

\$49.00
Page 6 of 14
4/28/2017 1:58 PM
Burleigh County

plans shall include the location of all trees that are four (4) inches or more in diameter, measured two (2) feet above the ground. The design of all structures shall attempt to save such trees, except to the extent that they may become dangerous or hazardous or impede proper drainage of the lot. If any such tree is removed without approval of the Committee, the property owner, on order of the Committee will replace the tree with a similar tree specified by the Committee. If the property owner fails to replace the tree within thirty (30) days of the date of the Committee's order, the obligation will become a lien on the land, accruing interest and subject to enforcement under the provisions of this Declaration, including fees and costs. No landscaping may be commenced, changed, or modified until plans have been submitted in writing to the Committee for approval. In the event the Committee fails to approve or disapprove the landscaping proposal within thirty (30) days after the plan has been submitted, approval will not be required. Each property owner, within sixty (60) days of the completion of a residence, shall landscape all yards fronting a street, provided, however, that a right to extend the time period for completion of the landscaping may be sought, in writing, and obtained at the sole discretion of the Committee in the case of extenuating circumstances.

M All mailboxes and mailbox holders shall be of a standard design accepted by the Committee and adhering to the applicable specifications of the U S Postal Service. All mailboxes shall be located as directed by the U S Postal Service. Each lot owner shall be responsible for the maintenance and replacement of his or her mailbox so as to keep it in a state of repair at all times.

N No animal, livestock, or poultry shall be raised, bred, or kept on any lot of the subdivision for commercial purposes. All dogs, cats, or other household pets must be kept on a leash, unless they are within a fenced area approved in writing by the Committee.

O No storage shed or freestanding garage may be constructed on any lot.

P CAMPERS, BOATS, ETC No camper, boat, trailer, or pontoon may be parked in a driveway or on the street for more than forty-eight (48) continuous hours unless approved by the Architectural Review Committee.

Q ELEVATION The minimum elevation of the basement which is not a walk-out basement shall be one thousand six hundred thirty-two (1632) feet. The minimum elevation of the basement floor for a basement with a walk-out shall be one thousand six hundred thirty-six (1,636) feet.



5 **PARTITION AND SUBDIVISION PROHIBITED** Each of the owners of lots or parcels in said Real Property, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way wavering or separating such ownership from any of the other ownerships in said Real Property. None of the lots may be subdivided, except by the Developer. In the case of a two-family dwelling, a lot or that portion of an additional lot, combined with an existing lot may be split to provide individual ownership of a twin home or duplex. Developer shall have the right to change lot lines as Developer sees fit.

6 **NOTICE OF CLAIM OF BREACH** Developer, or the Committee may at any time that Developer or the Committee deems a breach of these Restrictions and Obligations has occurred, execute, acknowledge and record in the Office of the Recorder of Burleigh County, a Notice of Claim of Breach setting forth the facts of such breach, describing the lot or lots upon which such breach has occurred and setting forth the name of the owner or owners thereof. Such notice upon being recorded, shall be notice to all persons of such breach, provided an action has been commenced within sixty (60) days after the recording of such notice to establish such breach, and if no such action has been commenced within such sixty (60) day period, then and in that event such notice shall be of no force and effect whatsoever and the breach set forth in said notice shall be presumed to have been remedied.

7 **MASTER PLAN** Developer has provided to the public a proposed master plan or plans of the "Southbay Area". Said master plan is not binding on the Developer nor has the master plan been zoned or platted and the public is informed that said master plan may be changed by Developer at his discretion. Any documents reflecting a proposed master plan are only a general reflection of development possibilities and the public is hereby informed that is should not rely on such documents in making investment decisions. In addition, Developer may add additional land and waterways to the proposed "Southbay Area".

8 **DIRT REMOVAL** Any and all dirt, debris, or vegetation that is removed, moved, or excavated from each lot may only be stored on the front portion (portion of the lot adjacent to the street) of the lot. The dirt stored on this front portion of the lot shall be removed in a timely manner as construction of the house permits.

