



**963512**  
\$74.00  
Page: 1 of 28  
2/26/2024 12:13 PM  
Burleigh County



---

SPACE ABOVE RESERVED FOR COUNTY RECORDER

**DECLARATION TO SUBMIT PROPERTY TO CONDOMINIUM PROJECT AND  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
HERITAGE COTTAGES**

**THIS DECLARATION** is made on this 26<sup>th</sup> day of February, 2024, by Heritage Development, Inc., with its principal office located at 1003 Community Loop, Bismarck, ND 58503 (hereinafter the "Declarant").

**WHEREAS**, Declarant is the owner of certain real property located in Burleigh County, North Dakota, described on **Exhibit A** attached hereto (hereinafter the "Property");

**WHEREAS**, Declarant desires to develop a residential condominium community intended and operated for occupancy by persons Fifty-Five (55) years of age or older in accordance with the Housing for Older Persons Act of 1995 ("HOPA");

**WHEREAS**, Declarant and its agents have caused to be incorporated, **Heritage Cottages Homeowners Association, Inc.**, under the Laws of the State of North Dakota, as a non-profit corporation, to which will be assigned the powers and duties of maintaining and administering the common areas, facilities, and administering and enforcing the covenants, easements and restrictions, and collections and disbursing the assessments and charges herein created; and

**WHEREAS**, Declarant does hereby submit the Property and the improvements to be constructed thereon in accordance with the provisions of N.D.C.C. Chapter 47-04.1, and does hereby establish a project with respect thereto and the improvements to be constructed thereon to be known as **Heritage Cottages**.

**NOW, THEREFORE**, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which shall run with, title or interest in the described Property or any part thereof, and be binding on all parties having any right, title, or interest in the described Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof. A description of the land included within the project is included in **Exhibit A**, and is incorporated herein by reference. The project shall consist of One Hundred Twelve (112) individual condominium units, each consisting of One One-Hundred-Twelfth (1/112) of the entire project, and consisting of the units in Heritage Cottages created under this Declaration (as described in Exhibit A). Diagrammatic floor plans of the structures to be constructed on the Property identifying each unit, relative location, and approximate dimensions is attached as **Exhibit B**, and is also incorporated herein by reference.

## **ARTICLE I DEFINITIONS**

**Section 1.** “Articles of Incorporation” or “Articles” shall mean the Articles of Incorporation of Heritage Cottages Homeowners Association, Inc., the original of which has been filed in the office of the North Dakota Secretary of State, and all subsequent amendments thereto.

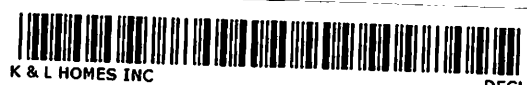
**Section 2.** “Association” shall mean and refer to the Heritage Cottages Homeowners Association, Inc., a North Dakota non-profit corporation, its successors, and assigns.

**Section 3.** “Board” shall mean the Board of Directors of the Association.

**Section 4.** “Building(s)” shall mean and refer to the structure(s) constructed or erected on the Property.

**Section 5.** “Bylaws” shall mean the Bylaws of Heritage Cottages Homeowners Association, Inc., along with all subsequent amendments thereto.

**Section 6.** “Common Elements” or “Common Areas” are used interchangeably and shall include the common roadways and appurtenant installations for utilities serving the project or any other governmental subdivision, department, or agency having jurisdiction over the project; and all other parts of the Property existing for the common use, including any green space or open space designated by a plat map of the Property, or necessary to the existence and maintenance and safety of the Building(s) and/or Unit(s).



**Section 7.** “Limited Common Elements” shall mean those portions of the Common Elements, the driveway and parking locations directly in front of the respective individual Units for the sole and exclusive use of the Owners of the directly adjacent Units together with the associated walkways, decks, patios, or other areas serving only specific Units, and such other similar area as may be designated by a plat map of the Property.

**Section 8.** “Unit” shall mean and refer to any individual unit constructed on the Property where such unit has been fully constructed and made ready for use. Units are categorized into One Bedroom, Two Bedroom, Two Story, and Garage Units as depicted in Exhibit B. Garage Units shall not be subject to HOPA requirements or restrictions.

**Section 9.** “Member” shall mean and refer to every person or entity who holds membership in the Association.

**Section 10.** “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of title to any Unit which is part of the Property, including the Declarant so long as any Unit as hereinafter defined is owned by the Declarant, and including contract sellers, but excluding those contract sellers having such interest merely as the security for the performance of an obligation.

## **ARTICLE II ADMINISTRATION**

**Section 1. General.** The Association shall be responsible for the operation, management, and control of the Property. All power and authority of the Association shall be vested in the Board. The Bylaws and any amendments thereto shall govern the operation and administration of the Association.

**Section 2. Binding Effect of Actions.** All agreements and determinations made by the Association in accordance with its powers shall be binding upon all Owners and occupants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all secured parties.

**Section 3. Rules and Regulations.** The Board shall have exclusive authority to approve and implement reasonable rules and regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the property subject to these declarations.



**Section 4. Amendments.** Any amendment to this Declaration shall require the consent of three-fourths of the Owners of the Units of this Project. Any amendment must be recorded against the project and Units.

### **ARTICLE III COVENANT FOR ASSESSMENTS**

**Section 1. General.** Assessments for common expenses shall be determined and assessed against the Units by the Board, in its discretion, subject to the limitations set forth herein and the Bylaws. Assessments for common expenses may include monthly assessments, annual assessments, and special assessments.

