

WEST BAY HEIGHTS

COVENANTS AND RESTRICTIONS

The following are the covenants and restrictions of West Bay Heights.

These covenants and restrictions are dated December 29, 2010, and recorded with the Benson County Recorder on January ____, 2011, in Book _____ of Miscellaneous, Page _____, and as Document No. _____.

West Bay Heights is located in Benson County, North Dakota, and the property is described as follows, to-wit:

A parcel situated in the Southwest 1/4 of Section 32, T154N R66W and Government Lot 3, of Section 5, T153N R66W of the 5th Principal Meridian, Benson County, North Dakota and is more particularly described as follows: Beginning at the intersection of the East line of the SW1/4 of Section 32 with the South right of way line of North Dakota State Highway #19; thence S00°14'08"W along the East line of the SW1/4 of said Section 32 a distance of 2597.06 feet to a point 52.77 feet past the South 1/4 corner of said Section 32; thence N73°40'34"W a distance of 592.71 feet; thence N00°00'00"E a distance 381.25 feet; thence along a simple curve to the right having a radius of 166.81 feet, with a delta angle of 1306'12" for an arc distance of 38.149; thence N67°36'57"W a distance of 205.10 feet; thence along a simple curve to the left having a radius of 634.65 with a delta angle of 501'05" for an arc distance of 55.583 feet; thence N25°4'54"E a distance of 51.51 feet; thence N17°20'18"E a distance of 178.93 feet; thence N89°02'35"E a distance of 227.58 feet; thence N36°10'58"W a distance of 102.78 feet; thence N37°28'29"W a distance of 368.97 feet; thence N72°39'26"W a distance of 650.00 feet; thence N90°00'00"W a distance of 460.00 feet; thence N00°00'00"E a distance of 650.00 feet; thence N90°00'00"W a distance of 160.00 feet; thence N00°00'00"E a distance of 505.00 feet to the South right of way line of North Dakota State Highway #19; thence S89°45'42"E along said right of way line a distance of 2100.08 feet to the point of beginning. Said parcel of land contains 76.45 acres, more or less with 0.11 acres in said Government Lot 3 and 76.34 acres in said SW1/4.

There is contained in West Bay Heights, an area identified in the plat of West Bay Heights as green space. This area is referred to in these covenants and restrictions as "green space."

West Bay Heights is created to preserve the natural beauty of the area. It is intended that the reasonable view from each lot be protected as much as possible. It is the desire to have a neighborly mind set to West Bay Heights. The area shall be quiet, but, yet, family orientated. In order to maintain the natural beauty of the area, the removal of trees in The Woods shall be at a minimum.

There is also contained in West Bay Heights, an area subject to an Emergence Wetland Program Easement. This area is identified in these covenants and restrictions as “natural area.”

The covenants and restrictions for West Bay Heights are hereby adopted to provide as follows:

1. No structure shall be constructed, erected, or located in West Bay Heights, unless the design and location are in harmony with existing structures. This determination will be made by the Board of Directors.

2. There shall be no structures constructed nor obstructions placed on or in the green space.

3. The green space will be maintained by the Association.

4. The areas identified in the plat of West Bay Heights as roads or trails shall be used for vehicular traffic. In addition to automobiles, vehicular traffic in this covenant and restriction shall include four wheelers and snowmobiles

5. There shall be no vehicular traffic on the areas identified in the plat of West Bay Heights as walking paths or any walking paths added to West Bay Heights, after the filing of the plat. This not only includes prohibiting vehicles from using the walking paths, but also prohibits four wheelers and snowmobiles from using the walking paths. Walking, bicycles, and golf carts are permitted uses on the areas identified as walking paths. The use of the walking paths will include the right to have reasonable access across any of the lots of West Bay Heights while on the walking paths.

6. The following restrictions shall apply to the natural areas identified in the plat of West Bay Heights:

- a. Drift wood shall not be removed from its natural state.
- b. There shall be no cutting of wood for firewood.
- c. There shall be no mowing.
- d. There shall be no burning.

The natural area is presently inundated with water. In the event the water recedes, the Association will maintain the natural area and will perform the above activities as needed and in agreement with the easement to assure no violation of the easement results.

