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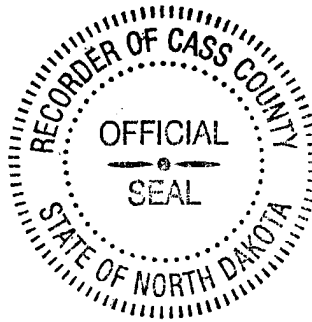
DABBERT CUSTOM HOMES

RECORDER'S OFFICE, CASS COUNTY, ND
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
DEBORAH A. MOELLER, COUNTY RECORDER

2/12/2025 10:17 AM

by Shena Garua, Deputy

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KIRKWOOD DRIVE

A PART OF RIVER'S EDGE SECOND ADDITION TO THE CITY OF HORACE

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS, EASEMENTS, LIENS AND CHARGES**



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DABBERT CUSTOM HOMES

KIRKWOOD DRIVE

a part of River's Edge Second Addition to the City of Horace

DECLARATION OF KIRKWOOD DRIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, RESERVATIONS, LIENS AND CHARGES

THIS DECLARATION is made effective the 11th day of February, 2025, by RIVER'S EDGE ESTATES, LLC, a North Dakota limited liability company (hereinafter, the "Developer").

RECITATIONS:

- A. River's Edge Estates, LLC, as the owner and developer of River's Edge Second Addition to the City of Horace in Cass County, North Dakota, created a Declaration of Covenants, Conditions, Restrictions, Easements, Liens and Charges for River's Edge Second Addition to the City of Horace (the "River's Edge Second Addition Declaration").
- B. The River's Edge Second Addition Declaration has been recorded with the Cass County Recorder.
- C. The plat of River's Edge Second Addition to the City of Horace has been recorded with the Cass County Recorder as Document No. 1688665 (the "Plat").
- D. As reflected in the Plat, there is a road in Block 8 of River's Edge Second Addition which is named "Kirkwood Drive". Kirkwood Drive is a private road serving only the following Lots:¹

Lots 18, 19, 20, 21, 22, 23 and 24, Block 8
River's Edge Second Addition to the City of Horace, Cass County, North Dakota

These Lots will hereinafter be referred to as the "Kirkwood Lots".

- E. The common area located to the west of Kirkwood Drive and to the north, east and south of Block 8, Lots 12, 13, 14, 15, 16 and 17 will be referred to as the "Kirkwood Common Area."
- F. Kirkwood Drive, Kirkwood Lots and the Kirkwood Common Area are subject to this Declaration and are also subject to the River's Edge Second Addition Declaration.
- G. Terms not defined herein shall have the meanings assigned thereto in the River's Edge Second Addition Declaration.

¹ Lot 11 is a City of Horace Park District Lot and is not subject to Kirkwood Drive assessments and is not a member of Kirkwood Drive Homeowners Association.



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H. By this document, the manner in which Kirkwood Drive will operate and be regulated (including costs and assessments paid) as set forth herein. This includes dealing with expenses for services, assessments and liens.

NOW, THEREFORE, the Developer declares that Kirkwood Drive, the Kirkwood Drive Lots and the Kirkwood Common Area shall be held, transferred, sold, conveyed, cared for and occupied subject to the covenants and terms set forth in this Declaration.

Section 1. **Recitations.** The Recitations set forth above are hereby incorporated into this Agreement.

Section 2. **Purpose.** The purpose of this Declaration is to set forth that Kirkwood Drive is a private drive, intended to be used only by Kirkwood Lot Owners, their invitees or visitors who are granted permission to use Kirkwood Drive. In addition, contractors and delivery vehicles that are servicing the Kirkwood Lots or the Kirkwood Common Area may use Kirkwood Drive limited to the time they are performing work servicing the requests of Kirkwood Lot Owners or the Kirkwood Drive Homeowners Association.

Section 3. **License.** The Developer does hereby create an irrevocable nonexclusive license for the Owners of the Kirkwood Lots, their guests, invitees and visitors, to use Kirkwood Drive. In addition, this license may be used by delivery vehicles delivering merchandise to a Kirkwood Lot and contractors during the time they are performing contracting services on a Kirkwood Lot, Kirkwood Common Area or Kirkwood Drive.

Section 4. **Limited Parking on Kirkwood Drive.** Kirkwood Drive is designed to handle through traffic. If there is room for other vehicles to pass a motor vehicle (passenger car or pickup truck), a vehicle may park on Kirkwood Drive for a period not to exceed 24 hours, or such other time as is approved by the Kirkwood Drive Homeowners Association.

Section 5. **Subject to River's Edge Second Addition Declaration.** The Kirkwood Lots, Kirkwood Drive and the Kirkwood Common Area will also be subject to the terms of the Declaration of Covenants, Conditions, Restrictions, Easements, Liens and Charges of River's Edge Second Addition to the City of Horace recorded with the Cass County Recorder Doc # 1728914.

Section 6. **Maintenance, Repair and Replacement.** The Kirkwood Lot Owners will be responsible for the maintenance, repair and replacement of Kirkwood Drive. This includes, but is not limited to, signage, snow removal, ice removal, sanding (or other ice treatment products), debris removal, street sweeping, maintenance of the roadway, repair of the roadway, landscaping, and, to the extent necessary, replacement of the roadway and signage for the roadway. The Kirkwood Lot Owners will also be required to take such steps as necessary to manage mowing and weed control that affect Kirkwood Drive and/or the Kirkwood Common Area. These responsibilities may be



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fulfilled through the Kirkwood Drive Homeowners Association funded by the Kirkwood Lot Owners.

