

BYLAWS OF HERITAGE PARK ASSOCIATION

**ARTICLE I
HERITAGE PARK ASSOCIATION**

Section 1. Legal Description of Affected Property: The property subject to these Bylaws is known as the Heritage Park Second Addition (hereinafter "Project") and is described as follows:

HERITAGE PARK SECOND ADDITION TO THE CITY OF BISMARCK

Burleigh County North Dakota

- Lots 1 through 6, Block 1;
- Lots 1 through 12, Block 2;
- Lots 1 through 20, Block 3;
- Lots 1 through 14, Block 4;
- Lots 1 through 16, Block 5;
- Lots 1 through 28, Block 6;

Notice of Common Areas owned by Heritage Park Association:

- Lot 1, Block 1, Heritage Park Addition – Landscape Buffer and Walking Trail;
- Lot 1, Block 7, Heritage Park Addition – Stormwater and Drainage Easement;
- Lot 17, Block 7, Heritage Park Addition – Landscape Buffer and Walking Trail;
- Lot 20, Block 6, Heritage Park Second Addition – Stormwater and Drainage Easement

Section 2. Definitions.

- A. As used herein the term "Developer" shall refer to Heritage Development, Inc.
- B. As used herein the term "Association" shall refer to Heritage Park Association.
- C. As used herein, the term "Lot" shall be defined so as to include all lots within the Project. The project includes the original Heritage Park Addition which consists of 93 lots and Heritage Park Second Addition which consists of 96 lots. It is the Developer's intention to combine the developments so that each lot owner becomes a member of the Heritage Park Association.

Section 3. Applicability of Bylaws. The provisions of these Bylaws are applicable to all Lots in the Project, as described above, and to the use and occupancy thereof. The phrase "Project" as used herein shall include the land, the structures, and buildings, presently constructed or to be constructed on Project land, and all other improvements thereon, all easements, rights and appurtenances belonging thereto and all other property intended to be submitted to the provisions of these Bylaws.

Section 4. Application. All present and future owners, mortgagees, lessees and occupants of Lots and their employees, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration of Restrictions and Obligations pertaining to use and operation

of the Project property. The acceptance of a deed or conveyance, or the entering into of a lease, or the act of occupancy of a structure on a Lot shall constitute an acceptance and the ratification of the provisions of these instruments and an agreement to comply therewith.

Section 5. Office. The office of the Association and of the Board of Directors shall be designated from time to time by the Board of Directors or the Association.

ARTICLE II BOARD OF DIRECTORS

Section 1. Number and Qualification. The Developer shall be deemed the sole initial director and officer of the Project until such time as the control is assigned to the Association, as provided herein. The affairs of the Project and of the Association shall be governed by the Board of Directors. The Board of Directors shall be composed of no less than three (3) people and no more than five (5) people, all of whom shall be owners, or spouses of owners or mortgagees of Lots or in the case of corporate owners, shall be officers, stockholders or employees of such corporation.

Section 2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Project an Association, except where such powers and duties by law or by the Declarations or Bylaws may not be delegated to the Board of Directors by the Lot Owners. The powers and duties to be exercised by the Board of Directors shall include, but shall not be limited to, the following:

- A. Operation, care, upkeep and maintenance of the common elements;
- B. Determination of the amount of funds required for operation, maintenance and other repairs of the Project, including common area operation, repair and maintenance;
- C. Determination of the amount of funds required to establish a capital account for the eventual repair or capital improvement for the repair, replacement or capital improvement of the sewer and water mains which service the Project;
- D. Billing members for and the collection of the common charges;
- E. Employment and dismissal of Association employees and independent contractors, as necessary for the efficient maintenance and operation of the common elements;
- F. Adoption and amendment of rules and regulations covering the details of the operation and use of Project common areas;
- G. Opening of bank accounts on behalf of the Project and Association designating the signatures required therefore;
- H. Purchasing Lots at foreclosure or other judicial sales in the name of the Association, or its designees, corporate or otherwise, on behalf of all Lot Owners, to the extend such sales result from the foreclosure of Association dues lien, only;



I. Obtaining insurance for the Association and common area property, pursuant to the provisions of Article V;

J. Making repairs, additions and improvements to or alterations of the Project common area property, and repairs to and restoration of such property in accordance with the other provisions of these Bylaws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings; and

K. The placement of a lien on any Lot for which assessments have not been paid.

Section 3. Managing Agent. The Board of Directors may employ for the Project a managing agent at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize including, but not limited to, the duties listed in Article II. The Board of Directors may delegate to the managing agent the powers granted to the Board of Directors by these Bylaws.