7. The community beach area, located on either side of the boat ramp, is for the

enjoyment of all owners and renters of lots in West Bay Heights. There shall be no obstructions placed on or in the beach area which would in any way obstruct or interfere with the use and enjoyment of the beach area.

It is acknowledged the lake has been flooding for the past few years. For that reason, there may be foreign objects in the water adjacent to West Bay Heights which may cause injury. While in the water, caution should be used to avoid injury.

8. Each lot in Block One and Lots 1 through 7 inclusive in Block Two shall have its own separate sewer system. This includes each lot having its own separate drain field. Lots 9 through 12 inclusive in Block Two, and all of the Lots in Blocks Three and Four shall have shared sewer systems as approved by the county health department and the Board of Directors of the Association.

9. It is preferred that all homes in West Bay Heights be stick built. The Board of Directors of the Association has the authority to allow homes that are not stick built, such as manufactured dwelling units, subject to the following:

a. All manufactured dwelling units shall be covered with an exterior material used

in conventional dwelling units. The exterior covering shall extend to the ground, except when a solid concrete or masonry perimeter foundation is used, the exterior

covering material need not extend below the top of the foundation.

b. All manufactured dwelling units shall have a roof with a pitch of not less than two

and one half inches vertical rise for each twelve inches of horizontal run and consisting of shingles or other material customarily used for conventional dwelling units.

c. For compatibility with the surrounding dwelling units, the manufactured dwelling

units may be required to have porches and eaves and roofs with eaves.

d. A manufactured dwelling unit shall be subject to all provisions of these covenants and restrictions.

10. All trails and roadways in West Bay Heights shall have an easement for the installation, repair, and maintenance of utilities.

11. The Developer, Hermansdale Farm, may rent dwellings in West Bay Heights. The rental of other dwellings is allowed in West Bay Heights, subject to approval of the Board of Directors of West Bay Heights, and any restrictions and conditions placed on the rental of dwellings by the Board of Directors of West Bay Heights.

12. Each structure must be enclosed to prevent nuisance animals from taking up residence within or beneath the structure, as determined by the Board of Directors of the

Association.

13. No basement, tent, shack, garage, or other outbuilding shall be erected to be used as a residence.

14. No building in The Heights shall be nearer than 20 feet from the lot line nearest the access road, nor nearer than 10 feet to any side lot line, unless said adjoining lot is owned by the same person(s). For the purpose of this covenant, eaves and steps shall not be considered part of the building, provided, however, this covenant shall not be construed to permit any portion of the building on a lot to encroach upon an adjoining lot owned by another person(s).

15. Garages, storage sheds, and gazebos shall be permitted, so long as they are in compliance with these covenants and restrictions.

16. No noxious or offensive trade shall be carried on upon any lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood. The determination of whether anything is an annoyance or nuisance shall be determined by the Board of Directors of the Association.

17. All driveways must be of sufficient area to park at least two cars entirely off the access road. Visitors must park in public areas or in front of the lot(s) owned by the person(s) hosting said visitor. Parking on the lots shall not be allowed, unless the parking is in a driveway or roadway.

18. All sewer and septic systems must be in compliance with the rules and regulations of the North Dakota State Health Department. No outbuildings shall be allowed to be used as a part of the septic system.

19. Electricity has been provided to each lot. Electrical lines are to be underground, and the digging, trenching, and burying of the wires, as well as the installation of the meters for each individual lot(s), is the responsibility of the owner of each lot(s). The Association reserves the right of access to repair and maintain any electrical lines in order to continue electrical service to West Bay Heights. It is the responsibility of the Association to provide, repair, and maintain electricity to the lot line. From the lot line the responsibility to provide the electricity shall be the responsibility of the owner of the lot.

20. Except for barbed wire or woven fence, fences shall be permitted.

21. No animals, livestock, or poultry of any kind shall be raised, bred or kept, except horses and dogs, cats, and other common household pets, as long as they are not kept, bred, or maintained for commercial purposes. In no event shall more than **two dogs or two cats** be maintained at one time. Any pet must remain on its owner's property or be under its owner's control at all times. A pet shall be considered a nuisance if the Board of Directors of the Association has received two or more complaints on that particular pet. Nuisance pets shall be

removed from the subdivision, and shall not be permitted to return. A nuisance pet is one determined by the Board of Directors of the Association to be a nuisance. In making the determination whether an animal is a nuisance, the Board of Directors of the Association shall consider if the pet is loud, runs through the subdivision, is out of control, scares any residents, or any other factor deemed relevant by the Board of Directors.

