

DECLARATION OF RESTRICTIONS AND OBLIGATIONS

THIS Declaration of Restrictions, Obligations, and Architectural Control is made this [??]th day of [???], 2018, by Heritage Development, Inc., with its principal address at 1003 Community Loop, Bismarck, North Dakota 58503, hereinafter referred to as “Developer.”

WITNESSETH

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

HERITAGE RESERVE SUBDIVISION TO BURLEIGH COUNTY

Lots 1 through 14, Block 1;
Lots 1 through 19, Block 2;
Lots 1 through 6, Block 3;
Lots 1 through 17, Block 4;
Lots 1 through 4, Block 5

WHEREAS, this Real Property has been platted into lots which are presently known as “Heritage Reserve Subdivision” to the County of Burleigh, North Dakota (hereinafter referred to as “the Lots”). This plat has been recorded in Burleigh County as Document No. [XXXXXXX].

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

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

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

1. PURPOSES: The Lots within the Real Property shall be used for residential purposes as set out on the development plan of Developer; however, Developer may hereafter amend such development plan. In this regard, Developer shall have the absolute right and ability to amend and change the development plan without notice, in the sole discretion of Developer. Every person who purchases a Lot in the above-described Real Property waives any and all objection to such development, including any commercial aspects thereof, and consents to such

development, as well as all amendments and changes thereto. Such waiver and consent shall bind all transferees and future owners of any Lot within the Real Property.

2. ARCHITECTURAL REVIEW COMMITTEE: There shall be an Architectural Review Committee (“Committee”) consisting of three (3) people appointed by Developer. Each person shall be subject to removal at the direction of Developer and all vacancies on the Committee shall be filled by appointment of Developer. In the event of the failure of Developer to appoint such Committee or to fill any vacancies therein, the owners of a majority of the Lots in the Real Property shall have the right by written document to appoint members of the Committee or to fill any vacancies therein, until such time as Developer shall appoint other members to the Committee. The initial members of the Committee shall be Chad Moldenhauer, Stacy Moldenhauer, and Michelle Holly. At such time as the developer has sold 100% of the Lots in the Real Property, the owners of the Lots shall thereafter have the right to appoint the members of the Architectural Review Committee in accordance with any bylaws established.

3. RESPONSIBILITIES OF ARCHITECTURAL REVIEW COMMITTEE

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

B. Any Lot owner seeking to construct a new home or other appurtenant structure, including but not limited to fences, shops, sheds, decks, hot tubs, patios, or pools, or seeking to commence landscaping or make any modification of the foregoing shall submit the plans to the Committee for review prior to the commencement of construction.

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

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

- (1) All roofing materials shall be limited to earth tone colored asphalt or steel shingles and must be approved by the Committee. Roofs will have a minimum of a 5/12 pitch unless otherwise approved by the Committee.

- (2) All driveways and parking pads shall be constructed of concrete, pavers, asphalt, or Class 5 gravel.
- (3) Heat pumps, solar devices, chimney flues, hot tub pumps, swimming pools pumps and filtration systems, satellite dishes, and similarly exposed mechanical equipment shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety concerns.
- (4) Siding shall be of wood, brick, stone, EIFS, fiber cement, other composite siding or combinations of those materials as approved by the Committee. No vinyl siding will be allowed. Colors shall be earth tone in nature and must be approved by the Committee.

E. Notwithstanding the above provisions, the Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this Declaration, nor shall the right to enforce any provisions be waived. No member of the Committee shall have any liability, responsibility, or obligation, whatsoever, for any decision or lack of a decision, in the carrying out of duties as a member of the Committee. The responsibility for compliance with all of the terms of this Declaration shall rest solely with the Lot owner. Each Lot owner agrees to save, defend, and hold harmless the Committee, and each of its members, on account of any activities of the Committee relating to the owner's Lot or buildings to be constructed on his or her Lot.