Section 7. **Construction of Kirkwood Drive.** Kirkwood Drive will initially be constructed by the Developer of the project. Kirkwood Drive will at all times be cast-in-place concrete. All driveways connected to Kirkwood Drive must be constructed of cast-in-place concrete, or other materials with written consent from the Developer or the ARC, or their successor.

Section 8. **Kirkwood Drive Homeowners Association.**

Section 8.1. **Membership in Association.** Upon purchase of a Kirkwood Lot, the Kirkwood Lot Owner(s) will be a member of the Kirkwood Drive Homeowners Association. The Developer will determine the time at which the Developer will turn over control of Kirkwood Drive to the Kirkwood Drive Homeowners Association. At such time as the Developer wishes to turn over control of Kirkwood Drive to the Kirkwood Drive Homeowners Association, the Developer will give notice to the Owners of each of the Kirkwood Lots. The Kirkwood Lot Owners will elect three (3) Lot Owners to constitute the governing board of the Kirkwood Drive Homeowners Association to oversee execution and enforcement of the Declaration of Kirkwood Drive. Turnover to the Kirkwood Drive Homeowners Association of this control will occur not later than the date on which the Developer records a statement with the Cass County Recorder that the Developer has turned over control of Kirkwood Drive Homeowners Association to River's Edge Second Addition Homeowners Association.

Section 8.2. **Appointment of Board Members.** If no Board of Directors for Kirkwood Drive Homeowners Association is established within thirty (30) days of the Developer recording a statement that Developer is turning over control to Kirkwood Drive Homeowners Association, the Developer will appoint three (3) Kirkwood Lot Owners to be Board Members of Kirkwood Drive Homeowners Association.

Section 8.3. **Responsibility.** The Developer, until turnover to the Kirkwood Drive Homeowners Association, will have responsibility for arranging for the services set forth in Section 6 of this Declaration. At such time as the Developer turns over to the management of Kirkwood Drive and the Kirkwood Common Area to the Kirkwood Drive Homeowners Association, the Board of Directors of Kirkwood Drive Homeowners Association will have the responsibilities for fulfilling the obligations set forth in Section 6 of this Agreement. Every Kirkwood Lot and Kirkwood Lot Owner is subject to assessment by the Developer or the Kirkwood Drive Homeowners Association, and shall be a mandatory member of that Association. There shall be one (1) vote per Kirkwood Lot on all matters calling for a vote of the members. Members do not include persons or entities that hold an interest only as a security for the performance of an obligation, such as a mortgagee. All members of the Kirkwood Drive Homeowners Association shall be governed and controlled by the Articles of Incorporation and the Bylaws of



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Kirkwood Drive Homeowners Association, which Articles and Bylaws should not conflict with the provisions of this Declaration and the River's Edge Second Addition Declaration. In the event of a conflict among the terms of these documents, the River's Edge Second Addition Declaration shall control.

Section 8.4. Effect of Delivery to the Association. Prior to the delivery of authority and responsibility for Kirkwood Drive to the Kirkwood Drive Homeowners Association, the Developer will be responsible for arranging for the services and matters set forth in Section 6. The Developer will have the ability to assess the Kirkwood Lots on an equal basis for the cost of performance of those matters set forth in Section 6, and a reasonable fee to Developer for carrying out these matters. Developer may charge a fee equal to twenty percent (20%) of the expenses of operating and servicing Kirkwood Drive. The authority to create and enforce assessments will be with the Developer until control is delivered to the Kirkwood Drive Homeowners Association. Developer will continue to have the authority to collect any unpaid obligations.

Section 9. Creation of a Lien and Personal Obligation and Assessments. Each Kirkwood Lot Owner, by acceptance of a deed for a Kirkwood Lot, whether or not so expressed in such deed, is deemed to covenant and agree to pay the Kirkwood Drive Homeowners Association or a fund established by the Developer, for general assessments or charges and for special assessments for capital improvements. All assessments shall be a charge on the Lot and shall be a continuing lien on the Lot on which each assessment is made. Each such assessment shall also be the personal obligation of the Kirkwood Lot Owner(s) for his/her/its Lot at the time when the assessment initially becomes due. The Developer or the Kirkwood Drive Homeowners Association may establish a monthly, quarterly, semi-annual and/or annual assessment payment amount due from each Kirkwood Lot Owner in order to fund the anticipated ongoing expenses, such as snow removal, debris removal and/or landscaping.

Section 10. Method of Assessment. The Developer or the Kirkwood Drive Homeowners Association shall fix the annual assessment and any monthly, quarterly or semi-annual assessment upon the basis provided herein; provided, however, that the assessments must be sufficient to meet the obligations imposed by this Declaration. The Developer or the Kirkwood Drive Homeowners Association shall set the date(s) such assessments become due. The Developer or the Kirkwood Drive Homeowners Association may provide for collection of annual assessments and monthly, quarterly or semi-annual assessments; provided, however, that upon default of the payment of any one or more installments by a Kirkwood Lot Owner, the entire balance of said assessment may be accelerated for that Kirkwood Lot Owner and that Kirkwood Lot, at the option of the Developer or the Kirkwood Drive Homeowners Association, to be declared due and payable in full for the current year and all past years. Any amount not paid when due is subject to a 1.5% per month late payment fee or the highest amount allowed by law, whichever is less, and payment of attorneys' fees and costs incurred in collection.

Section 11. General Assessments. The general assessments levied by the Developer or the Kirkwood Drive Homeowners Association shall be used exclusively for



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those purposes set forth in Section 6. Each Kirkwood Lot, whether improved or unimproved, shall be assessed at an equal amount, with the assessment commencing on a date and for an amount determined necessary by the Developer or the Kirkwood Drive Homeowners Association. For special assessments, the amount assessed may not be equal if damage was caused by a particular Kirkwood Lot Owner(s) or his/her guests, invitees, agents or contractors.

