

448231

DECLARATION OF RESTRICTIONS AND OBLIGATIONS

THIS DECLARATION of Restrictions, Obligations, and Architectural Control is made this 9th day of July, 1993, by Riverfront Properties, Inc., hereinafter referred to as "Owner".

W I T N E S S E T H

WHEREAS, Riverfront Properties, Inc. is the owner of the following described Real Property, which is hereinafter referred to as the "Real Property":

Tracts 3A and 3B in Sections Seven (7), Eight (8) and Eighteen (18), Township One Hundred Thirty-eight (138) North, Range Eighty (80) West of the Fifth Principal Meridian, Burleigh County, North Dakota.

The South two hundred (200) feet of the East six hundred thirty (630) feet of Tract 2A of Section Seven (7), Township One Hundred Thirty-eight (138) North, Range Eighty (80) West of the Fifth Principal Meridian, Burleigh County, North Dakota, containing two and nine-tenths (2.9) acres, more or less.

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

WHEREAS, the Owner 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 the Owner and any and all future owners of the said lots or any of them.

NOW, THEREFORE, in consideration of the premises, the Owner hereby certifies and declares that it has established and does hereby establish the following general plan for the protection and benefit of all of the said Real Property, and has fixed and does hereby fix the following 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 the Owner.

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 and very limited commercial purposes only as specifically set out on the development plan of the Owner, including as the Owner may hereafter amend such development plan. The said development plan of the Owner shall control the type of structure that shall be permitted on any lot, and each such structure must be in accordance with such plan. Every person who purchases a lot in the above-described Real Property waives any and all objection to such development, including the commercial aspects thereof, and consents to such development. Such waiver and consent shall bind all transferees and future owners of any lot in the said Real Property.

2. ARCHITECTURAL COMMITTEE: There shall be an Architectural Committee consisting of three (3) persons to be appointed by the Owner. Each of the said persons so appointed shall be subject to removal at the direction of the Owner at any time and from time to time, and all vacancies on the said Committee shall be filled by appointment of the Owner. In the event of the failure of the Owner 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 temporary members of the said Committee or to fill any vacancies therein, until such time as the Owner shall appoint other members to such Committee.

3. BUILDING MATERIALS: All building construction on the said Real Property shall be of new material, and no building shall be erected or altered until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Committee as to quality of workmanship and materials, as to harmony (including color) of external design with the existing structures, and as to location with respect to topography and finished grade elevation. All buildings shall have cedar shakes, 3 Tab Hallmark or better for roofing material. Exterior siding on all buildings shall consist of steel, stucco with proper trim, brick, cedar or redwood. All colors and stain colors shall be approved by Architectural Committee. No log siding, log homes, or masonite are allowed.

4. TREES, SHRUBBERY, ETC.: In excavation for structures, sod, or trees shall be added or removed from the lots, no earth, except by written permission of the Architectural Committee or its successors, and then only to such place as may be directed by such written permission. Native trees shall not be removed, except where necessary for placement of a residence, accessory building, or driveway, but not to exceed six (6) feet from the outside structure wall or five (5) feet from the driveway to the tree base; if diseased or dying; if under four (4) inches in base diameter; or if approved by the Bismarck City Forester.

5. EASEMENTS: Each lot shall have the use and benefit of the easements and rights of way shown on the plat for the Real Property.

6. BASEMENT AND GRADE LEVELS: Any basement of a house or similar structure shall not under any circumstance be placed lower than one thousand six hundred thirty-one (1,631) feet above sea level. In addition, in order to provide grading which will divert water away from buildings and prevent standing water and soil saturation detrimental to structures and lot use, the finish grade at each foundation wall shall in no event be less than a height which will provide the lot with a minimum vertical fall of six (6) inches in the first ten (10) feet away from foundations and minimum gradient thereafter to side lot lines of not less than one-quarter ($\frac{1}{4}$) inch per foot or two percent (2%).

7. ABOVE GROUND LINES: Above ground telephone distribution and service lines shall be prohibited, except during emergencies or repairs. Above ground electric light and power distribution and service lines shall be prohibited, except during emergencies or repairs.