Section 4. Selection and Term of Office. One (1) Board member shall be elected initially for a term of one (1) year, one (1) Board member for a term of two (2) years, and one (1) Board member for a term of three (3) years. Thereafter one (1) Board member will be elected each year. The term of each Board member shall thereafter be three (3) years.

Section 5. Removal of Members of the Board of Directors. At any regular or special meeting of the Association, any one or more of the members of the Board of Directors may be removed, with or without cause, by a two-thirds (2/3) majority of the available votes and a successor shall then or thereafter be elected to fill the vacancy thus created. Any member of the Board of Directors whose removal has been proposed by the Lot Owners shall be given an opportunity to be heard at the meeting considering such proposal.

Section 6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a member thereof by a vote of the Lot Owners, shall be filled by vote of a majority of the remaining Board members at a duly noticed special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected may be a member of the Board of Directors until a successor shall be elected at the next annual meeting of the residential Lot Owners.

Section 7. Organizational Meeting. The first meeting of the members of the Board of Directors, shall be held within ten (10) days following the first annual meeting of the Lot Owners.

Section 8. 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 of the members of the Board of Directors, but at least one such meeting shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each member of the Board of Directors, by mail or telephone, at least three (3) business days prior to the date specified for such meeting.

Section 9. Special Meetings. Special meetings of the Board of Directors may be called by the



President on three (3) business days' notice to each member of the Board of Directors, given by mail or telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least one member of the Board of Directors.

Section 10. Waiver of Notice. Any member of the Board of Directors may, at any time, waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board of Directors shall constitute a waiver of notice by such Director. If all the members of the Board of Directors are present at a meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 11. Quorum of Board of Directors. At all meetings of members of the Board of Directors, a majority thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the binding and enforceable decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum is present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 12. Compensation. No member of the Board of Directors shall receive any compensation from the Project or Association for acting as such but may be reimbursed for expenses incurred.

Section 13. Liability of the Board of Directors. The members of the Board of Directors shall not be liable to the Lot Owners for any mistakes of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Lot Owners shall indemnify and hold harmless each member of the Board of Directors against all contractual liability to others arising out of contracts by the Board of Directors on behalf of the Project and the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declarations or Bylaws. It is also intended that the liability of any Lot Owner arising out of the indemnity in favor of the members of the Board of Directors shall be limited to such proportion of the total liability thereunder as such Lot Owner's Lot bears to the interests of all Lot Owners in the common elements.

**ARTICLE III
MEETINGS – GENERAL ASSOCIATION MATTERS/AFFAIRS**

Section 1. Annual Meeting. Within sixty (60) days after the Developer has transferred control of the Association to the Board of Directors as provided in these Bylaws, a first meeting of the Lot Owners shall be called by the Developer who shall provide notice to all Lot Owners as provided in this Article. Thereafter, the annual meetings of the Lot Owners shall be no later than June 30th of each succeeding year. At such meetings, the Board of Directors shall be elected by a vote of the Lot Owners in accordance with the requirements of these Bylaws. The Lot Owners may transact such other business at such meetings as may properly come before them.

Section 2. Place of Meeting. Meeting of the Lot Owners shall be held at the principal office of the Project or at such other suitable place convenient to the owners as may be designated by the Board of



Directors.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the Lot Owners if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Secretary by Lot Owners having at least one-third (1/3) of the available Association votes. The notice of any special meeting shall stat the time, please and purpose of the meeting. No business shall be transacted at a special meeting, except as stated in the notice.