9 **DOCKS AND SIMILAR STRUCTURES** No dock, swim platform, or other structure shall be placed on or under the water until the construction plans and specifications have been approved in writing by the Architectural Review Committee ("Committee") as to quality, workmanship, material, harmony (including color) of existing structures, and location. All docks are limited to aluminum construction with plastic floats. No decking shall be placed on the docks until the decking has been approved by the Committee. Only one boat dock structure is permitted per lot with a maximum configuration of four (4) boats per lot. Combined



lot use will be encouraged. No structure will be allowed to impede boat traffic flow. Docks may be limited to a configuration parallel with the shoreline if traffic flow is a concern. The Homeowners Association or the Architectural Review Committee may require docks to be relocated or modified at the owner's expense. The Committee in consultation with Developer shall develop strict guidelines for all structures of every kind, whether temporary or permanent, to be placed in or near the water areas on the above-described Real Property. Such guidelines shall assure that all such structures are uniform in appearance and are aesthetically pleasing. The Committee shall have the absolute right to select only one company from whom such docks and similar structures are purchased in order to assure such uniformity. No owner of any lots may lease, assign, or in any manner transfer any ownership or possessor rights in said docks or similar structures.

10 **BOATS** All watercraft shall be electric powered or gas powered with a 25 HP engine or less. The parking of guest boats is limited to a forty-eight (48) hour period. Lot owners and their guests shall abide by the guidelines for usage of the water area for various activities. Boat and all other watercraft speeds shall be minimal as set specifically by the Southbay Homeowners Association ("Association"). There shall be no racing of watercraft and no sking allowed on the water areas on the above-described Real Property. The Southbay Homeowners Association shall develop strict rules to govern all water activities on the above-described Real Property and such rules shall control all such activities, including the levy of fines against any violations thereof. Due to the fact that Southbay water areas are ground water source, any and all watercraft brought in from other areas must be power sprayed and all bacteria removed before such watercraft can be placed in the Southbay water areas.

11 **USAGE OF WATERWAY AND CLEANING OF WATERCRAFT** The waterways and ramps adjacent to the waterways can only be used by lot owners and their family members who reside with the lot owner. The waterways and ramps are not public and shall not be used by anyone other than the lot owners and their family members who reside with them.

12 **LIGHT FIXTURE AND UTILITIES** Developer shall choose a light fixture that will be paid for by the lot owner and that will be installed by the owner in the rear of each owner's lot in a location approved by the Committee. The light fixture shall be the same for all lots and shall contain an electronic photo eye.

13 **AREA ADJACENT TO WATER** The lot owner shall construct a concrete curb according to the Engineer's detail adjacent to the water area as directed by the Committee. In the area between the curb and the water line, the lot owner shall cover that area with landscaping fabric and sand or fabric and washed pea rock. Said improvements shall be constructed and completed at the same time that the residence construction is completed. The Committee will determine the

type of fabric and the depth of sand or pea rock **THE DEVELOPER IS NOT RESPONSIBLE FOR ANY OF THE COSTS FOR THE CONCRETE CURB, FABRIC, SAND, OR PEA ROCK.**

On all lots the owner shall be responsible for maintaining and repairing the area adjacent to the water including but not limited to all bank stabilization, erosion damage, and any and all damage to the curb and the sand or washed pea rock. The owner shall maintain the sand or pea rock free of weeds and all debris.

14 **WORK ON BACK SLOPES** If the lot owner desires to change, repair, or landscape the back slope area above the concrete curb, the lot owner must obtain the written approval of the Committee.

15 **ASSESSMENTS FOR MAINTENANCE AND IMPROVEMENTS TO WATER AREAS** Developer will be developing a large contiguous area described as the "Southbay Area". Developer intends to develop water areas throughout the Southbay Area. It will be the responsibility of the Southbay Homeowners Association to maintain and improve all of the water areas. Each lot in the Southbay Development will be a member of the Southbay Homeowners Association.

Maintenance shall also include installing aerators, circulation pipes or other equipment required for water quality needs and shall also include the costs of maintaining all pipes and pumps that are required for maintaining water quality. Since all lot owners will be members of Association, all costs will be assessed on a pro rata basis regardless of which addition, subdivision, or lot owner is benefited. Off water lots will be assessed at a rate of 1/2 the assessment of a water front lot.