4. BUILDING RESTRICTIONS:

A. **Square Footage:** Any home constructed shall have a minimum main floor area of the main structure, exclusive of one-story open porches and garages, of not less than one thousand five hundred (1,500) square feet for a one-story dwelling. In the case of a two story (not including basement) dwelling, the above-ground floor living level shall be not less than one thousand (1,000) square feet and the total finished square footage area, excluding the basement, shall not be less than two thousand (2,000) square feet. No split-level, bi-level or three-story dwellings may be constructed on the above-described Lots. No homes shall be more than 40 feet in height at the front elevation. All buildings are subject to the requirements of the Burleigh County Building Code.

B. **Setbacks:** The setback line for construction of homes and ancillary buildings in the development shall be a minimum of thirty feet (30') and a maximum of forty feet (40'). The minimum side setbacks of the home and ancillary buildings shall be twenty feet (20') and the minimum rear setback shall be thirty feet (30') unless otherwise approved by the Architectural Review Committee.

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

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

E. **Wires & Satellites:** All lines or wires for telephone, power, cable television, or otherwise, shall be placed underground and no such wires shall be shown on the exterior of any building unless the same shall be underground or in a conduit attached to a building. No television or radio antenna or aerial shall be installed. Television satellite disks may be installed but not to exceed eighteen inches (18") in diameter.

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

G. **Fences:** Fencing will be allowed at the back and sides of the Lot ,but will not be allowed to extend beyond the front of the home, nor shall fencing be more than six feet (6') in height. Fences shall be constructed of maintenance-free materials and no wood or chain-link fences shall be allowed. All fences must be approved by the Architectural Review Committee.

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

I. **Ancillary Buildings:** Any detached structures must be constructed of the same materials, and in the same style and form of the home on the Lot. No ancillary building shall be constructed before the home is constructed on the Lot, nor shall the footprint be larger than the main floor of the home or more than twenty-five feet (25') in height.

J. **Garages.** All attached garages shall be at least three stalls (3) wide and shall be at least twenty-four feet (24') deep. All garages must have one garage door that is at least sixteen feet (16') wide and a second garage door that is at least nine feet (9') wide, or the garage must have three (3) garage doors that are each at least nine feet (9') wide unless otherwise approved by the Architectural Review Committee

K. **Permanent Parking:** No more than one parking pad may be placed on each Lot for use by a spare vehicle, recreational vehicle (boat, pontoon, camper or trailer) or utility vehicle (tractor, four-wheeler, side-by-side or motorcycle). No other vehicles shall be parked outside continuously for more than forty-eight hours (48) at a time.

L. **Storage Tanks:** Storage tanks of any kind shall be buried underground. No elevated or above-ground storage tanks shall be permitted on any Lot.

5. CONSTRUCTION REQUIREMENTS:

- A. **Construction Debris:** All refuse containers kept on site during the construction of the home must be tarped or covered and care must be taken to keep any debris on site. Any trash or garbage from the construction of the home that travels off site must be collected within twenty four (24) hours.
 - B. **Tracking:** Contractors must take reasonable steps to ensure the mud and dirt stays on site during construction. Any mud tracked into the streets must be removed and cleaned within twenty-four (24) hours. Concrete washouts must be contained on the individual Lots.
 - C. **Construction Period:** Any construction commenced on a home shall be substantially completed within twelve (12) months from the date the construction is commenced. Landscaping shall be completed within six (6) months from the substantial completion of the home.
 - D. **No Manufactured Housing:** All homes shall be built on site. No manufactured, modular, or pre-fabricated homes shall be allowed within subdivision.
6. **ANIMALS AND LIVESTOCK:** 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 purposes. At all times, pets must be leashed or fenced.
7. **NUISANCE:** No noxious, illegal, or offensive use of property shall be carried on any Lot, nor shall anything be done on any Lot that may be, or become, an annoyance or nuisance to the neighborhood. No Lot owner shall at any time conduct or permit to be conducted on any Lot any trade or business of any kind, either commercial or noncommercial, religious or otherwise, including day schools, nurseries, or schools, nor shall the premises be used for any other purpose whatever except for the purpose of providing a private, single-family dwelling or residence.
8. **MAINTENANCE:** No trash, garbage, ashes, or other refuse, junk, vehicles in disrepair, underbrush, or other unsightly growth or objects shall be maintained or allowed on any Lot. All landscaping and buildings shall be kept in a state of repair. All residences shall be painted or stained, from time to time, so as to maintain a reasonable state of repair. All vacant Lots shall be mowed at least three (3) times per year, with each mowing to occur by May 30, July 30, and September 30 of each year and shall be maintained in accordance with the rules adopted by the Architectural Review Committee.
9. **MAINTENANCE OF COMMON AREAS:**
- A. **Common Areas:** Lot 1, Block 1 and Lot 1, Block 5 are to be used as common areas with signage and landscaping for the benefit of the subdivision and shall be owned by the Heritage Reserve Association.