Section 4. Notice of Meetings. Notice required or permitted to be given to any member of the Board of Directors or any Lot Owner shall be in writing and may be delivered to any member of the Board of Directors or such Lot Owner either personally or by mail addressed to such Board member or Lot Owner at such addresses as provided to the Board in writing. It shall be each respective Lot Owner’s responsibility to notify the Board of Directors, in writing, of a change of address or a change of ownership of a Lot. Failure to promptly provide such written notice of change of address or change of ownership shall be at each respective Lot Owner’s sole cost and risk. Notice of each annual meeting of the Lot Owners must be given at least twenty (20) days but not more than forty (40) days prior to such meeting, stating the purpose thereof as well as the time and place where the meeting is to be held. Notice of each special meeting of the Lot Owners must be given at least ten (10) days but not more than thirty (30) days prior to such meeting, stating the purpose as well as the time and place where the meeting is to be held.

Section 5. Adjournment of Meetings. If any meetings of Lot Owners cannot be held because a quorum has not attended, a majority of the available Association votes of the Lot Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time no less than forty-eight (48) hours from the time the original meeting was called.

Section 6. Order of Business. The order of business at all meetings of the Lot Owners shall be as follows:

- A. Roll call;
- B. Proof of notice of meeting;
- C. Reading of minutes of preceding meeting;
- D. Reports of officers;
- E. Reports of Board of Directors;
- F. Reports of committees;
- G. Election of members of the Board of Directors (when so required);
- H. Unfinished business; and
- I. New business.

Section 7. Voting – Available Association Votes. The owner of each Lot, or some person designated by the owner or owners to act as a proxy on his or her behalf and who need not be an owner, shall be entitled to cast the votes appurtenant to such Lot at all meetings of Lot Owners. Proxies, if any, shall be in written form, only, to be effective. There shall be one (1) vote for each Lot within the project, regardless of the number of persons or entities who actually own a given Lot. The designation of any such proxy shall be made in writing to the Secretary and shall be revocable at any time by written notice to the Secretary by the owner or the owner’s designee.

Section 8. Majority Available Association Votes. As used in these Bylaws, the term “majority of all available Association votes” shall mean more than fifty (50%) percent of the total available Association votes of all Lot Owners present in person or by proxy and voting at any meeting of the Lot Owners.

Section 9. Quorum. The presence in person or by proxy of Lot Owners having one-half (1/2) the available Association votes of all Lot Owners shall constitute a quorum at all meetings of the Lot Owners.

Section 10. Majority Vote. The vote of a majority of the available Association votes present at a meeting in which a quorum shall be present and shall be binding upon all Lot Owners for all purposes except where a higher percentage vote is required by law, by the Declarations or by these Bylaws.

Section 11. Initial Directors. The Developer shall assume the role of the Association Board of Directors from the time of the first Lot in the Project has been conveyed to a third party until three quarters (3/4) of the Lots in the Project have been conveyed to third parties. Thereafter, the Board of Directors shall be selected by a vote of all Lot Owners, as provided herein. An account of all income and expenses, along with the segregated account balance is to be turned over to the Board of Directors after the first meeting of the Lot Owners.

ARTICLE IV OFFICERS

Section 1. Designation. The principal officers of the Project and Association shall be the President, Secretary and Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint such other officers as in its judgment may be necessary. The President must be a member of the Board of Directors.

Section 2. Election of Officers. Officers shall be elected each year by the Board of Directors at the annual meeting of each new Board of Directors following the annual meeting of the Lot Owners and shall hold office at the pleasure of the Board of Directors.

Section 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Directors, any officers may be removed, either with or without cause, and the successor may be elected at any regular meeting of the Board of Directors, or at any special meetings of the Board of Directors called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Lot Owners and of the Board of Directors. The President shall have all of the general powers and duties which are incident to the office of President of a corporation.

Section 5. Secretary. The Secretary shall keep the minutes of all meeting of the owners and Board of Directors; the Secretary shall maintain such books and papers as the Board of Directors may direct; and shall, in general, perform all duties incident to the office of the Secretary.

Section 6. Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of accounts showing all receipts and disbursements, and for the preparation of all required financial statements. The



Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name of the Board of Directors, and such depositories as may from time to time be designated by the Board of Directors, and the Treasurer shall, in general, perform all duties incident to the office of Treasurer.