Initially, Developer will stock fish in the waterway. Thereafter, it will be the Homeowners Association's responsibility to regulate and control the amount and type of fish in the waterways.

Water quality shall be tested at least once each year and may be more often if directed by the North Dakota Health Department. The cost to be the responsibility of the Homeowners Association.

16 **SOUTHBAY HOMEOWNERS ASSOCIATION ("ASSOCIATION")**
The water, sand, pea rock and concrete curb area of and adjacent to each lot shall require maintenance in order to insure the quality of the development and subdivision involving the Real Property. Each owner of a lot, in the Real Property, shall be obligated to pay the cost of any repair or maintenance related to the concrete curb, sand, fabric, and pea rock for their lot. Off water lots will be assessed at a rate equal to one-half (1/2) the assessment of a water front lot. This shall specifically include the repair or maintain the boat ramp, park, planting areas and all other costs for Association activities as determined solely by the Association.



Such activities and costs shall be determined by the Association which has already been established. Each owner of a lot in the property above-described shall be a regular member of the Association, a corporation not for profit, which said membership shall be appurtenant to such lot, and the transfer of title to such lot shall automatically transfer the regular membership appurtenant to such lot to the transferee or transferees. Each such owner and/or owners are obligated to promptly, fully, and faithfully comply with and conform to the By-Laws of the Association, and the rules and regulations from time to time prescribed thereunder by the Board of Directors of said corporation or its officers and to promptly pay in full all dues, fees or assessments levied by said corporation on its members whether such dues, fees or assessments were levied prior or subsequent to the date of acquisition of title, except that the purchaser of any such unit at a Trustee's Sale on foreclosure or a lender who acquires title by deed in lieu of foreclosure shall not be liable for any dues, fees or assessments levied prior to such sale or acquisition of title. Although the Association may require the owner of an off water lot to pay dues, fees, and assessments, such dues, fees, and assessments shall not be more or less than 1/2 that paid by a water front lot. Initially, the Association dues shall be Fifty Dollars (\$50.00) per year payable commencing on the day that the lot is purchased from Southbay Development, LLC. Southbay Development, LLC shall not at any time be responsible for dues or assessments on those lots owned by Southbay Development, LLC. The initial Fifty Dollars (\$50.00) annual dues amount shall be on a prorated basis for the number of days for which the buyer of the lot owned the property for that year. Annual dues shall be due on January 15th of each year. Any assessment that is not paid within thirty (30) days after the due date shall bear interest at the rate on one and one-half percent (1 1/2%) per month (eighteen percent (18%) annual percentage rate). Developer shall not be required to pay any dues on any vacant lots or spec homes owned by Developer.

17 **LIEN IN FAVOR OF SOUTHBAY HOMEOWNERS ASSOCIATION**

The Association shall have a lien against each of the lots in the said Real Property to secure the full and faithful performance of these Restrictions and Obligations, and in the event of the non-performance or default hereunder by any of the owners of a lot in the said Real Property, the interest of such defaulting owner may be foreclosed by said corporation in the same manner as a realty mortgage and any redemption thereafter shall be subject to the lien herein created as to other or future events of non-performance or default, and the lien hereby created shall likewise apply to the Grantee of any Sheriff's Deed after foreclosure as to other or future events of non-performance or default, or the said lien may be foreclosed as a mortgage with power of sale, provided however, that it is specifically understood that the lien herein created shall, at all times, be subordinate and inferior to the lien of any bona fide lending institution which now exists or is hereafter placed against the interest of such defaulting individual owner in the above-described property or any part or parcel thereof.



18 **POWERS AND DUTIES OF SOUTHBAY HOMEOWNERS ASSOCIATION** The Association, acting through its Board of Directors and officers, shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the areas consisting of the water area described above, all as more fully set forth in the Articles of Incorporation or the By-Lays of said Association.