Section 12. **Special Assessment for Capital Improvements**. In addition to the annual assessments authorized above, the Developer or the Kirkwood Drive Homeowners Association may levy, in any assessment year, a special assessment applicable for that year and for not more than the next four succeeding years for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements located within Kirkwood Drive or the Kirkwood Common Area, including roads, paving of roads, common areas, parks (if any), entrances and the landscaped area or areas of entrance, street lighting, decorative lighting, banners or other decorations to enhance the aesthetic value of Kirkwood Drive, the sidewalks or any other improvement, including fixtures and personal property related thereto, providing that any such assessment shall require the approval of a majority of the Owners who are voting in person or by proxy at a scheduled meeting or special meeting duly called for that purpose. So long as Developer owns any Kirkwood Lot, any special assessment must also be approved in writing by the Developer. Any special assessment shall be levied in an equal amount for each Kirkwood Lot, except that special assessments that relate solely to private road repair for a Kirkwood Lot, improvements or damage repair will be assessed only against those Kirkwood Lots benefitted from the work or that caused the damage necessitating the work.

Section 13. **Surplus Funds**. The Developer or the Kirkwood Drive Homeowners Association shall not be obligated to spend in any year all the assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Developer or the Kirkwood Drive Homeowners Association shall not be obligated to reduce the amount of the annual assessment in the succeeding year if a surplus exists from a prior year, and the Developer or the Kirkwood Drive Homeowners Association may carry forward from year to year such surplus as the Developer or the Kirkwood Drive Homeowners Association, in its discretion, may determine to be desirable for the greater financial security of the Kirkwood Drive Homeowners Association and the accomplishment of its purposes.

Section 14. **Enforcement of Covenants**.

Section 14.1. All delinquent assessments, together with a late payment fee thereon (at a rate of 1.5% per month or the highest rate allowed by law, whichever is less), and costs of collection thereof, including attorneys' fees and costs shall be charged on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest thereon, attorneys' fees and costs of collection thereof, shall also be the personal obligation of the person(s) who was the Owner(s) of such Kirkwood Lot(s) at the time when the assessment become due.



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Section 14.2. If the Developer or the Kirkwood Drive Homeowners Association elects to claim a lien for nonpayment of assessments, it may do so at any time after the occurrence of a default. The Developer or the Kirkwood Drive Homeowners Association will make demand for payment to the defaulting Owner by giving notice to the Owner at the Owner's last known address. Delivery by email to the most recent email address provided by the Owner is permissible and constitutes notice. This notice shall state the date and amount of the delinquency. If such delinquency is not paid within ten (10) days after delivery of the notice, the Developer or the Kirkwood Drive Homeowners Association may elect to file a claim of lien against the Kirkwood Lot of such delinquent Owner. The filing will be with the Cass County Recorder. The claim of lien shall state:

- (i) The name of the delinquent Owner(s);
- (ii) The legal description of the Kirkwood Lot against which the claim is made;
- (iii) The amount claimed to be due and owing;
- (iv) That the Claim of Lien is made by the Developer or the Kirkwood Drive Homeowners Association pursuant to the terms of this Declaration;
- (v) That the lien claimed against the Kirkwood Lot is in an amount equal to the amount of the stated delinquency, accelerated as permitted by this Declaration and the amount of attorneys' fees and costs being incurred for this action; and
- (vi) Due demand has been made upon the defaulting or delinquent Owner(s) pursuant to this Declaration, and that said amount was not paid within the required time period after such demand.

Section 14.3. Upon recordation of a duly executed and acknowledged original of the Claim of Lien by the Cass County Recorder, the lien claimed therein shall immediately attach to the real property and become effective, subject to the limitations hereinafter set forth. Each default shall constitute a separate basis for a claim of lien or a lien, but a number of defaults may be included within a single claim of lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of real estate mortgages pursuant to the statutes of the State of North Dakota.

Section 14.4. The lien of the assessments provided for above shall be subordinate to the lien of any first mortgage or other mortgage placed of record prior to the recording of the lien. Sale or transfer of any Kirkwood Lot pursuant to or as part of a foreclosure of a mortgage which has priority over this lien shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall release any Kirkwood Lots from liability for assessments becoming due from or after the sale or transfer which is part of the first or superior mortgage. The amount due represents a lien against the property and the personal responsibility of the Owner(s) of the Kirkwood Lot at the time the obligation to the Kirkwood Drive Homeowners Association was



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incurred. Only full payment will cause release of a lien against or obligation of Owner.

Section 14.5. In addition to lien rights, the Developer or the Kirkwood Drive Homeowners Association, as the case may be, shall have the authority to levy fines upon any homeowner who remains in default of these covenants or the River's Edge Second Addition Declaration after written notice of default. The amount of such fines shall be adjusted on a periodic basis by the Developer or the Kirkwood Drive Homeowners Association, but the minimum amount per violation shall be set at \$50.00 and the maximum amount per violation shall be set at \$500.00. The Developer or the Kirkwood Drive Homeowners Association may change the minimum and/or maximum amount payable for a violation. Any fine not paid shall be a charge on the Lot; a continuing lien on the Kirkwood Lot; an obligation of the Owner of the Kirkwood Lot, and will additionally require payment of attorney's fees and costs incurred in pursuing the matter. Any amount not paid when due will bear interest at the rate of 1.5% per month or the highest interest rate allowed by law, whichever is less. Each day a default exists may be considered a separate violation, in the discretion of the Developer or the Kirkwood Drive Homeowners Association.