Section 7. Agreements, Contracts, Deeds, Checks. All agreements, contracts, deeds, leases, checks and other instruments of the Project and Association shall be executed by two (2) officers or by such other person or persons as may be designated by the Board of Directors, in writing.

Section 8. Compensation of Officers. No officer shall receive compensation from the Association for acting as such, by may be reimbursed for expenses incurred.

**ARTICLE V
INSURANCE**

Section 1. Insurance for Fire and Other Perils.

A. The Association shall be required to obtain and maintain, to the extent obtainable, "blanket" type policy of insurance with extended coverage, and malicious mischief endorsements, insuring the Association and Project common areas, including Green Lots, and improvements thereon, if any. Such insurance shall be in an amount equal to one hundred (100%) percent of the current replacement cost of such improvements, exclusive of land, foundation, excavation, and other items normally excluded from coverage. Such policies must also provide that they may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association. Such policy must be consistent with state and local insurance laws and at least equal to such coverage as is commonly required by prudent institutional mortgage investors in the area in which the Project is located. The Association shall be authorized to obtain and maintain public liability insurance providing coverage to the individual members of the Board of Directors for liability for the acts or failures to act of a Board member in carrying out or effecting his or her duties and responsibility as a Board member.

B. Insurance Required Lot Owners. Each Lot Owner is herein and hereby notified that the Association will not obtain, retain or maintain any casualty, fire or other peril insurance upon any Lot or improvement within the Project, other than common areas, including the Green Lots. Each Lot Owner shall be required to obtain their own casualty insurance for any such perils or improvements.

Section 2. Public Liability Insurance.

A. Association Public Liability Insurance. In the event the Association acquires or leases common area space, then, and in that event, the Association shall be required to obtain and maintain, to the extent obtainable, the comprehensive general liability insurance covering all of the common elements, owned or leased by the Association, and public ways of the Project. Coverage limits will be in amounts generally required by private institution mortgage investors for projects similar in construction, location and use. However, such coverage shall be for at least five hundred thousand (\$500,000) dollars for bodily injury, including deaths of persons, and two hundred fifty thousand (\$250,000) dollars for property damage, per occurrence. The cost of such insurance shall be paid by the Association and charged to the individual Lot Owners as an Association fee. Coverage under this policy shall include, without limitation, a legal liability of the insured for property damage, bodily injuries and deaths of persons in connection



with the operation, maintenance or use of the common and limited common elements, and legal liability arising out of lawsuits related to employment contracts of the Association. Such policies must provide that the policy may be canceled or substantially modified, by any party, without at least thirty (30) days prior written notice to the Association.

B. Lot Owner Public Liability Insurance. Each Lot Owner is hereby notified that the Association shall not provide liability or casualty/all risk insurance to or for Lots or individual Lot Owners. Such liability or casualty insurance shall be retained, maintained and paid for by the individual Lot Owners within the Project.

**ARTICLE VI
OPERATION OF PROPERTY**

Section 1. Determination of Common Expenses and Common Charges; Assessment Units. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Project, determine the amount of common charges required to meet the common expenses of the Project, and allocate and assess such common charges against each Lot.

A. Common Expenses. The common expenses to be assessed against all Lots within the Project shall include among other things:

- (1) The cost of all insurance premiums on the policies of insurance required to be or which have been obtained by the Association pursuant to the provisions of Article V.
- (2) Road maintenance and repair to the extent such maintenance and repair is provided by the Association.
- (3) The cost of Association residential water and sewage disposal system maintenance and repair (which shall be limited to the sewer mains and water main line and common systems and which exclude individual lines or connections to individual lines such supply or service individual Lots within the Project).
- (4) Yard and law care of the Association common areas.
- (5) Snow removal as provided by the Association.
- (6) Real estate taxes assessed against Association common property.

B. Operation (including electricity and water) and maintenance of the Project common property, including without limitation, an amount for working capital of the Project, for a general operating reserve for a reserve fund for capital or major residential water or sewer improvements, repairs, or replacements and to make up any deficit in the common expenses for any prior year. Such common expenses shall be assessed equally against all Lots within the Project. Each lot owner shall be solely responsible for the cost of maintaining, repairing or replacement of the sewer line and/or water line which services each individual Lot Owner's Lot through and including the saddle connection which connects the individual Lot Owner's water or sewer line to the sewer or water main. The Association will not and shall



not pay for the maintenance, repair or replacement of water or sewer lines with service individual Lots.