The Association shall also have the duty and obligation to establish, construct, maintain and repair all property described above and related matters

The Association, in its sole discretion, shall also have the absolute power and authority to levy assessments against each lot owner for such care

In the event an owner of any lot shall fail to maintain the premises and the improvement situated thereon in a manner satisfactory to the Association, it, after approval by two-thirds (2/3rds) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said lot and to repair, maintain, and restore the lot and water area

19 **SOUTHBAY DEVELOPMENT** All lot owners in the Southbay Development shall become members of the Southbay Homeowners Association

20 **MERGER POWERS OF SOUTHBAY HOMEOWNERS ASSOCIATION** The Association shall have the specific power and authority to merge, combine, or otherwise cooperate with any other homeowners association or similar organization that may share common concerns or interest as the Homeowners Association

21 **INVALIDITY OF ANY PROVISION** In the event any restriction or obligation herein contained by invalid or held invalid or void by any court of competent jurisdiction, such invalidity or nullity shall in no way affect any other condition or restriction herein contained

22 **NO WAIVER** A waiver of a breach of any of the foregoing conditions or restrictions shall not be construed as a waiver of any succeeding breach of violation thereof or of any other restriction or obligation

23 **EASEMENTS OF USAGE OF WATER AREAS** All lots are subject to an access and usage easement of the water areas for the benefit of all lot owners in the "Southbay Area", and their guests and invitees Said lot owners shall only have an access and usage easement to those water areas that are connected by water and easements between the dominant and servient water areas



24 **LEGAL ACTION IN THE EVENT OF BREACH** As to Developer and the owner or owners of any of said lot or lots, including any bona fide purchaser under contract, the foregoing restrictions and obligations shall operate as covenants running with the land and a breach of any of them or a continuance of any such breach may be enjoined, abated, or remedied by appropriate proceedings by Developer, by the Committee, or by the Association as the case may be

25 **INTERPRETATION OF RESTRICTIONS** All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Committee or the Association and their decision shall be final, binding and conclusive on all of the parties affected

26 **FAILURE TO COMPLY WITH ORDER OF COMMITTEE** In the event of the failure of any individual lot owner to comply with a written directive or order from the Committee or Association, then, in such event, the Committee or Association shall have the right and authority to perform the subject matter of such direction or order and the cost of such performance shall be charged to the owner of the lot in question and may be recovered by the committee or Association in an action at law against such individual lot owner

27 **ASSIGNMENT BY DEVELOPER** Developer may sell or assign its rights under these Covenants of Restrictions and Obligations, and, any successor or subsequent assignee shall have all the powers and duties of Developer

28 **VIEWS** No lot owner may obstruct or limit other lot owner's view of the water areas by placing any fence, trees, shrubs, or any other obstructions on said lot owners property The Architectural Review Committee shall determine if a view obstruction will occur or has occurred, and such determination shall be considered an authorized interference with such right, and the lot owner, at his or her cost, shall remove obstruction on demand

29 **CONSENT TO ASSESSMENTS FOR CONSTRUCTION AND MAINTENANCE OF TREES, GREEN AREAS, ETC.** Developer will be developing a green area or areas in and around the Southbay Development which shall include the landscape islands at the entrances of the Southbay Development and in the interior of Southbay Development In addition, Developer may erect walking paths in and around the area, and also install light fixtures and irrigation sprinkler systems at various sites in the area In addition, Developer intends to plant trees and various vegetation at the entrances and in the interior of Southbay Development, green areas, and paths The Southbay Homeowners Association shall be responsible for the maintenance of the above-described improvements including but not limited to watering, trimming, replacing dead or undesirable vegetation, replacing any of the improvements, and maintaining and replacing signage and lighting **NOTICE: THE OWNERS OF LOTS IN THIS DEVELOPMENT SHALL**



GREGORY TSCHIDER

DECRES

856128

\$49.00
Page 14 of 14
4/28/2017 1:58 PM
Burleigh County

Melwood Jensen, Deputy



**DECLARATION OF ADDITIONAL
RESTRICTIONS AND OBLIGATIONS**

This Declaration of Additional Restrictions and Obligations is made on July 24, 2008 by Southbay Development, LLC, hereinafter referred to as "Developer", concerning the following lots located in Burleigh County, North Dakota which are hereinafter referred to as the "Real Property":

SOUTHBAY FIRST ADDITION TO THE CITY OF BISMARCK

- Block 4: Lots 1 through 12
- Block 5: Lots 1 through 9
- Block 6: Lots 7 through 9
- Block 7: Lots 8 through 26