**Section 2. Annual and Monthly Assessments.** Annual and Monthly assessments shall be established and levied by the Board. Each assessment shall cover all anticipated common expenses of the Association for that specified time period, including, but not limited to: insurance; exterior maintenance of buildings; lawn care and mowing; snow removal; sewer and storm system maintenance; water line maintenance; roadway and driveway maintenance; irrigation maintenance; watering, exterior lighting; and taxes and specials installments. Annual assessments shall provide, among other things, for contributions to a separate reserve fund sufficient to cover the periodic cost of maintenance, repair, and replacement of the Common Elements.

**Section 3. Special Assessments.** In addition to the annual or monthly assessments, the Board may levy in any assessment year a special assessment against all Units for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted common expense, (ii) general or specific reserves for maintenance, repair, or replacement, and (iii) the maintenance, repair or replacement of any part of the Common Area, and any fixtures or other property related thereto.

**Section 4. Effect of Nonpayment of Assessments.** Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, and shall bear interest at the highest rate then permitted by North Dakota law. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges, and reasonable attorney's fees, and/or proceed with any other permissible legal remedy then available to the Association. Any assessment levied against a Unit remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Unit. A Notice of Lien shall be recordable any time thereafter and shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such Notice of Lien may include assessments which are due and payable when the Notice of Lien is recorded, fees, charges, late charges, fines, interest, costs, attorney's fees, advance to pay taxes and/or prior encumbrances and interest thereon. Such Notice of Lien



**963512**

\$74.00  
Page: 4 of 28  
2/26/2024 12:13 PM  
Burleigh County

shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such Notice of Lien, the same shall be satisfied of record. The Association may foreclose the claim in any manner allowed by North Dakota Law. In an action brought by the Association to foreclose a lien on a Unit, the Association shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage convey or otherwise deal with the same, subject, however to applicable restrictions of record. Action to recover a money judgement for unpaid assessments may be maintainable without foreclosing or waiving the lien securing the same.

## **ARTICLE IV INSURANCE**

### **Section 1. Comprehensive Public Liability and Fire Insurance.**

- A. The Board shall obtain comprehensive general liability insurance insuring the Association, the Declarant, the agents and employees of the Association and the Declarant. The limits of all insurance policies shall not be less than Two Million Dollars (\$2,000,000) covering all claims for death of or injury to any person and/or property damage in any single occurrence. Such insurance shall also include protection against water damage liability, and liability for the property of others. Such insurance must provide that, despite any provisions giving the carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the approval of the Association.
  
- B. The Board shall be required to obtain and maintain, to the extent obtainable, the "master" or "blanket" type policy of fire insurance with extended coverage, and malicious mischief endorsements, insuring the condominium building only (excluding the interior of the units from the studs in, specifically excluding improvements, cabinets, fixtures, appliances, floor coverings, wall coverings, heating and air conditioning equipment, furniture, furnishings, or other property belonging to the unit owners). Such insurance shall cover the condominium, including the common elements and limited common elements, the Board, and all unit owners and their mortgages, as their interest may appear in any amount equal 100% of their current replacement costs of the condominium buildings, 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 ten days prior written notice to the Board of directors.

**Section 2. Premiums.** Premiums upon insurance policies purchased by the Board on behalf of the Association shall be paid by the Association as part of the common expenses.

**Section 3. Supplemental Insurance.** The Board may obtain such other policies of insurance in the name of the Association as the Board deems appropriate to protect the Association and Owners, including, without limitation, errors and omissions insurance for officers and directors of the Association.

**Section 4. Insurance to be Maintained by Unit Owner.** It is the responsibility of each Unit Owner to obtain and maintain insurance covering any property within the Owner's Lot, including any and all improvements thereon, improvements to the interior of the Unit and party walls, including cabinets, fixtures, furniture, and other property, and covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the Unit.

Each policy shall contain a standard mortgage clause in favor of each mortgagee of a condominium unit which shall provide that proceeds shall be payable to such mortgage as its interest may appear., 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 condominium is located.

Each Owner shall be responsible for providing insurance coverage for the personal property contained in each Unit, and all other personal property, including motor vehicles, wherever located on the project property, as well as any additional insurance coverage desired for personal liability or living expenses.

## **ARTICLE V MAINTENANCE**

**Section 1. Maintenance by Association.** The Association shall provide for all maintenance, repair or replacement (collectively referred to a "maintenance") of the Common Elements. The Association shall also provide maintenance for the exterior of the Units. The Association shall have an easement described to perform its obligations under this Section.

**Section 2. Maintenance by Owner.** All interior maintenance of the Units shall be the responsibility and expense of the Owner(s) thereof.

**Section 3. Damage Caused by Owner.** Notwithstanding any provision to the contrary in this Section, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of an Owner or occupant, or their guests, or by a condition in the Unit which the Owner or Occupant has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter

upon any Unit to do so), and the cost thereof may be assessed against the Unit of the Owner responsible for the damage.

## ARTICLE VI USE RESTRICTIONS

**Section 1. Rules and Regulations.** The Board of Directors of the Association shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of all outdoor space of each Unit and the Common Elements. Such rules and regulations may provide for the imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants or conditions contained in this Declaration.

**Section 2. Use of Property / Occupancy by Persons Fifty-Five Years of Age and Older.** No portion of the Property shall be used except for residential purposes and purposes incidental or accessory thereto, as permitted by the City of Bismarck Zoning Ordinance. The Association shall consist of a residential community intended and operated by persons Fifty-Five (55) years of age or older in accordance with HOPA. Garage Units are not occupied structures and ownership is not restricted to persons fifty-five years of age or older.

## ARTICLE VII DECLARANT RIGHTS

Declarant hereby reserves exclusive and unconditional authority to exercise the following rights until such time as all Units within the development have been sold by Declarant:

**Section 1. Complete Improvements.** To complete the improvements indicated on the Plat, or otherwise included in Declarant's development plans or allowed by the Declaration, and to make alterations in Common Elements to accommodate its sales facilities;

**Section 2. Model Units.** To construct and display model Units and other development, located anywhere on the property.