C. The Board of Directors or its designee shall advise each Lot Owner in writing of the amount of common charges payable to each Lot Owner, and shall furnish copies of all budgets, upon which such common charges are based, to all Lot Owners. Assessments on both sold and unsold Lots shall commence within sixty (60) days after the date of the conveyance of the first Lot of the Project.

Section 2. Repair or Reconstruction After Damage. In the event of damage to a structure or Lot within the Association, the owner thereof shall arrange for the prompt and complete removal, repair and restoration of all such damage. As used herein, the work "prompt" shall be defined in the sole and absolute discretion of the Board of Directors.

Section 3. Reserve Accounts.

A. The Association shall be authorized to establish and maintain an adequate reserve fund for periodic maintenance, repair, and replacement of improvements to the common Project residential water and sewage disposal main lines and systems, which the Association is expressly obligated to maintain. The funds shall be maintained out of regular assessments for common expenses.

B. Additionally, a working capital fund shall be established for the Project operation equal to a two (2) month estimated common area charge for each Lot. Each Lot's share of the working capital fund must be collected and transferred to the Association within one hundred twenty (120) days after the date of conveyance of the Lot by the Developer to the third party. The purpose of the funds is to insure that the Association will have cash available to pay the first year's insurance premiums, to meet unforeseen expenditures, or to acquire additional equipment and services deemed necessary or desirable by the Board. Amounts paid into the funds are not to be considered any advance of the regular assessment.

Section 4. Payment of Common Charges. Each Lot Owner shall be personally obligated to pay the common charges assessed by the Association against said Lot Owner's Lot. The charges shall also constitute an assessment against the Lot, which assessment may be perfected and secured by the recording of a lien with the County Recorder.

Section 5. Collection of Assessment. The Association shall assess common charges against the Lot Owners from time to time and at least annually and shall take prompt action to collect from a Lot Owner any common charge due with remains unpaid by the Lot Owner for more than thirty (30) days from the due date of such common charges, and shall further pay and be responsible for any and all costs of collection, including, without limitation, reasonable actual attorney fees. A lien for past due assessments and common charges may be made a matter of record by recording notice thereof with the County Recorder as provided by North Dakota law.

Section 6. Default in Payment of Common Charges. In the event of default by any Lot Owner in paying to the Association the assessed common or other expenses and charges, such Lot Owner shall be obligated to pay interest at the rate of ten (10%) percent per annum on such past due common or other expenses and charges, and shall further pay and be responsible for any and all costs of collection, including, without limitation, reasonable actual attorney fees. The Association shall have the right and duty to attempt to recover such common and other expenses and charges, together with interest thereon



and the expenses of the proceedings, in an attempt to recover such common and other expenses and charges, together with interest thereon and the expenses of the proceedings, in an action brought against such Lot Owner, or by foreclosure of the lien on such Lot granted pursuant to the laws of the State of North Dakota. The Association does not intend to extend credit beyond thirty (30) days of the date of billing.

Section 7. Foreclosure of Liens for Unpaid Common and Other Expenses and Charges. In any action brought by the Association to foreclose a lien on a Lot because of unpaid Association expenses and charges, the Association, acting on behalf of all Lot Owners, shall have the power to purchase the Lot at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the same. The lien for Association charges referred to in Article VI is inferior to any mortgage given and recorded prior to recording of any liens or notices of liens for such Association common expenses and charges.

Section 8. Statement of Common Charges. The Association shall promptly provide any Lot Owner, who makes a request in writing, with a written statement of the Lot Owner's unpaid Association charges.

Section 9. Abatement and Enjoying of Violations. The violation of any rule or regulation adopted by the Board of Directors (including use restrictions), or the maintenance of a condition deemed as a nuisance by the Association, or the breach of any Bylaw contained herein, or the violation of the Restrictive Covenants, or the breach of any provision of the Declarations, shall give the Association, the right, in addition to any other rights set forth in these Bylaws: (a) to enter any Lot (including the associated easement tract(in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Lot Owner any structure, thing, or condition that may exist herein contrary to the intent and meaning of the provision hereto, and the Association, or any agents thereof, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate ore remedy such thing or condition by appropriate legal proceedings.