SOUTHBAY SECOND ADDITION TO THE CITY OF BISMARCK

- Block 3: Lots 91 through 99;
Lots 126 through 130
- Block 6: Lots 1 through 12
- Block 7: Lots 1 through 7

WHEREAS, Developer has executed "Declarations of Restrictions and Obligations" in regards to the Real Property; and

WHEREAS, the Real Property is subject to the "Declarations" filed for each Addition, however, Developer desires to record additional restrictions and obligations applicable to the Real Property;

NOW, THEREFORE, in consideration of the premises, Developer hereby certifies and declares that it has established and does hereby establish the following additional covenants and restrictions for the protection and benefit of all of the Real Property, and has fixed and does hereby fix the following additional protective conditions, restrictions, and obligations upon and subject to which each and all of the lots in the said Real Property shall be hereafter held, used, occupied, leased, sold and/or conveyed. Each and all of which the said conditions and restrictions shall inure to the benefit of, be binding upon and pass with said Real Property, and each and every lot and/or parcel thereof, and shall inure to the benefit of, apply to, and bind the respective successors in title or interest of Developer.

THE SAID ADDITIONAL CONDITIONS AND RESTRICTIONS ARE AS FOLLOWS, TO-WIT:

1. **PARTITION OF LOTS:** As described in the "Declarations" filed with the Burleigh County Recorder's Office in regards to the Real Property, Developer retains the right to subdivide any of the lots in the Real Property. Pursuant to that right, Developer is hereby declaring that it intends to subdivide lots so that two connected units (hereafter referred to as "townhomes") may be constructed on the lot. Developer may subdivide some or all of the lots in the Real Property at the Developer's discretion. The obligations and restrictions described hereafter shall only apply to those lots in the Real Property which are subdivided.

2. **LAWN MAINTENANCE AND SNOW REMOVAL:** The Southbay Townhouse Association shall be responsible for the maintenance of the lawns on the subdivided lots. Maintenance shall include fertilizing, weed control, and mowing of the lawns on the affected lots. Maintenance shall not include watering or sod replacement. The Association shall also be responsible for the snow removal from the sidewalks, steps, and driveways located on the front portion or a main access to the structure of the townhome.

3. **ASSESSMENTS FOR LAW MAINTENANCE AND SNOW REMOVAL:** Each lot owner of the Real Property (as subdivided) will be a member of the Southbay Townhouse Association. Since all lot owners will be members of Association, all costs will be assessed on a pro rata basis regardless of which addition, subdivision, or lot owner is benefited.

4. **SOUTHBAY TOWNHOUSE ASSOCIATION ("ASSOCIATION"):** The lawn for each lot and the snow removal for each lot shall require maintenance in order to insure the quality of the development involving the Real Property. Each owner of a lot, in the Real Property (as subdivided), shall be obligated to pay the cost of any repair or maintenance related to the lawn maintenance and snow removal. All lot owners shall equally share these costs and all other costs for Association activities as determined solely by the Association. Such activities and costs shall be determined by the Association. Each owner of a lot in the property above-described shall be a regular member of the Association, a corporation not for profit, which said membership shall be appurtenant to such lot, and the transfer of title to such lot shall automatically transfer the regular membership appurtenant to such lot to the transferee or transferees. However, Developer shall have the right to elect all of the members of the Board of Directors of the Association until Developer has transferred or sold ninety percent (90%) of the lots in the Southbay Development. Each such owner and/or owners are obligated to promptly, fully, and faithfully comply with and conform to the By-Laws of the Association, and the rules and regulations from time to time prescribed thereunder by the Board of Directors of said corporation or its officers and to promptly pay in full all dues, fees or assessments levied by said corporation on its members whether such dues, fees or assessments were levied prior or subsequent to the date of acquisition of title, except that the purchaser of any such unit at a Trustee's Sale on foreclosure or a lender who acquires title by deed in lieu of foreclosure shall not be liable for any



dues, fees or assessments levied prior to such sale or acquisition of title. Initially, the Association dues shall be Fifty Dollars (\$50.00) per year payable commencing on the day that the lot is purchased from Southbay Development, LLC. Southbay Development, LLC shall not at any time be responsible for dues or assessments on those lots owned by Southbay Development, LLC. The initial Fifty Dollars (\$50.00) annual dues amount shall be on a prorated basis for the number of days for which the buyer of the lot owned the property for that year. Annual dues shall be due on January 15th of each year. Any assessment that is not paid within thirty (30) days after the due date shall bear interest at the rate on one and one-half percent (1½%) per month (eighteen percent (18%) annual percentage rate). Developer shall not be required to pay any dues on any vacant lots or spec homes owned by Developer.