22. The owner or person(s) in possession of each lot, whether vacant or improved, shall keep the same free of weeds and debris, provided such maintenance is not prohibited by these covenants and restrictions. If the owner of the lot fails to keep the lot free of weeds and debris, the Association may maintain the weeds and debris, and assess the cost of such maintenance to the fees that lot pays to the Association.

23. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept, except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

24. The storage of vehicles, boats, four wheelers, golf carts, snowmobiles, or any other vehicle outside of any structure is allowed for a reasonable period of time, which shall be set by the Board of Directors of the Association.

25. The Developer will provide water to each lot in West Bay Heights, as provided herein. If rural water is available to West Bay Heights, the Developer will pay for the installation of rural water to each lot. The owner of the lot will be responsible to pay the monthly fee for the rural water and to also repair and maintain the water line from the lot line. If rural water is not available, the Developer will provide water to each lot from a well and the Developer will also install, maintain, and repair the water line to each lot line, and from the lot line, the owner of the lot will be responsible to repair and maintain the water line. The Developer and the Association, or its agents, have the right of ingress and egress across any of the lots of West Bay Heights to repair and maintain the wells and water lines.

26. All lots in West Bay Heights shall be used solely as for single family dwellings, except as provided herein. A use other than single family dwelling may be allowed if approved by the Association and the Benson County Board which is responsible for zoning.

27. The boat ramp to be installed in West Bay Heights by the Developer may be used by the owner of any lots of West Bay Heights. The Association will be responsible to maintain and repair the boat ramp.

28. It is permissible to allow existing dwellings to be moved to West Bay Heights, rather

than built on site. It is necessary to obtain the written permission of the Board of Directors of the Association before any dwelling is moved into West Bay Heights. The Board of Directors of the Association may allow the moving of any dwelling into West Bay Heights subject to any restrictions or conditions it may require.

29. It is intended there be a reasonable view from all lots in West Bay Heights. The planting of trees must be approved by the Association and straight row plantings will not be allowed, if such plantings obstruct the view of any other lot in West Bay Heights. The Board of Directors of the Association may require the removal of any object obstructing the reasonable view from any lot in West Bay Heights. In its discretion, the Board of Directors may assess the cost of the removal against the property causing the obstruction.

30. No lot in West Bay Heights may be subdivided, without the written consent of the Board of Directors of the Association.

BOARD OF DIRECTORS

A. The official name shall be West Bay Heights Association. The Association is responsible to enforce its own covenants and restrictions.

B. These covenants and restrictions will be enforced, regulated, and interpreted by the Board of Director of the Association.

C. The Board of Directors of West Bay Heights shall consist of seven (7) individuals elected by owners of property in West Bay Heights. There will be one vote per lot, and Association members may have more than one vote if the Association member owns multiple lots. For each lot that has more than one owner, each owner will have a fractional vote determined by the fractional interest that member has in the lot. For example, if one individual owns two lots in West Bay Heights, that individual has two votes. If one lot in West Bay Heights has two owners, each owner has one-half of a vote.

D. Each Board of Directors shall consist of a president, vice president, and secretary/treasurer. The officers of each board will be elected by the members of the Association.

E. The administration of West Bay Heights, as well as the enforcement of these covenants and restrictions, shall be done by the Board of Directors.

F. It is the duty of the owner of each lot to pay their share of the common expenses, expenses of administration, maintenance and repair of the common elements, water, trash removal, mosquito spraying, electricity for the common wells, and repair and maintenance of the common wells, any insurance, and any fixed charges allocated or assessed to each property unit,

and any other expenses set forth in these covenants and restrictions. Payment shall be in such amounts and at such times as determined by the Board of Directors. The assessment for each lot shall be determined by the Board of Directors taking into account the benefit received by each lot assessed.