Section 10. Maintenance and Repair.

A. All maintenance of the repairs to any structure constructed upon a Lot, whether structural or nonstructural, ordinary or extraordinary, (unless necessitated by the negligence, misuse, or neglect of owner of a different Lot, or guest or invitee of a different Lot Owner, in which case such expense shall be charged to such different Lot Owner), shall be made promptly and completely by the owner of such Lot. Each Lot Owner shall be responsible for all damages caused to any other Lot or improvements on a Lot or to the common elements resulting from such Lot Owner's failure to promptly effect and complete required maintenance and repairs.

B. All maintenance, repairs and replacements to the common elements (unless necessitated by the negligence, misuse, or neglect of owner of a different Lot, or guest or invitee of a different Lot Owner, in which case such expense shall be charged to such Lot Owner), shall be made by the Association and be charged to the Lot Owners as a common expense.

C. The Architectural Control Committee shall have the power and authority to determine and direct when stain or paint shall be applied to the exterior surface of a structure, including, but not limited



to, decks, and railings, and when shingles, siding and gutters on a structure shall be replaced.

Section 11. Additions, Alterations, or Improvements by Board of Directors. Whenever, in the judgment of the Board of Directors, the common elements shall require additions, alterations, or improvements costing in excess of \$5,000, and the making of such additions, alterations, or improvements shall have been approved by a sixty (60%) percent majority of the available Association votes, the Association shall proceed with such additions, alterations, or improvements and shall equally assess all applicable Lot Owners for the cost thereof as a common charge. Any additions, alterations, or improvements costing \$5,000 or less may be made by the Board of Directors without the approval of the individual lot owners and the cost thereof shall constitute a common charge, which shall be equally assessed against lots within the Project.

Section 12. Additional, Alterations or Other Improvements of Structures. No Lot Owner shall construct any structure or make any structural addition, alteration, modification or improvement to a structure constructed upon a Lot, including the exterior of a structure on a Lot, without the prior express written consent and approval of the Architectural Control Committee as described in Article X by these Bylaws. The Committee shall have the obligation to respond to any written request by a Lot Owner for approval of a proposal to construct a structure or implement a structural addition, alteration or improvement to a Lot within thirty (30) days after the Association actual receipt of such written request, and failure to so respond within the stipulated time shall constitute consent by the Architectural Control Committee to the proposed structure, addition, alteration or improvement. The Architectural Control Committee shall not be liable to any contractors, subcontractors, or material men or any person sustaining personal injury or damage for any claim arising in connection with such addition, alteration, or improvement. The provision of this section shall not apply to Lots owned by the Developer until such time as a Lot shall not be altered without the prior express written consent of the Architectural Control Committee.

Section 13. Right to Access. Each Lot Owner shall grant a right of access to the Owner's Lot to the managing agent and any other person authorized by the Board of Directors or managing agent, to make inspections or to correct any condition originating to the Owner's Lot and threatening another Lot in the Project. Request for such entry shall be made in advance and such entry shall be scheduled for a time reasonably convenient to the Lot Owner. However, in case of an emergency, such right of entry shall be immediate, whether the Lot Owner is present or not. The Association shall have and retain the right to enter easement tracts for purposes of performing necessary repair or maintenance procedures, as provided in these Bylaws and the Declarations.

Section 14. Power to Grant Rights and Restrictions in Common Elements. The Owners; Association shall have the right and authority to make and implement rules and regulations concerning a) the use and maintenance of common areas; and b) shall have the right to grant utility easements under, through or over the common elements which are reasonable to the ongoing development and operation of the Project.