Section 15. **Improper Maintenance and Use of Lots**. In the event any portion of any Kirkwood Lot is maintained as to present a public or private nuisance, or to substantially detract from the appearance, quality or value of the surrounding Lots or other areas of the Development which are substantially affected thereby or related thereto, or in the event any portion of a Kirkwood Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Kirkwood Lot is failing to perform any of Owner's obligations under this Declaration, the River's Edge Second Addition Declaration or associated documents, the Developer or the Kirkwood Drive Homeowners Association may make a finding to such effect, specifying the particular condition or conditions which exist. Pursuant thereto, the Developer and/or Kirkwood Drive Homeowners Association may give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days and diligently pursued to completion, the Developer or Kirkwood Drive Homeowners Association may cause such action to be taken on the Owner's Lot at that Owner's expense. If, at the expiration of the fourteen day period of time, the requisite corrective action has not been taken, the Developer and/or the Kirkwood Drive Homeowners Association is authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Developer or to the Kirkwood Drive Homeowners Association upon demand and payment of such amounts may be secured by an Assessment Lien. Each Lot Owner grants the Developer, the Kirkwood Drive Homeowners Association and their respective agents an irrevocable license to enter the Owner's Lot for the purpose of correcting the default and does waive and release all claims and damages related in any manner to corrective action by the Developer, the Kirkwood Drive Homeowners Association or their respective agents.

Section 16. **Enforcement**. If any party shall violate or attempt to violate any of the Covenants contained in this Declaration, it shall be lawful for the Developer, the Board of Directors of Kirkwood Drive Homeowners Association (if then established) or any



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Kirkwood Lot Owner to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate the Declarations and either prevent him/her from violating the Declarations and/or recover damage for such violation. Recovery may include the Developer or the Kirkwood Drive Homeowners Association placing a lien against any one or more Lots violating this Declarations and enforcing that lien the same as a mortgage may be enforced under North Dakota law. Recovery may also be made from the Lot Owner(s).

Section 17. **Right to Enforce.** Failure to enforce any of the Covenants or Restrictions now or hereafter imposed should not be deemed a waiver or release of the right to do so thereafter, nor shall it be construed as an act of acquiescence or approval on the part of the Developer or the Kirkwood Drive Homeowners Association.

Section 18. **Duration.** The Covenants of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by heirs, devisees, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded. After which time said Covenants, conditions, restrictions, reservations, easements, liens and charges shall be automatically extended for successive periods of ten (10) years unless an instrument signed by at least an eighty percent (80%) majority of the Kirkwood Lots by the then Owners has been recorded, agreeing to modify said Covenants and restrictions, in whole or in part; provided, however, the easements and licenses created are perpetual and run with the real property and the Kirkwood Lots involved, regardless of amendment or termination of this Declaration.

Section 19. **Severability.** The invalidation of any of these Covenants, conditions, restrictions, reservations, easements, liens and charges by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 20. **Amendments.** This Declaration and the Bylaws of Kirkwood Drive Homeowners Association may be amended by the Developer at any time until the Developer has sold all Kirkwood Lots in River's Edge Second Addition and Developer divests itself of the right to amend this Declaration or the Bylaws of Kirkwood Drive Homeowners Association by a recording with the Cass County Recorder. It shall be conclusively presumed that the Developer has not divested itself of control of the Kirkwood Lots, Kirkwood Drive and the Kirkwood Common Area, or turned over control to the Kirkwood Drive Homeowners Association, until there is a sworn affidavit placed of record with the Cass County Recorder so stating, signed by the Developer or its legal representative. Once the Developer has divested itself of control and the right to amend this Declaration and the Bylaws of Kirkwood Drive Homeowners Association, this Declaration and the Bylaws may be amended only by an instrument signed by the Owners of not less than eighty percent (80%) of the Kirkwood Lots. Any instrument by which this Declaration or the Bylaws of Kirkwood Drive Homeowners Association are properly amended must be evidenced by a document recorded with the Cass County Recorder in order to become effective.

Section 21. **Developer.** River's Edge Estates, LLC and its successors and assigns is the Developer and the Declarant described herein. The Developer shall have



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the right to grant, assign and convey all of its rights to enforce these declarations, covenants, conditions, reservations, easements, liens and charges to such association, including Kirkwood Drive Homeowners Association or other entity acceptable to the Developer, including the River's Edge Second Addition Homeowners Association, as may be organized and established for such purposes at such times as, in the sole discretion and judgment of the Developer, such entity is able to enforce the restrictions herein contained. If Kirkwood Drive Homeowners Association is organized, the rights of the Developer shall vest in the Kirkwood Drive Homeowners Association when all Kirkwood Lots are sold or July 1, 2055, whichever occurs last.

Section 22. Bylaws. The Bylaws of Kirkwood Drive Homeowners Association are attached hereto as Exhibit A. These Bylaws will apply to the Kirkwood Lots, Kirkwood Drive and the Kirkwood Common Area and may be amended as set forth in Section 20 of this Declaration.

(Signature Page to Follow)



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IN WITNESS OF ITS TERMS AND CONDITIONS, the undersigned, with the authority to amend as set forth in Section 20 of this Declaration, has caused this Declaration to be executed this 11th day of February, 2025.

DEVELOPER:

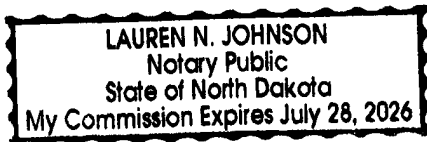
RIVER'S EDGE ESTATES, LLC

a North Dakota limited liability company

By: Donald A. Dabbert, Jr.
Its: Managing Member

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

On this 11th day of February, 2025, before me personally appeared DONALD A. DABBERT, JR., the Managing Member of RIVER'S EDGE ESTATES, LLC, the entity that is described and that executed the within instrument, and acknowledged to me that such entity executed the same.