**Section 3. Signs.** To erect and maintain signs and other sales displays offering the Units for sale in or on any Unit owned by Declarant and on the Common Elements.

**Section 4. Easements.** To have and use easements, for itself, its employees, contractors, representatives, agents, and prospective purchasers through and over the Common Elements for the purpose of exercising its special Declarant rights;

**Section 5. Control of Association.** To control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board until all Units within the development have been by Declarant.

## ARTICLE VIII GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, covenants, conditions, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Entitlement to Relief.** The Association may commence legal action to recover sums due for damages, for injunctive relief or to foreclose a lien, or any combination thereof, or an action for any other relief authorized. Relief may be sought by the Association against any Owner to enforce compliance with the governing documents, the Rules and Regulations or the decisions of the Association. However, no Owner may withhold any assessment payable to the Association, or take (or omit) other action in violation of the governing documents, the rules and regulations as a measure to enforce such Owner's position, or for any other reason.

**Section 3. Costs of Proceeding and Attorney's Fees.** With respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes, the Association may assess the violator and the Shop with any expenses incurred in connection with such enforcement, including, without limitation fines or charges previously imposed by the Association, reasonable attorney's fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association.

**Section 4. Liability for Owners and Occupants' Acts.** An Owner shall be liable for the expense of any maintenance, repair or replacement of the property rendered necessary by such Owner's acts or omissions, or by that of occupants or guests of the Owner, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or occupant. However, any insurance deductible amount and/or increase in insurance rates, resulting from the Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his/her Shop.

**Section 5. Severability.** If any term, covenant, or provision of this Declaration or any exhibit attached hereto is held to be invalid or unenforceable for any reason whatsoever, such






963512

\$74.00  
Page: 9 of 28  
2/26/2024 12:13 PM  
Burleigh County

determination shall not be deemed to alter, affect or impair in any manner whatsoever any other portion of this instrument or exhibits.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be signed in its name, effective as of the 26<sup>th</sup> day of February, 2024.

**HERITAGE DEVELOPMENT, INC.**

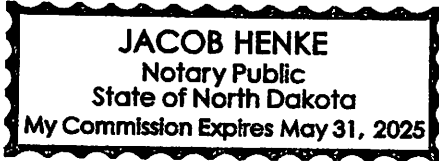
By:   
Chad Moldenhauer, President

STATE OF NORTH DAKOTA )

SS

COUNTY OF BURLEIGH )

On this 26<sup>th</sup> day of February, 2024, before me, personally appeared Chad Moldenhauer as the managing member and on behalf of Heritage Development, Inc., known to me to the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged that he executed the same.



  
Notary Public



DECLA

**963512**

\$74.00

Page: 10 of 28

2/26/2024 12:13 PM

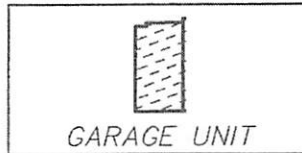
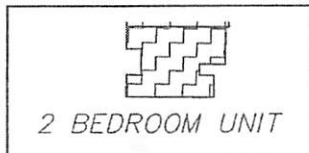
Burleigh County

### **EXHIBIT A – LEGAL DESCRIPTIONS**

Block 1, Lots 14 through 15 (inclusive) of the Heritage Ridge 2nd Addition, Platted in part of the SW 1/4 of Section 8, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, which shall include the following units:

Units 101-147, 149, 151, 153, 201-248, 300A-300B, 310A-310F, 320A-320F in Heritage Cottages created under this Declaration.