**ARTICLE VII
CONDEMNATION**

Section 1. Condemnation. The Association shall represent the Lot Owners in any condemnation



proceeding or negotiations, settlement and agreements with the condemning authority for acquisition of the common areas, or part thereof. In the event of taking or acquisition of part of or all of the common areas by condemning authority, the award of proceeds of settlement shall be payable to the Association or any Trustee, for the use and benefit of the Lot Owners and their mortgages as their interest may appear. In the event of a taking or condemnation or by eminent domain of part or all of the common elements, the Board of Directors shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. Any expense over condemnation proceeds may be assessed as common expense by the Board. Any surplus shall be distributed to the Lot Owners in proportion to their common interests, subject to unpaid liens upon such unit. The Board of Directors may appoint a trustee on behalf of the Lot Owners, in carrying out the above functions, in lieu of the Owner's Association.

**ARTICLE VIII
RECORDS**

Section 1. Records and Audits. The Board of Directors or the managing agent shall keep detailed records of the actions of the Board of Directors and the managing agent, minutes of the meeting of the Lot owners, and financial records and books of account of the Project and Association, including a chronological listing of receipts and expenditures, as well as a separate account of each Lot which, among other things, shall contain the amount of each assessment of common charges against such Lot, and the date when due. Audited financial statements shall be provided only upon a Sixty-Seven (67%) percent majority vote of all available Association votes.

**ARTICLE IX
AMENDMENT TO BYLAWS**

Section 1. Lot Owner Amendment. Except as provide directly below, a Sixty-Seven (67%) majority vote of all available Association votes shall be required to amend any provisions of these Bylaws.

Section 2. Developer Amendment. For a period of one (1) year after executing these Bylaws as the Developer owns one-third (1/3) or more of the Lots in the Project, the Bylaws may be amended to comply with the Developer's mortgage requirements or to correct typographical or other errors or omissions.

**ARTICLE X
ARCHITECTURAL CONTROL COMMITTEE**

Section 1. 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 said Committee shall be filled by appointment of Developer. In the event of the failure of Developer to appoint such Committee or to fill any vacancies therein, the owners of a majority in number of the lots in the said Real Property shall have the right by written document to appoint members of the said Committee or to fill any vacancies therein, until such time as Developer shall appoint other members to such Committee. The initial members of the Committee shall be Chad Moldenhauer, Stacy Moldenhauer, and Michelle Holly. At such time as the developer has sold 100% of the Lots in the Property, the Owners of the Lots shall thereafter have the right



to appoint the members of the Architectural Review Committee.

Section 2. Responsibilities of Architectural Review Committee.

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

B. Any property owner seeking to construct a new home or other appurtenant structure, add to or modify any portion of the exterior of an existing home, or commence or modify landscaping shall submit the plans to the Committee for review. A modification of the home exterior will include but is not limited to decks, hot tubs, patios, pools, and similar alterations. Construction of new structures includes equipment and material housing, gazebos, arbors associated with landscaping and similar construction.

C. No construction, change, modification, or alteration for which plans are to be submitted to the Committee pursuant to Paragraph B immediately above, shall commence until 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 full compliance with this section of the Declaration will be deemed to have occurred.

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

Section 3. Building and Use Restrictions:

A. The Committee will approve the size and square footage of any home to be built to make sure that it is in harmony with the surrounding residences. No split-level or bi-level dwelling may be constructed on the above-described lots. All buildings are subject to the requirements of the Bismarck City Building Code.

B. The setback line for construction of homes in the development shall be a minimum of 25' in conformity with the Bismarck City Building Code. Setbacks further than 25' must be approved by the Architectural Review Committee and be in harmony with the adjoining homes.



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

D. Any construction commenced on any house as provided in this Declaration shall be substantially completed within twelve (12) months from the date the construction is commenced.

E. No sign of any kind shall be displayed to public view on any building site, except for 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.

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

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

H. No fences shall be constructed. Exception may be made for privacy fences which are enclosed within a covered patio. The location, size and materials of said fence must be approved by the Committee.

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

J. 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.

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

L. No landscaping may be commenced, changed, or modified until a scaled set of plans have



been submitted in writing to the Committee for approval. In addition, no trees may be planted in the back yards that will block or negatively impact the views of neighbors. In the event the Committee fails to approve or disapprove the landscaping proposal within thirty (30) days after the plan has been submitted, approval will not be required. Landscaping shall be completed within six (6) months from the date the house is substantially completed.