8. BUILDING SPECIFICATIONS: No lots can be subdivided into smaller lots, except where such lots are being added to an adjoining lot. No building shall be constructed in any portion of the Real Property, unless the same shall have a ground floor area of at least two thousand four hundred (2,400) square feet on main floor of ranch style homes, and one thousand seven hundred (1,700) square feet on main floor and one thousand two hundred (1,200) square feet on second floor of a two-story home. Square footage shall exclude basements and garages. In addition, all residential structures shall have at least a two (2) car garage of at least five hundred twenty-eight (528) square feet in area. All plans for houses or other appurtenant structures shall be approved in writing by the Architectural Committee in consultation with the Owner before construction is commenced. It is the intent of this restriction to create harmony in the development of said subdivision and to promote the general plan, outlook, and appearance of the subdivision. No unattached building shall be erected, except a gazebo or similar structure which has been approved by the Architectural Committee and which has the workmanship, materials, and harmony (including color) of the existing buildings. All structures shall be erected with the approval of the Architectural Committee only, and the Architectural Committee shall have the absolute right in its sole discretion to disapprove any structure, including homes.

9. STORAGE: No trailer, camper, basement, tent, shack, boat house or other outbuilding erected on the tract shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted, unless written permission is obtained from the Architectural Committee.

10. FENCES: No fence, rail, or hedge shall be placed anywhere on a lot, except for retaining or camouflage purposes or to fully enclose a swimming pool, in which case such entire fence must be clearly transparent. No radio or television antenna, any type of post or pole, television dish, solar panels, or similar structure shall be erected, constructed, or placed upon any of the said lots, or on any lot.

11. SIGNS: No sign of any kind or for any use or purpose whatsoever shall be erected, posted, painted, or displayed upon any of the said lots or upon any building or other structure thereon, without the prior written permission of the Architectural Committee. This restriction shall apply to all contractors and to all homeowners who have their homes for sale.

12. NUISANCES: No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No commercial activities of any kind shall be carried on in any portion of the Real Property designated as residential. The only commercial activity allowed shall be in areas designated as commercial on the development plan of the Owner. No lot owner may carry on social activities on a lot unless such owner has constructed a residence thereon. Parties or similar activities are prohibited on vacant lots.

13. ANIMALS: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose. 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 Architectural Committee.

14. GARBAGE: No dumping of trash, garbage, old lumber, or unsightly materials is allowed on any lots, particularly on the easements. An exception will be made while construction is in process, but all materials must be removed and all areas cleaned up immediately after construction is completed. All easements are to be kept mowed and maintained by the property owners.

15. BUILDING CODE: All buildings must be subject to requirements of Bismarck City Inspection.

16. SPACING: Side yards must be equivalent to twenty percent (20%) of the residence and all buildings shall have a twenty-five (25) foot setback from the property line in front, unless otherwise specifically approved in writing by the Architectural Committee.

17. 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 Committee as to quality, workmanship, material, harmony (including color) of existing structures.

tures, and location. The Architectural Committee in consultation with the Owner 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 Architectural 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.

18. BOATS: Each lot owner will be allowed to park two (2) boats owned by such owner at the lot dock. 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 bay for various activities. Boat speeds shall be minimal as set specifically by the Maintenance Association. There shall be no racing of watercraft and no skiing allowed on the water areas on the above-described Real Property. Personal watercraft operated on the water areas of the above-described Real Property shall be subject to the same rules as boats for those areas, except as specifically set out in the rules of the Maintenance Association. The Maintenance 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.

19. NOTICE OF CLAIM OF BREACH: The Owner, or the Architectural Committee may at any time that it or the Architectural Committee deems a breach of these Restrictions and Obligations has occurred, execute, acknowledge and record in the Office of the Register of Deeds 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.