Notary Public

(Signature Page to Kirkwood Drive
Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges)



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EXHIBIT A

BYLAWS

KIRKWOOD DRIVE HOMEOWNERS ASSOCIATION

KIRKWOOD DRIVE HOMEOWNERS ASSOCIATION, a North Dakota nonprofit corporation (the "Association") organized under N.D.C.C. Chapter 10-33 (the "Act") and the Articles of Incorporation of the Association (the "Articles"), has agreed to and adopted the following Bylaws:

ARTICLE I. **DEFINITIONS**

Section 1.1. Definitions. Any words or terms used in these Bylaws which are defined in the Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Liens and Charges of River's Edge Second Addition to the City of Horace recorded with the Cass County Recorder in February 2025 in Cass County, North Dakota (the "Declaration") will have the meaning described in the Declaration. The terms "Declarant" or "Developer" as used herein shall refer to the same entity, River's Edge Estates, LLC.

Section 1.2. Premises. The Premises that constitutes the Kirkwood Drive area are described as the following Lots:

Lots 18-24, inclusive, Block 8
River's Edge Second Addition to the City of Horace, Cass County, North Dakota

ARTICLE II. **MEMBERS AND VOTING**

Section 2.1. Members. Each Owner of a Lot on the Premises, except for the City of Horace, North Dakota, and the City of Horace Park District, shall be a Member of the Association, and no other person or entity shall be entitled to membership. The Declarant, or its successors in interest or assigns, shall be entitled to membership in the Association only so long as the same is the Owner of one or more Lots on the Premises. There is one class of Members in the Association. These Bylaws shall apply to the Premises, which is in River's Edge Second Addition to the City Horace, Cass County, North Dakota.

Section 2.2. Transfer of Membership. Each membership is appurtenant to the Lot on which it is based and shall transfer automatically by voluntary or involuntary conveyance of the ownership of that Lot. It shall be the responsibility of each Owner, upon becoming entitled to membership, to notify the Association in writing that they are the Owner/Member and their contact information, including email address. Until so notified, the Association may continue to carry the name of the former Owner as a



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Member, in its sole discretion. In the event the Owner of any Lot should fail or refuse to transfer the membership to the transferee, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered, except for any money and/or lien obligation of the Owner/transferor and of the Lot to the Developer and/or to the Association.

Section 2.3. Multiple Owners. When more than one person or entity holds an ownership interest in a Lot, the vote for such Lot shall be exercised by a single representative as they agree between or amongst themselves and jointly signify in writing to the Secretary of the Association, but in no event shall more than the assigned voting power be cast with respect to any Lot, nor shall the voting power allocated to a Lot be split or otherwise cast separately by the several Owners of the Lot. In the event multiple Owners of a Lot cannot agree on the exercise of voting power for such Lot, any one of the Owners may apply to the Board of Directors of the Association which, after hearing all parties at a special meeting, shall determine the manner of exercise of voting power for said Lot by a majority vote of the Directors voting at the special meeting. A Director shall not vote upon such determination with respect to a Lot of which that Director is one of multiple Owners.

Section 2.4. Voting. A majority (greater than 50%) of those voting, with each Lot having one (1) vote through the Owner of that Lot, shall govern all determinations of the Lot Owners unless a greater vote is required by the Declaration or these Bylaws. No vote shall be cast with respect to any Lot while it is owned by the Association. During any period when an assessment against a Lot remains unpaid for more than sixty (60) days after the assessment becomes due and payable, the delinquent Lot Owner's voting rights may be suspended by the Developer or by the Board of Directors until all payments to the Association and/or the Developer are current.

Section 2.5. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Owners representing more than fifty percent (50%) of the voting power of the Association shall constitute a quorum. If the voting power of a Lot is suspended by reason of delinquency in payment of assessments, such voting power shall be deducted from the quorum requirement with a majority of more than 50% computed based on Owners qualified to vote after the deduction shall constitute a quorum.

Section 2.6. Proxies. Votes by the Members may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting. A person designated by proxy to act for a Member need not be a Member.



ARTICLE III.

MEETING OF THE MEMBERS

Section 3.1. Place of Meetings. Meetings of the Association shall be held at a suitable place convenient to the Lot Owners as may be designated by the Board of Directors.

Section 3.2. Annual Meetings. The first annual meeting of Members shall be set by the Developer. At such first annual meeting of the Members, the Members may designate a regular date for successive annual meetings. If the Members fail to designate such a regular date, the Board of Directors may continue to designate the date of the next annual meeting until such a designation is made by a majority vote of the Members. If any designated date falls upon a legal holiday, it shall be understood that the actual date of the meeting shall be the next business day succeeding such designated date. At such meetings, in accordance with the requirements of Section 4.4 of these Bylaws, the Directors shall be elected by ballot of the Lot Owners. The Lot Owners may also transact such other business of the Association as may properly come before them. In all events, a meeting of the Members shall be held at least annually. If a regular meeting of the Members has not been held during the preceding fifteen (15) months, twenty percent (20%) or more of the Members with voting rights may demand a meeting by notice to the President of the Board, and if there is no President, to any Director of the Board of Directors.

Section 3.3. Special Meetings. It shall be the duty of the President of the Association to call a special meeting of the Members as directed by the resolution of the Board of Directors or upon the presentation to the Secretary of the Association of a petition therefor signed by twenty percent (20%) or more of the Members with voting rights, or by two (2) Directors. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless all of the Members with voting rights have waived notice of the meeting under the Act. One or more special meetings may be held before there has been a first annual meeting.