# EXHIBIT A



THIS EXHIBIT DOES NOT CONSTITUTE A SURVEY  
& IS FOR ADMINISTRATIVE PURPOSES ONLY

MATCH LINE

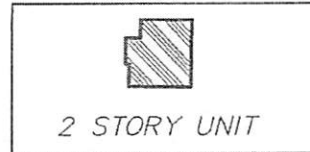
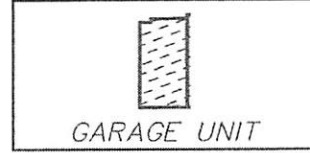
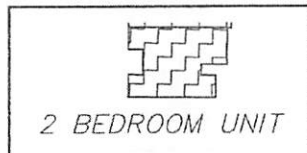
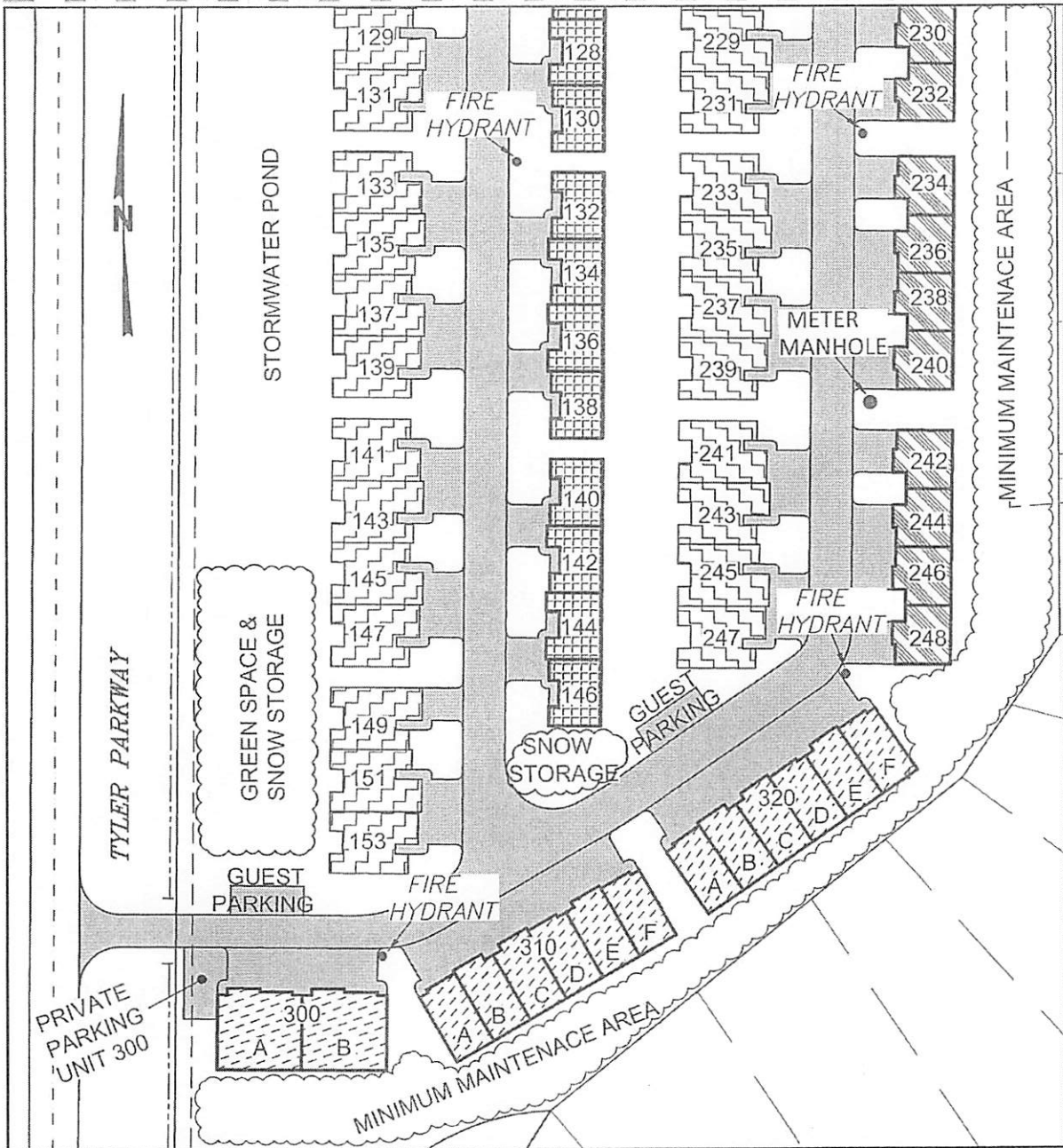
# EXHIBIT A

963512

\$74.00  
Page: 12 of 28  
2/26/2024 12:13 PM  
Burleigh County

DECLA

K & L HOMES INC



THIS EXHIBIT DOES NOT CONSTITUTE A SURVEY  
& IS FOR ADMINISTRATIVE PURPOSES ONLY



DECLA

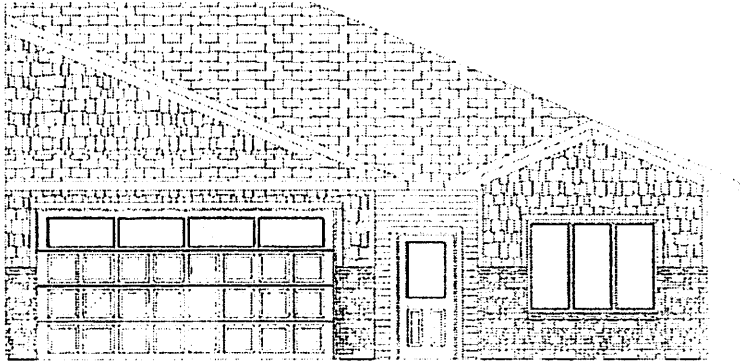
**963512**

\$74.00  
Page: 13 of 28  
2/26/2024 12:13 PM  
Burleigh County

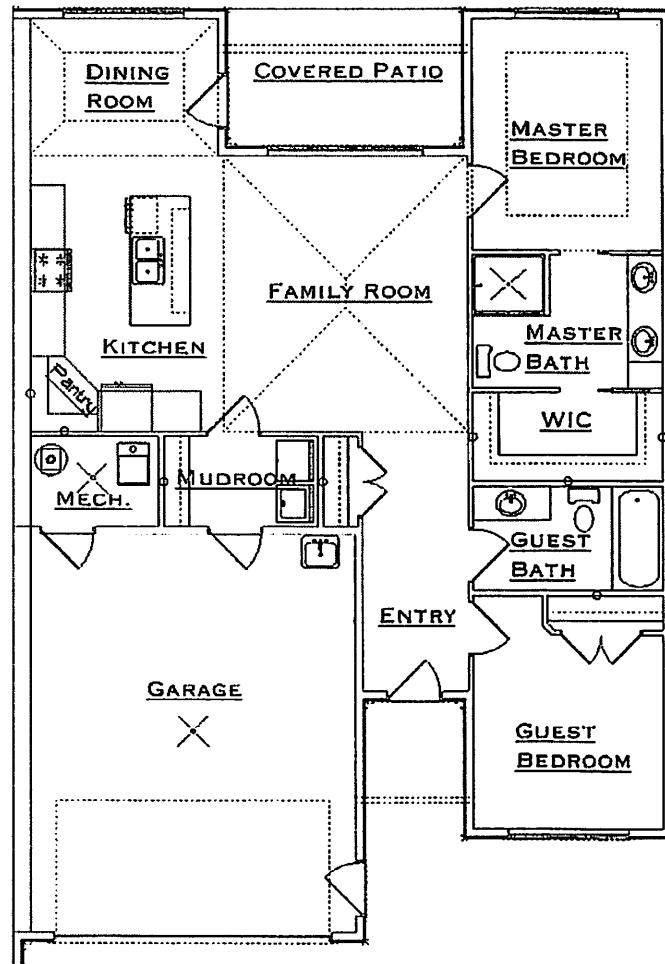
**EXHIBIT B – SITE PLANS**

## EXHIBIT B TWO BEDROOM UNITS

**Two Bedroom Units.** There are fifty-one Two Bedroom Units in the development. The home square footage varies from 1,318 to 1,342 square feet and the garage from 472 to 492 square feet. Each unit is 54'-56' deep and 38' wide.