G. Should any owner fail or refuse to make any payment within the time set by the Board of Directors and in the amount determined by the Board of Directors, the amount will constitute a lien on the interest of such owner as set forth in the deed of conveyance to that owner, together with the owner's interest in the general common elements, and upon the recording of the notice by the Board of Directors with the proper official of Benson County, North Dakota, the lien shall become effective with said recording and shall constitute a lien upon such unit owner's interest in their property.

To evidence such lien for unpaid assessments, the board shall prepare a written notice setting forth the amount, the name of the owner of the lot, and a description of said lot. This notice will be signed on behalf of the Board by an officer of the Board and shall be recorded in the office of the official newspaper of Benson County. The lien shall attach from the date of the recording. Such lien may be enforced by foreclosure by the Association of the defaulting owner's lot in the same manner as mortgages on real property. The lien shall be in favor of the Association and for the benefit of all members of the Association.

H. The Association, through its Board of Directors, may acquire and hold, for the benefit to the lot owners, real property, or tangible and intangible personal property, and may dispose of the same by sale or otherwise, and the beneficial interest in such item of property shall be owned by the lot owners in the same proportion as their respective interest in the general common elements, and shall not be transferable, except with a transfer of a lot unit. A transfer of a lot unit shall transfer to the transferee ownership of the transferor's beneficial interest in such real or personal property without any reference to the real or personal property or a bill of sale. Each owner may use such real and personal property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners. The sale of a lot unit under foreclosure shall entitle the purchaser to the beneficial interest in the real and personal property associated with the foreclosed lot.

I. Regular annual meetings of the Association shall take place on the _____ of _____ of each year at such time and location as determined by the Board of Directors. Notice of the time and location of the meeting shall be provided to the owner(s) of record of each lot no later than one week prior to the meeting, which notice will be sent to the record owner(s) by mail at the address of the record owner on file with the secretary of the Association. This notice will be mailed no later than _____ days prior to the meeting.

J. At each annual meeting, the Board of Directors shall be elected. The term of the officers, president, vice president, and secretary, shall be three (3) years.

K. There are no proxies allowed. This means that in order to vote, a party must be present in person.

L. In the event of a resignation, or for any other reason there is a vacancy on the Board of Directors, the Board shall appoint a member of the Association to complete the vacant term on the Board.

M. A special meeting of the Association can be called by the Board of Directors, or by ten percent (10%) of the members of the Association. The date, location, and time of the meeting will be provided to the members of the Association no later than one (1) week prior to the special meeting by the same method for the annual meeting. In the event the agenda of any meeting includes an amendment to these covenants and restrictions, the notice of the meeting must be no later than ten (10) days prior to the first meeting, and there must be two (2) meetings held to discuss the change prior to its adoption. Any change to the covenants and restrictions will be voted on at the second meeting.

N. What the Association will be responsible to pay for includes, but is not limited to the following:

- a. Electricity for the wells and sewer systems.
- b. Road Maintenance.
- c. Snow removal on roads.
- d. Mowing of Association road ditches.
- e. Boat ramp and Association beach cleaning.
- f. Maintenance on the wells, water lines, sewer lines and drainfields.
- g. Proposed capital improvements that are detailed in the original plat.
- h. Improvements that the Board of Directors of the Association approve in the future.
- i. Upkeep and tree plantings of green spaces.
- j. Garbage service.
- k. Future walk paths and upkeep.

O. The Board of Directors cannot conduct business at a meeting unless a quorum of the Directors is present. A quorum is a majority of the Directors.

P. The Association cannot conduct business at its meeting unless a quorum is present. A quorum is a majority of the lots in the Association.

AMENDMENT

These covenants and restrictions will remain in full force and effect until amended, modified, revoked, or rescinded by a majority vote.

Dated this _____ day of January, 2011.

Reginal Herman

Eileen Herman

Hermansdale Farm, a North Dakota Partnership,
Developer

By: _____
Reginal Herman
Its: Partner

STATE OF NORTH DAKOTA)
)ss
COUNTY OF _____)

On this _____ day of January, 2011, before me, a notary public within and for the said county and state, personally appeared Reginal Herman and Eileen Herman, and the said Reginal Herman as a partner of Hermansdale Farm, a North Dakota partnership, and who acknowledged that they executed the above and foregoing instrument as set forth herein and further had the authority to execute the same.

Notary Public