Section 3.4. Notice of Meetings. It shall be the duty of the Secretary of the Association to send to each Lot Owner a notice of the date, time, place and complete agenda of the regular, special or annual meeting and the procedure for appointing proxies at least fourteen (14) days (and not more than thirty (30) days) in advance of an annual meeting of Lot Owners, and not less than seven (7) days (and not more than thirty (30) days) in advance of any other meeting. The notice shall be hand-delivered or emailed (to all Members who have supplied an email address), or sent by United States mail, postage prepaid, to all Lot Owners of record at the address of their respective Lots, or to such other address or addresses as any of them may have designated in writing to the Secretary of the Association. A failure to provide a working email address to the Secretary will result in a \$50 charge to that Member each year for the extra work it takes to give notice in another manner.



Section 3.5. Adjourned Meetings. If any meeting of Lot Owners cannot be commenced because a quorum is not present, the Lot Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours, nor more than thirty (30) days, from the time the original meeting was called, with no further notice than that notice given at such adjourned meeting. A quorum at the next meeting time will be necessary for the meeting to occur.

Section 3.6. Order of Business. The order of business at all annual meetings of Lot Owners shall be as follows:

1. Roll call.
2. Proof of notice of meeting or waiver of notice.
3. Reading of minutes of preceding meeting.
4. Report of officers.
5. Report of committees.
6. Designation of regular date for annual meetings (if necessary).
7. Announcement of members of Nominating Committee for the Board of Directors (as appropriate).
8. Election of Board of Directors.
9. Unfinished business.
10. New business.
11. Open forum.
12. Announcement of date, time and place of the meeting of new Board of Directors (as appropriate).
13. Adjournment.

Section 3.7. Fair Voting Procedures. The following shall be considered minimum standards to assure fair voting procedures:

(a) All proxies should be available for inspection prior to and during a meeting of the Members so that a reasonable opportunity is afforded to challenge and count proxies.

(b) All mail ballots and all proxies cast at a meeting should be first opened at the time the votes on an election or issue are counted and tallied.

(c) In the case of an election of a Director, every candidate or designee of a candidate may observe the counting and tallying of votes; and on any other issue, a reasonable number of observers from both sides of each issue shall observe the counting and tallying of ballots.



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(d) The vote count on each election and issue shall be announced before adjournment of the meeting and shall be available to all Members in written form signed by the Secretary of the Association through the Association website (or by email, if an email address has been provided) within seven (7) days of the meeting.

(e) A Member who is delinquent in payment of assessments may reinstate voting rights for a meeting by payment of the delinquency by delivering an immediately negotiable check with adequate funds or providing other proof of payment to the Secretary, Treasurer or President of the Association before the meeting is called to order, unless a different requirement is adopted by the Board and the delinquent Member is given written notice thereof at least fifteen (15) days before the meeting.

ARTICLE IV. **BOARD OF DIRECTORS**

Section 4.1. Initial Board of Directors. The initial Board of Directors shall consist of three (3) persons appointed by the Developer who need to be Lot Owners or representatives of Lot Owners, and who shall serve until the first annual meeting of the Members and thereafter until their successors are elected and qualified. Should any vacancy occur in the initial Board of Directors, the vacancy shall be filled by the Developer. The initial Board of Directors shall have the power to adopt the Bylaws of the Association, to elect officers, to establish a schedule of assessments which shall be effective until December 31st of the year in which the first annual meeting of the Association occurs. The initial Board of Directors shall have generally the powers and duties as set forth in Section 4.5.

Section 4.2. Number and Qualification. The number of Directors constituting the Board of Directors after the initial Board of Directors shall be three (3); provided, however, that the number of Directors may be increased to five (or thereafter decreased back to three) by affirmative vote of the majority of all Lot Owners/Members eligible to vote at any annual meeting of the Members, subject to any limitations in the Articles. All Directors elected by the Lot Owners shall themselves be a Lot Owner or an officer or employee of a corporation or other entity owning a Lot.

Section 4.3. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations also may be made by any two Members in a written nomination to the Secretary of the Association or by motion and second from the floor at an annual meeting. The Nominating Committee shall consist of a Chairperson (who shall also be a member of the Board of Directors) and two or more Members of the Association selected by the Chairperson. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it



shall, in its discretion, determine, but not less than the number of vacancies that are to be filled.

Section 4.4. Term and Election. The term of office of each Director shall be fixed at one (1) year or until a successor is duly elected. Directors shall be elected by majority vote of Lot Owners (or a representative) eligible to vote as set forth in Section 2.4. Each Director shall hold office until his or her respective successor has been elected and has agreed to serve. There is no limit on the number of terms a Director may serve.

Section 4.5. Power and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Lots and the Association. The Board of Directors may act on behalf of the Association and do all such things and all such acts in the name of the Association as allowed for the Association in the Act, the Declaration and/or these Bylaws.

Section 4.6. Vacancies. Any vacancy in the Board of Directors arising by death or resignation of a Director elected or appointed by the Developer shall be filled only by appointment made by the Developer. Any other vacancy shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so appointed shall serve for the unexpired term of the Director's predecessor in office.

Section 4.7. Removal of Directors. At any regular or special meeting of the Lot Owners duly called, any one or more of the Directors may be removed, with or without cause, by a majority of the Lot Owners authorized to elect such Director, present in person or by proxy, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Lot Owners shall be given an opportunity to be heard at the meeting.

Section 4.8. Organization of Meeting. The first meeting of the Board of Directors each year following the annual meeting of Lot Owners shall be held within ten (10) days after the annual meeting of Lot Owners, and if the date, time and place are announced at the annual meeting of Lot Owners, no further notice shall be necessary.