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

N. No 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.

O. No storage shed or unattached garage may be constructed.

P. All roofing material shall be limited to earth toned colored shingles approved by the Committee. Roofs will have a minimum of a 5/12 pitch unless otherwise approved by the Committee.

Q. All driveways and parking bays shall be constructed of concrete or pavers.

R. Heat pumps, propane tanks, solar devices, chimney flues, hot tub pumps, swimming pools pumps and filtration systems, satellite dishes, and similarly exposed mechanical equipment shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety concerns.

S. Siding shall be comprised of James Hardie Fiber Cement or LP Smartside products in Lap, Shingle or Vertical material along with stone. Colors will be earth tone in nature and the colors and combinations of said materials must be approved by the committee.

**ARTICLE XI
RIGHTS OF ACTION**

Section 1. Owners' Association and Lot Owners. The Owners' Association and any aggrieved Lot Owner shall be granted a right of action against a Lot Owner(s) for failure to comply with the provisions of these Bylaws, the Declaration of Restrictions and Obligations or with decisions of the Owners' Association which are made pursuant to authority granted against the Owners' Association.

**ARTICLE XII
CONFLICTS**

Section 1. Conflicts. These Bylaws are set forth to comply with the requirements of the laws of the state of North Dakota. In case of any of these Bylaws conflict with the provisions of such statute or any Declaration, the provisions of the statute or the Declaration, as the case may be, shall control.

ARTICLE XIII



MISCELLANEOUS

Section 1. Notices. All notices to the Board of Directors shall be by registered or certified mail, in care of the managing agent, or if there is no managing agent, to the office of the Board of Directors or to such other address as the Board of Directors may hereafter designate from time to time. All notices to any Lot Owner shall be sent by registered or certified mail to the buildings or to such other address as may have been designated by such Lot Owner from time to time, in writing, to the Board of Directors. All notices to mortgagees of Lots shall be sent by registered or certified mail to their respective addresses of change of address which shall be deemed to have been given when received. In the event a Lot is owned by multiple persons or entities, notice to own owner shall be deemed as notice to all owners of such Lot.

Section 2. Invalidity. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity enforcement of or affect the balance of these Bylaws.

Section 3. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of Bylaws, or the intent of the provision.

Section 4. Gender. The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

Section 5. Waiver. No restrictions, condition, obligation or provision in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

Section 6. No Severance of Ownership. No Lot Owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to the Owner's Lot without including therein the appurtenant interest in common areas.

Section 7. Payment of Assessments. No Lot Owner shall convey, mortgage, sell or lease the Owner's Lot unless and until the Lot Owner has paid in full, to the Association, all unpaid common charges theretofore assessed by the Board of Directors against such Owner's Lot.

Section 8. Taxes. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Lot and not the Project as a whole.

Section 9. Priority. No provision in these Bylaws shall give a Lot Owner or any other party, priority over any rights of the first mortgages of Lots pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses or a taking of Lots and/or common elements.

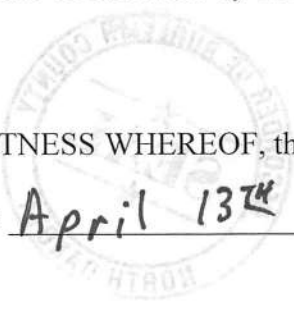
Section 10. Reports and Financial Statements. The Association shall be required to make available to Lot Owners and lenders, insurers, or any mortgage holders, current copies of the Declarations, Bylaws, Amendments or other rules concerning the Project and the books, records and financial statement of the Association. These documents and records shall be available for inspection, upon request, during normal business hours or under other reasonable circumstances. Any financial statement requested by the parties



listed above shall be furnished by the Association within a reasonable time following such request.

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

Dated: April 13th, 2021.



HERITAGE DEVELOPMENT, INC.

Chad A. Moldenhauer

By: *Chad A. Moldenhauer*
 Its: *President*

STATE OF NORTH DAKOTA)
)ss
 COUNTY OF BURLEIGH)

On this 13th day of April, 2021, 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.



Michelle M Holly
 Notary Public / Burleigh County, North Dakota