20. MAINTENANCE ASSOCIATION: The Real Property 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 a pro rata share of the cost of any construction, repair, or maintenance related to the development and subdivision in the Real Property described above. This shall specifically include the construction, repair, or maintenance of any water areas, any mitigation areas or activities related to the Southport Development Project, or any other activities or elements that will enhance or maintain the quality of the said Real Property as determined solely by the Maintenance Association. Such activities and costs shall be determined by the Maintenance Association.

established hereunder. Each owner of a unit in the property above-described shall be a regular member of the Maintenance Association, a corporation not for profit, which said membership shall be appurtenant to such unit, and the transfer of title to such unit shall automatically transfer the regular membership appurtenant to such unit 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 Maintenance 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.

21. LIEN IN FAVOR OF MAINTENANCE ASSOCIATION: The Maintenance 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 unit 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 or 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.

22. POWERS AND DUTIES OF MAINTENANCE ASSOCIATION: The Maintenance 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 said property or any lot, parcel or portion thereof, together with the improvements, trees, shrubbery, plants and grass thereon, if the title thereto is owned by the members of said corporation as tenants-in-common, all as more fully set forth in the Articles of Incorporation or the By-Laws of said Maintenance Association.

The Maintenance Association shall also have the duty and obligation to establish, construct, maintain and repair all property and related matter which involve the waterways in the Real Property. This shall include control gates, channels, and roadways affected by such waterways as well as any mitigation areas in any way related to the Real Property.

23. MERGER POWERS OF MAINTENANCE ASSOCIATION: The Maintenance Association shall have the specific power and authority to merge, combine, or otherwise cooperate with any other maintenance association or similar organization that may share common concerns or interests as the Maintenance Association.

24. PARTITION 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 severing or separating such ownership from any of the other ownerships in said Real Property.

25. PROTECTION FOR MORTGAGEES AND TITLE INSURANCE COMPANIES: The owner of any encumbrance made for value on any said lot or lots and any corporation insuring the lien of such encumbrance may conclusively presume that no breach exists under these conditions and restrictions provided such encumbrance is recorded in the Office of the Register of Deeds of Burleigh County prior to the commencement of any action to establish any such breach and not within sixty (60) days after the recording of any Notice of Claim of Breach, anything contained herein to the contrary notwithstanding.

PROVIDED, that a breach of any of the foregoing restrictions and obligations, shall not affect, impair, defeat or render invalid the lien charge or encumbrance of any mortgage or trust deed made for value which may then exist upon said land, which said mortgage or trust deed shall be and is hereby declared to be prior and superior to the rights in favor of any person or persons under and by virtue of these conditions and restrictions; provided, however, that in the event of a foreclosure of any such trust deed or mortgage, or if the owner of the note secured by such trust deed or mortgage acquires title to said land in any manner whatsoever in satisfaction of his indebtedness, then any purchaser at the foreclosure of Trustee's Sale, or any said note owner acquiring title as aforesaid agrees that said property so acquired by them shall immediately upon said acquisition become subject to each and all of the restrictions and obligations and rights herein contained, but free from the effects of any breach occurring prior thereto.

26. INVALIDITY OF ANY PROVISION: In the event any restriction or obligation herein contained be 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.

27. 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.

28. LEGAL ACTION IN THE EVENT OF BREACH: As to the Owner 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 the Owner, by the Architectural Committee, or by the Maintenance Association as the case may be.

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

30. FAILURE TO COMPLY WITH ORDER OF ARCHITECTURAL COMMITTEE: In the event of the failure of any individual lot owner to comply with a written directive or order from the Architectural Committee or Maintenance Association, then, in such event, the Architectural Committee or Maintenance 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 covered by the Architectural Committee or Maintenance Association in an action at law against such individual lot owner.

31. BID REQUIREMENT: Nodak Construction shall have the right and opportunity to enter a bid for the construction of any structure to be built on any lot in the above-described Real Property.

32. ASSIGNMENT BY OWNER: The Owner 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 the Owner. The Owner or said successor interest shall have the right to tie these covenants to adjoining land including, but not limited to, membership in the Maintenance Association described herein.

IN WITNESS WHEREOF, said Riverfront Properties, Inc., as Owner, has executed this instrument the day and year first above written.

RIVERFRONT PROPERTIES, INC.

BY: Kevin Turnbow
Kevin Turnbow, President

BY: Kevin Turnbow
Kevin Turnbow, Secretary