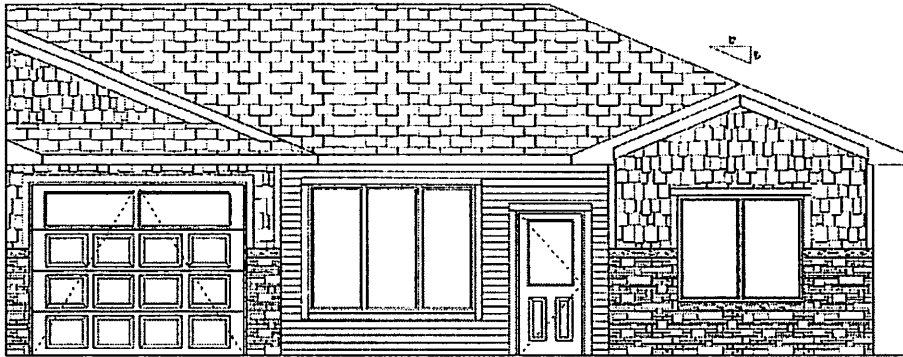


THIS EXHIBIT DOES  
NOT CONSTITUTE A  
SURVEY & IS FOR  
ADMINISTRATIVE  
PURPOSES ONLY

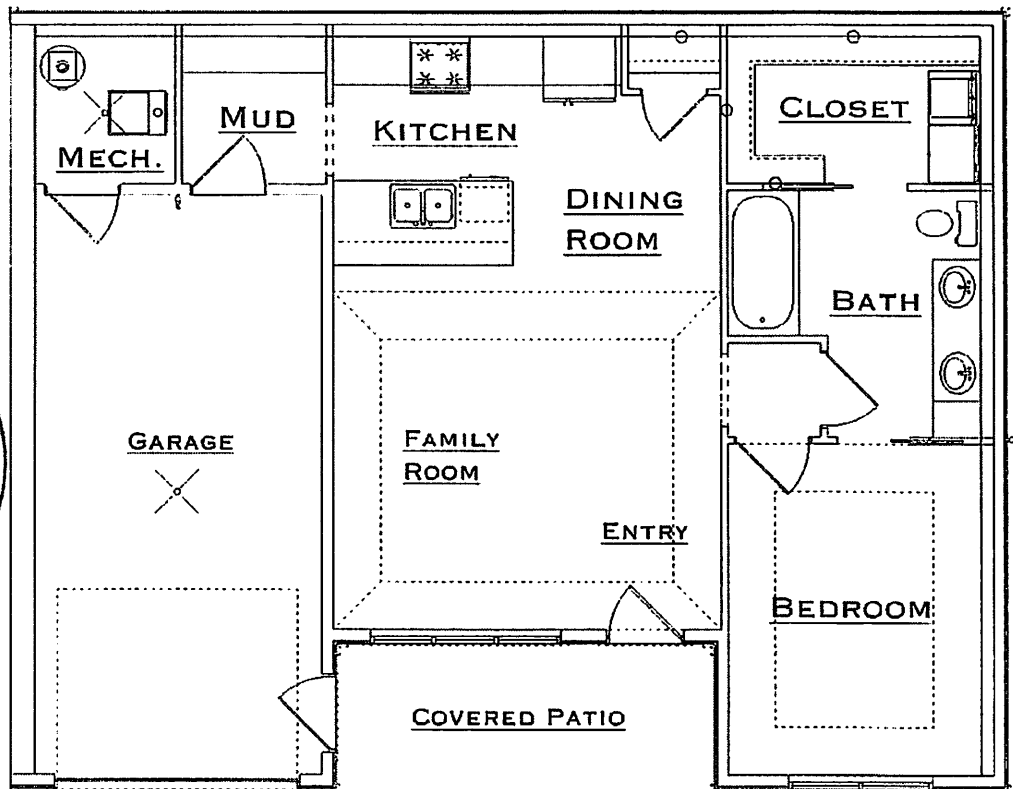


## EXHIBIT B ONE BEDROOM UNITS

**One Bedroom Units.** There are twenty-three One Bedroom Units in the development. The home square footage varies from 902 to 926 square feet and the garage from 324 to 366 square feet. Each unit is 34'-36' deep and 41' wide.