5. LIEN IN FAVOR OF SOUTHBAY TOWNHOUSE ASSOCIATION: The Association shall have a lien against each of the lots (as subdivided) in the said Real Property to secure the full and faithful performance of these Restrictions and Obligations, and in the event of the non-performance or default hereunder by any of the owners of a lot in the said Real Property, the interest of such defaulting owner may be foreclosed by said corporation in the same manner as a realty mortgage and any redemption thereafter shall be subject to the lien herein created as to other or future events of non-performance or default, and the lien hereby created shall likewise apply to the Grantee of any Sheriff's Deed after foreclosure as to other or future events of non-performance or default; or the said lien may be foreclosed as a mortgage with power of sale, provided however, that it is specifically understood that the lien herein created shall, at all times, be subordinate and inferior to the lien of any bona fide lending institution which now exists or is hereafter placed against the interest of such defaulting individual owner in the above-described property or any part or parcel thereof.

6. POWERS AND DUTIES OF SOUTHBAY TOWNHOUSE ASSOCIATION: The Association, acting through its Board of Directors and officers, shall have the sole and exclusive right and duty to maintain the lawns and remove the snow as described above.

The Association, in its sole discretion, shall also have the absolute power and authority to levy assessments against each lot owner for such care.

In the event an owner of any lot shall fail to maintain the lawn and the sidewalks and driveways situated thereon in a manner satisfactory to the Association, it, after approval by two-thirds (2/3rds) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said lot and to repair, maintain, and restore the lot.



694371
Page: 3 of 5
07/24/2008 01:22P
22.00 Burleigh County

7. **MERGER POWERS OF SOUTHBAY TOWNHOUSE ASSOCIATION:** The Association shall have the specific power and authority to merge, combine, or otherwise cooperate with any other homeowners association or similar organization that may share common concerns or interest as the Townhouse Association.

8. **INVALIDITY OF ANY PROVISION:** In the event any restriction or obligation herein contained by invalid or held invalid or void by any court of competent jurisdiction, such invalidity or nullity shall in no way affect any other condition or restriction herein contained.

9. **NO WAIVER:** A waiver of a breach of any of the foregoing conditions or restrictions shall not be construed as a waiver of any succeeding breach of violation thereof or of any other restriction or obligation.

10. **EASEMENTS:** All lots are subject to an access easement of the lots to maintain the lawns and remove snow.

11. **LEGAL ACTION IN THE EVENT OF BREACH:** As to Developer and the owner or owners of any of said lot or lots, including any bona fide purchaser under contract, the foregoing restrictions and obligations shall operate as covenants running with the land and a breach of any of them or a continuance of any such breach may be enjoined, abated, or remedied by appropriate proceedings by Developer, by the Committee, or by the Association as the case may be.

12. **INTERPRETATION OF RESTRICTIONS:** All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Association and its decision shall be final, binding and conclusive on all of the parties affected.

13. **FAILURE TO COMPLY WITH ORDER OF ASSOCIATION:** In the event of the failure of any individual lot owner to comply with a written directive or order from the Association, then, in such event, the Association shall have the right and authority to perform the subject matter of such direction or order and the cost of such performance shall be charged to the owner of the lot in question and may be recovered by the Association in an action at law against such individual lot owner.

14. **ASSIGNMENT BY DEVELOPER:** Developer may sell or assign its rights under these Additional Covenants of Restrictions and Obligations, and, any successor or subsequent assignee shall have all the powers and duties of Developer.



694371
Page: 4 of 5
07/24/2008 01:22P
22.00 Burlleigh County