- B. **Fees:** Each Lot owner shall be assessed a portion of the maintenance costs associated with the common areas as determined by the association bylaws.
- C. **Heritage Reserve Association:** The Heritage Reserve Association Board of Directors will consist of a President, Vice President, and Treasurer/Secretary. The Developer shall assume the role of the Association Board of Directors until the Developer has sold 100% of the Lots in the subdivision, after which time the Board of Directors shall be nominated by a majority of the individual Lot owners. The Association shall have the right to recoup costs and fees associated with any unpaid dues and use any remedies allowed by law.
- D. **Future Subdivisions:** The Developer reserves the right to add new developments, further common areas, and additional lots to the Heritage Reserve Association.
10. **CENTRAL SEWER SYSTEM:** All Lots shall be served by a central sanitary sewer system approved by the North Dakota State Department of Health. The Heritage Reserve Association shall have the ability to contract the maintenance of the central sanitary sewer system with a qualified provider, assess the individual Lot owners a maintenance fee, and to establish a capital account for extraordinary expenses.
11. **PARTITION AND SUBDIVISION PROHIBITED:** Each of the owners of Lots in the development, whether such ownership is in fee simple or as a tenants-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. None of the Lots may be subdivided, except by the Developer.
12. **TREE AND VEGATATION REMOVAL:** No existing trees or vegetation may be removed without the approval of the Architectural Review Committee.
13. **INVALIDITY OF ANY PROVISION:** In the event any restriction or obligation herein contained by invalid or held invalid or void by any court of competent jurisdiction, such invalidity or nullity shall in no way affect any other condition or restriction herein contained.
14. **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.
15. **LEGAL ACTION IN THE EVENT OF BREACH:** As to Developer and the owner or owners of any Lot, including any bona fide purchaser under contract, the foregoing restrictions and obligations shall operate as covenants running with the land and a breach of any of them or a continuance of any such breach may be enjoined, abated, or remedied by appropriate proceedings by Developer or the Committee, as the case may be, or any Lot owner. The Developer and the Committee have the sole discretion to identify and address a breach as well as grant variances and under no circumstances may a legal action be brought against the Developer or the Committee.

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

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

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

19. NOTICE OF CLAIM: If Developer, or the Committee, deems a breach of these Restrictions and Obligations has occurred, Developer or the Committee may execute, acknowledge, and record in the Office of the Recorder of Burleigh County, a Notice of Claim 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 Lot owner or owners thereof. Such notice upon being recorded shall constitute notice to all persons of such breach, and shall remain of record until the described breach is remedied. Within thirty (30) days of the described breach being remedied, Developer or the Committee shall record a Release of Claim identifying the breach described by the Notice of Claim as having been remedied.

IN WITNESS WHEREOF, the Developer hereto has set its hand the date listed below.

Dated: _____, 2018.

HERITAGE DEVELOPMENT, INC.

 By:
 Its:

STATE OF NORTH DAKOTA)

COUNTY OF BURLEIGH)ss
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On this ____ day of _____, 2018, before me personally appeared Chad Moldenhauer as President of Heritage Development, Inc., known to me to be the person described in and who executed and acknowledged the foregoing instrument.

Notary Public