Section 4.9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority vote of the Directors, but at least one such meeting shall be held each calendar year. Written notice of regular meetings of the Board of Directors shall be given to each Director at least ten (10) days prior to the day set for such meeting by the Board of Directors or by the President. Notice may be given by email.

Section 4.10. Special Meetings. Special meetings of the Board of Directors may be called by the President with not less than seven (7) days written notice (by email) to each Director, which notice shall state the purpose of the meeting and the time and place within the City of Horace, State of North Dakota. Special meetings of the Board of Directors shall be called by the President or Secretary in a like manner and on like notice upon the written request of at least two (2) Directors. Notice may be given by email.



Section 4.11. Open Meetings. Except as otherwise provided in the Act or in the Declaration, meetings of the Board of Directors must be open to Lot Owners. To the extent practicable, the Board shall give reasonable notice to the Lot Owners of the date, time and place of a Board meeting. This may be done by email. Notice is given if the date, time and place of a meeting is announced at a previous meeting of Lot Owners or the Board. Notice is not required if an emergency requires immediate consideration of a matter by the Board.

Section 4.12. Remote Participation. A meeting of Directors or any committee of the Board may be conducted by telephone, Zoom or Microsoft Teams conference or any means of communication through which the participants may simultaneously hear and speak to each other during the meeting, if notice of the meeting has been given as would be required for a meeting, and if the number of persons participating in the conference is sufficient to constitute a quorum. A Director may participate in a Board meeting by means of communication through which the Director, other Directors participating, and all other Directors physically present at the meeting may simultaneously hear and speak to each other during the meeting. Participation in a meeting by this means constitutes personal presence at the meeting.

Section 4.13. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may waive notice of such meeting and such waiver shall be deemed equivalent to the giving and receipt of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by such Director of the time, place and purpose thereof, unless a Director specially appears to protest or dispute the meeting or the notice.

Section 4.14. Board of Directors Quorum and Voting. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there is less than a quorum present, the meetings may be adjourned from time to time until a quorum is present. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 4.15. No Proxies. Directors shall not vote by proxy.

Section 4.16. Action Without a Meeting. Any action that could be taken at a meeting of the Board of Directors may be taken without a meeting when authorized in a writing signed by all of the Directors.

Section 4.17. Compensation. The Directors will receive no compensation for their services as Directors. However, when authorized by the Board, Directors and officers may be reimbursed for actual expenses incurred in connection with the business of the Association, and officers may be compensated for bookkeeping or recordkeeping functions.



Section 4.18. Committees of the Board. The Board may create and appoint one or more committees to investigate or deal with specific matters. The number of members and the members of the committee will be set by the Board. The committee will report to the Board. Board members may be appointed to a committee. The Board may choose to take action based on a committee report. A committee does not have the power to establish a policy or take action. This may only be done by the Board or by the Association.

ARTICLE V.

OFFICERS OF THE ASSOCIATION

Section 5.1. Designation. The principal officers of the Association shall be a President, Vice President, Secretary and a Treasurer. All principal officers shall be elected by and from the Board of Directors. Any two or more of the offices of Vice President, Treasurer and/or Secretary may be filled by the same person. The Board may, from time to time, appoint an assistant Secretary and such other officers with such duties as, in the Board's judgment, may be desirable, and such officers need not be Directors.

Section 5.2. Election of Officers. The principal officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board. All officers shall hold office at the pleasure of the Board until a replacement is elected or the officer is removed.

Section 5.3. President. The President of the Association shall be the chief executive officer of the Association and shall preside at all meetings of the Association and the Board of Directors. The President shall see that all orders and resolutions of the Board are carried out, and shall sign all leases, mortgages, contracts, deeds and other written instruments (except to the extent that the Board of Directors authorizes or mandates the delegation of such signature authority in a different manner).

Section 5.4. Vice President. The Vice President of the Association shall act in the place of the President and perform the President's duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President are able to act, the Board of Directors shall appoint some other Director to act on an interim basis. The Vice President also shall perform such other duties as shall, from time to time, be required by the Board of Directors.

Section 5.5. Secretary. The Secretary of the Association shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association. The Secretary shall give notice of all meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association, together with their addresses and email addresses; and shall perform such other duties as may be required by the Board. The Secretary may be compensated for these services. The Secretary is not required to be a member of the Board.

Section 5.6. Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate



accounts of all receipts and disbursements in the books belonging to the Association. The Treasurer shall sign all checks and shall be responsible for the deposit of all monies and valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors, except to the extent that the Board of Directors authorizes or mandates the delegation of such authority to a manager or agent. The Treasurer may be compensated for these services. The Treasurer is not required to be a member of the Board.

Section 5.7. Committees. The Board shall appoint members of a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors may establish other committees and appoint their members as deemed appropriate in carrying out its purposes. This is further addressed in Section 4.18.

ARTICLE VI.

ANNUAL REPORTS

Section 6.1. Annual Reports. The Association shall prepare and provide to each Lot Owner at or prior to each annual meeting a report of the affairs of the Association, including at least the following information:

- (a) A statement of any capital expenditures in excess of \$500 approved by the Board of Directors for the current year or succeeding two (2) fiscal years.
- (b) A statement of the balance of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board of Directors.
- (c) A copy of the statement of revenues and expenses for the Association's last fiscal year and a balance sheet as of the end of said fiscal year.
- (d) A statement of the status of any pending litigation or judgments to which the Association is a party.
- (e) A statement of the insurance coverage provided by the Association, if any.
- (f) A statement of the total past due assessments on all Lots, current as of not more than sixty (60) days prior to the date of the meeting.

ARTICLE VII.