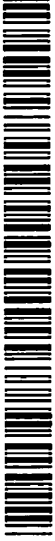


THIS EXHIBIT DOES  
NOT CONSTITUTE A  
SURVEY & IS FOR  
ADMINISTRATIVE  
PURPOSES ONLY



963512

\$74.00  
Page: 16 of 28  
2/26/2024 12:13 PM  
Burleigh County

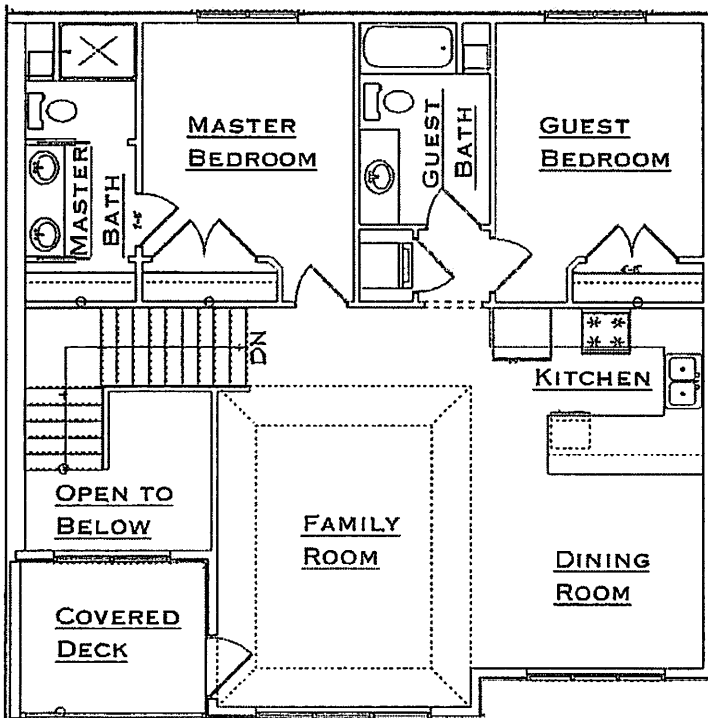
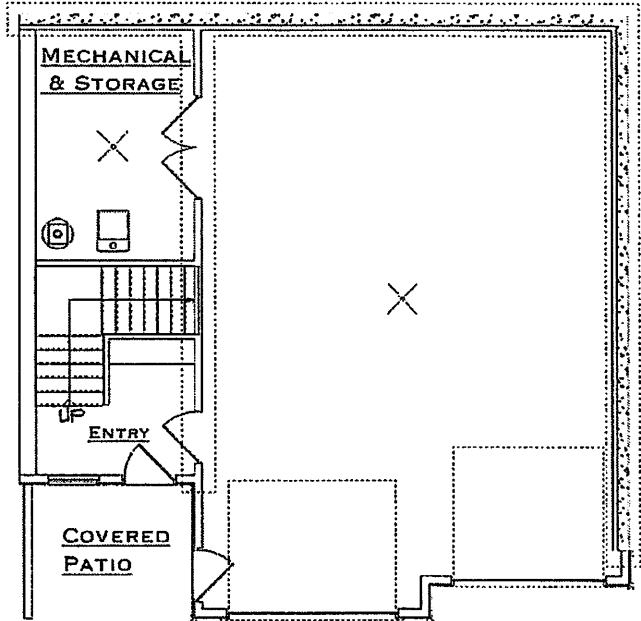


DECLA

K & L HOMES INC

## EXHIBIT B TWO STORY UNITS

**Two Story Units.** There are twenty-four Two Story Units in the development. The home square footage is 1,190 square feet and the garage is 1,060 square feet. Each unit is 36' deep and 36' wide.

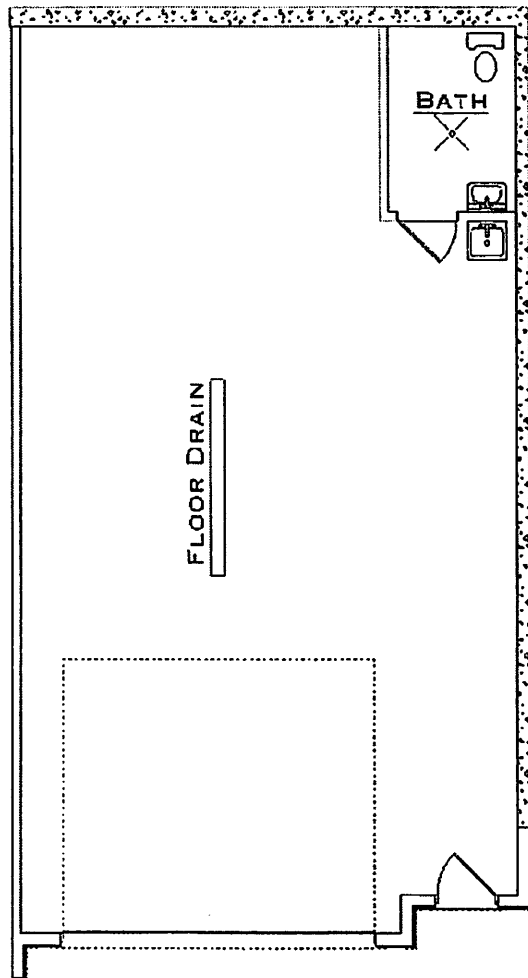
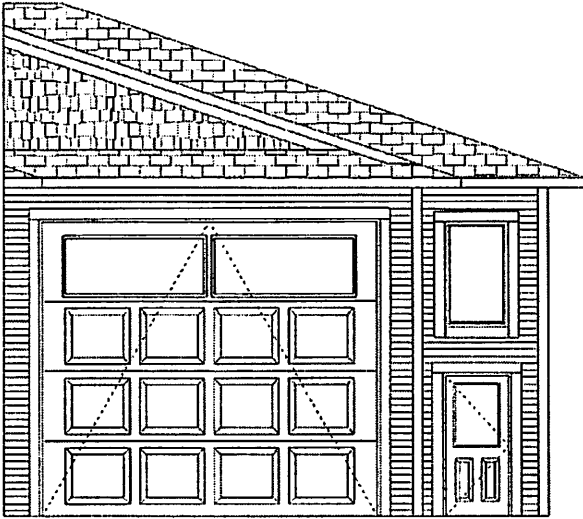


THIS EXHIBIT DOES  
NOT CONSTITUTE A  
SURVEY & IS FOR  
ADMINISTRATIVE  
PURPOSES ONLY



## EXHIBIT B GARAGE UNITS

**Garage Units.** There are twelve Garage Units in the development. The square footage varies from 1,236 to 1,286 square feet. There are also two non-conforming Garage Units (300A&B) that are 2,236 and 2,794 square feet. Each unit is 48'-50' deep and 26' wide. Non-conforming units are 50' deep and 46'-58' wide.