MISCELLANEOUS

Section 7.1. Right to Substitute. Whenever a Director or officer of the Association is an officer or employee of a corporate Lot Owner, or a partner or employee of a partnership Lot Owner, or a member of a limited liability company Lot Owner, the respective corporation, partnership or limited liability company may, by written notice to the Association, remove such Director or officer of the Association and designate another such person to serve the unexpired balance of the term.



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Section 7.2. Indemnification of Officers and Directors. To the fullest extent permitted by the Act, as amended from time to time, or by other provisions of law, each officer or Director who was or is a party or is threatened to be made a party to any proceeding by reason of a former or present official capacity in the Association shall be indemnified and defended by the Association, including attorneys' fees and legal costs. The Association may purchase liability insurance for protection against such claims.

Section 7.3. Notice. The term "notice" has the meaning given in §10-33-01 of the Act. Notice may also be given by email in all situations.

Section 7.4. Amendment to Articles and Bylaws. Until the second Board of Directors has been constituted pursuant to these Bylaws, an amendment to the Articles and/or these Bylaws shall not be considered by the Association. This does not restrict the Developer's right to amend the Articles and Bylaws. After the second Board of Directors has been constituted pursuant to these Bylaws, an amendment to the Articles or these Bylaws may be adopted upon the amendment receiving an affirmative vote of the Members of who have authority to cast at least seventy-five percent (75%) of the total percentage votes in the Association (meaning a vote of 75% of the Owners of all Lots), in writing, at any regular, special or annual meeting of the Association. The Developer shall have the right to amend the Bylaws and Articles at any time until the Developer has sold all Lots in the Premises and divests itself of the right to amend as set forth in the Declaration by written statement to that effect recorded with the Cass County Recorder.

Section 7.5. Conflicts. If any of these Bylaws conflict with the provisions of the Act, the provisions of the Act will govern. If any of these Bylaws conflict with the provisions of the Declaration or the Articles of Incorporation, the provisions of the Declaration or Articles will apply.

Section 7.6. Inspection of Books and Records. Current copies of the Declaration, Bylaws and other rules concerning the Association, and the books, records and financial statements of the Association, shall, during reasonable and normal hours by arrangement through the Secretary of the Association, be available for inspection by any Lot Owner, prospective purchaser, Lot lender or the holder, insurer and guarantor of a mortgage on any Lot at the principal office of the Association or elsewhere as specified by the Secretary of the Association, and copies of the same may be purchased at reasonable cost. Business hours may vary, as there will be no full-time employees. This information may also be available through the Association website, when established.

Section 7.7. Financial Statements. The Association shall make a statement for the preceding fiscal year available to the holder, insurer or guarantor of any first mortgage that is secured by a Lot in the community upon submission of a written request for statement. The financial statement shall be available within 120 days after the Association's fiscal year end. Any financial statement shall be furnished free of charge (limited to one request per requesting party per year) within a reasonable time upon written request from any such Owner, lender, holder, insurer or guarantor, or any prospective Owner, lender, holder, insurer or guarantor.



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Section 7.8. Notice to Association. Any Owner who mortgages the Owner's Lot shall notify the Association through the management agent, if any, or the President or Secretary in the event there is no management agent, of the name and address of the mortgagee, and the Association shall maintain such information in a book or file entitled "Mortgagees of Lots."

Section 7.9. Compliance. Each Lot Owner, and any lender or holder of any mortgage that is secured by a Lot, shall be governed by and shall comply with the terms, conditions, obligations and provisions of the Act, the Declaration, the Articles, these Bylaws and the Rules and Regulations of the Association, as any of the same may be amended from time to time.

Section 7.10. Rules and Regulations. The Developer or the Board may, from time to time, promulgate such rules and regulations as it deems reasonable and necessary for the administration, management, operation, protection of value and use of the Common Elements and any other areas, facilities and improvements which Members of the Association are entitled to use so as to promote the common use, enjoyment and protection of property values thereof by Lot Owners, and for the protection and preservation thereof, and may, in addition, adopt such reasonable rules and regulations as it may deem necessary with respect to Lot Owners, including, without limiting the generality of the foregoing, the right to adopt such rules and regulations with reference to animals and leases. Copies of such rules and regulations and any amendments thereto shall be furnished to all Members from an officer of the Association and/or be available on the Association website. However, a failure to furnish or post such rules or regulations shall not affect their validity or enforceability. Subject to obtaining any required consent of the Developer pursuant to the Declaration, any such rule or regulation may be amended, modified or revoked, and new and additional rules and regulations may be adopted by the Members at an annual or special meeting of the Members or by the Developer until the Developer has sold all Lots in the Premises and divests itself of the right to amend as set forth in Section 7.4.

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THE UNDERSIGNED hereby certifies that the foregoing are Bylaws of Kirkwood Drive Homeowners Association, adopted the 11th day of February, 2025.

**KIRKWOOD DRIVE HOMEOWNERS
ASSOCIATION**

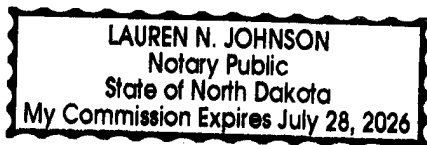
By: RIVER'S EDGE ESTATES, LLC

a North Dakota limited liability company

By: Donald A. Dabbert, Jr.
Its: Managing Member

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

On this 11th day of February, 2025, before me personally appeared DONALD A. DABBERT, JR. as Managing Member of River's Edge Estates, LLC, the entity that is described in and that executed the within instrument, and acknowledged to me that such entity executed the same.



Notary Public

(Signature Page to Bylaws of Kirkwood Drive Homeowners Association)