THIS EXHIBIT DOES  
NOT CONSTITUTE A  
SURVEY & IS FOR  
ADMINISTRATIVE  
PURPOSES ONLY

963512

\$74.00  
Page: 17 of 28  
2/26/2024 12:13 PM  
Burleigh County





DECLA

**963512**

\$74.00  
Page: 18 of 28  
2/26/2024 12:13 PM  
Burleigh County

---

**EXHIBIT C – BYLAWS**



963512

\$74.00  
Page: 19 of 28  
2/26/2024 12:13 PM  
Burleigh County

## **BYLAWS OF HERITAGE COTTAGES HOMEOWNERS ASSOCIATION, INC.**

### **ARTICLE I PLAN OF UNIT OWNERSHIP**

**Section 1. Condominium Ownership.** In accordance with the Declaration to Submit Property to Condominium Project and Declaration of Covenants, Conditions, and Restrictions for Heritage Cottages (the “Declarations”), Heritage Development, Inc. has submitted the real property described therein (the “Property”) for condominium ownership under N.D.C.C. Chapter 47-04.1, and has established this non-profit corporation, **Heritage Cottages Homeowners Association, Inc.**, for purposes of administration of a condominium association (the “Association”).

**Section 2. Applicability of Bylaws.** These Bylaws are applicable to the Property and to the use and occupancy thereof. The term Property shall include the land, the buildings, and all other improvements thereon, all easements, rights and appurtenances belonging thereto, and all other property intended to be submitted to the provisions of the law of the State of North Dakota regarding residential ownership.

The term “Unit” as used herein shall mean those areas and appurtenances defined by the Declaration as separate Units within the project.

**Section 3. Office.** The office of the Board of Directors shall be located at 1003 Community Loop, Bismarck, North Dakota, 58503, until such time as it may be changed by action of the Association.

### **ARTICLE II OCCUPANCY BY PERSONS FIFTY-FIVE (55) AND OLDER**

**Section 1. Compliance with the Housing for Older Persons Act of 1995 (“HOPA”).** These Bylaws shall be construed in accordance with HOPA to create a residential community intended and operated for occupancy by persons fifty-five (55) years of age or older. The Garage Units associated with Property shall be excluded from HOPA requirements and restrictions as they are not residential.

**Section 2. Occupancy of Units.** The Association shall require any new owner of a Unit to produce reliable documentation of all occupants’ ages. Copies of the reliable documentation shall be retained by the Association. Any of the following documents are considered reliable documentation of the age of the occupants: (1) state issued driver’s license; (2) birth certificate; (3) passport; (4) immigration card; (5) military identification; (6) any other state, local, national, or international official documents containing a birth date of comparable reliability; or (7) a certification in a lease, application, affidavit, or other document signed by any member of the



**963512**

\$74.00  
Page: 20 of 28  
2/26/2024 12:13 PM  
Burleigh County

household age eighteen (18) or older. Upon adoption of these Bylaws, the Association shall routinely (every other year) determine the occupancy of each Unit.

**Section 3. Policies and Procedures.** In accordance with HOPA, the following policies and procedures are adopted by the Association:

- a. The Association shall describe itself in all publications, advertising, and in legal documents as housing for persons fifty-five (55) years of age or older.
- b. Any owner or Realtor who sells or leases property in the Association must disclose in the advertisements and purchase or lease documents that the Association is an age-restricted community under HOPA.
- c. In any publication or advertisement phrases describing the Association as “adult living,” “adult community,” or similar statements shall not be used.
- d. In the case of a lease of property in the Association, the lease agreement must verify current age or date of birth of occupant(s) in said lease agreement.
- e. A copy of the age restriction policy must be provided by every owner seller or lessor (whatever the case may be) to any prospective buyer or lessee to read and acknowledge. This requirement shall be satisfied by providing any prospective buyer or lessee a copy of the association Declarations and these Bylaws. Said documents are to be included as part of the purchase or lease documents.
- f. Every two years following the adoption of these Bylaws, the association shall review its policies and procedures to ensure compliance with HOPA.
- g. The Association shall post and maintain a statement in common area(s) describing the association as “housing for persons fifty-five (55) years of age and older.”

### **ARTICLE III GOVERNING BOARD**

**Section 1. Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors (the “Board”). The Board shall consist of a representative of Heritage Development, Inc. until all Units (as defined by the Declarations) are sold. Thereafter, the Board shall be composed of 3 members constituting Owners (as defined by the Declarations) as appointed by a majority vote of the Members of the Association at a meeting held for such purpose. Regular meetings of the Board may be held at such time and place as shall be determined from time to time

by a majority vote of the Board. At all meetings of the Board, a majority of the Board members shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present at a meeting at which quorum is present shall constitute the acts of the Board.

**Section 2. Powers and Duties.** The Board shall have the powers and duties necessary for the administration of the affairs of the Association. The powers and duties to be exercised by the Board shall include, but shall not be limited to the following:

- a. Operation, care, repair, upkeep, and maintenance of the Common Elements (as defined by the Declarations);
- b. Employment of personnel as necessary for the efficient maintenance, operation, and use of the Association.
- c. Opening of bank accounts on behalf of the Association and designating the signatories required therefore.
- d. Broad discretion to determination of the common charge/assessment amounts required for operation, maintenance, and other affairs of the Association.
- e. Collection of the common charges/assessments.
- f. Adoption and amendment of rules and of rules and regulations covering the details of the operation and use of the Association property.
- g. Making repairs, additions, and improvements to, or alteration of, the Association property, and repairs to and restoration of the 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.

#### **ARTICLE IV**

#### **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 Owners shall be called by the Developer who shall provide notice to all Owners as provided in this Article. Thereafter, the annual meetings of the 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 Owners in accordance with the requirements of these Bylaws. The Owners may transact such other business at such meetings as may properly come before them.



963512

\$74.00  
Page: 22 of 28  
2/26/2024 12:13 PM  
Burleigh County

**Section 2. Place of Meeting.** Meeting of the 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.** A special meeting of the Owners may be called by the Board of Directors or upon a petition signed and presented to the Board of Directors by Owners having at least one-third (1/3) of the available Association votes. The notice of any special meeting shall state the time, place 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 Owner shall be in writing and may be delivered to any member of the Board of Directors or such Owner either personally or by mail addressed to such Board member or Owner at such addresses as provided to the Board in writing. It shall be each respective Owner's responsibility to notify the Board of Directors, in writing, of a change of address or a change of ownership of a Unit. Notice of each annual or Special meeting of the 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.

**Section 5. Voting** - The Owner of each Unit, or some person designated by the Owner shall be entitled to cast the votes appurtenant to such Unit at all meetings of Owners. Proxies, if any, shall be in written form, only, to be effective. There shall be one (1) vote for each Unit within the project, regardless of the number of persons or entities who actually own a given Unit.

**Section 6. Quorum.** The presence in person or by proxy of Owners having one-half (1/2) the available Association votes of all Units shall constitute a quorum at all meetings of the Owners.

**Section 7. Initial Director.** The Developer shall assume the role of the Association Board of Directors from the time of the first Unit in the Project has been conveyed to a third party until all Units in the Project have been conveyed to third parties. However, Developer has the ability to transfer control to the Board of Directors prior to conveyance of all Units in Developer's sole discretion. Thereafter, the Board of Directors shall be selected by a vote of all Owners, as provided herein.

## ARTICLE V 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,



963512

\$74.00  
Page: 23 of 28  
2/26/2024 12:13 PM  
Burleigh County

determine the amount of common charges required to meet the common expenses of the Project, and allocate and assess such common charges against each Unit.

A. Common Expenses. The common expenses to be assessed against all Units within the Project shall include, but shall not be limited to, the following 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 Declarations.
- (2) The cost of Association residential water and sewage disposal system maintenance and repair (which shall include the sewer mains and water main line and common systems and the individual lines or connections to individual lines such supply or service individual Units within the Project).
- (3) Yard and lawn care of the Association common areas.
- (4) Snow removal as provided by the Association.
- (5) 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 Units within the Project.

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

**Section 2. Reserve Accounts.** 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.

**Section 3. Payment of Common Charges.** Each Owner shall be personally obligated to pay the common charges assessed by the Association against said Unit. The charges shall also constitute

**963512**\$74.00  
Page: 24 of 28  
2/26/2024 12:13 PM  
Burleigh County

an assessment against the Unit, which assessment may be perfected and secured by the recording of a lien with the County Recorder.

**Section 4. Collection of Assessment.** The Association shall assess common charges against the Owners from time to time and at least annually and shall take prompt action to collect from an Owner any common charge due that remains unpaid by the 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 5. Default in Payment of Common Charges.** In the event of default by any Owner in paying to the Association the assessed common or other expenses and charges, such 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 Owner, or by foreclosure of the lien on such Unit 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 6. 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 majority of the available Association votes, the Association shall proceed with such additions, alterations, or improvements and shall equally assess all applicable 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 Owners and the cost thereof shall constitute a common charge, which shall be equally assessed against lots within the Project.

**Section 7. Additional Alterations or Other Improvements of Structures.** No Owner shall construct any structure or make any structural addition, alteration, modification or improvement to a Unit without the prior express written consent and approval of the Board.

## **ARTICLE VII BUILDING AND USE RESTRICTIONS**





The Following restrictions shall be applicable to the Units and Owners:

- a. **Architectural Review.** The Board shall be responsible for interpreting Building and Use Restrictions as well approving all additions or modifications to Units, Landscaping, Common Elements and Limited Common Elements.
- b. **Signage.** Except as provided by law, 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.
- c. **Satellite Dishes.** No television or radio antenna or aerial shall be installed. Television satellite dishes may be installed, but shall not exceed eighteen (18) inches in diameter.
- d. **Flagpoles.** No flagpoles may be constructed or placed in the development by a Unit Owner. This provision is not intended to restrict the ability of the Board to erect and maintain any flagpole(s) on Common Elements.
- e. **Landscaping.** No sculptures, railings, monuments, or any other non-vegetation objects shall be placed or erected in the front yards, except as approved by the Board.
- f. **Fences.** No fences shall be constructed, except underground pet fences as approved by the Board.
- g. **Nuisance.** No noxious, illegal, or offensive use of property shall be carried on any Unit, nor shall anything be done on it that may be, or become, an annoyance or nuisance to the neighborhood. No Unit Owner shall conduct or permit to be conducted any trade or business, either commercial or noncommercial, religious, or otherwise. This provision shall not restrict the use of any Units owned by the Developer. Garages and Residential Units are to be used for residential purposes only and not for commercial or industrial purposes.
- h. **Parking.** No boat, trailer, automobile, recreational vehicle, truck, other vehicle, or any part thereof shall be stored or permitted to remain in the development unless the same is stored or placed inside of a Unit. Guest vehicles must be parked in the driveway of the adjacent Unit or assigned guest parking areas and must be moved within forty-eight (48) hours. No parking is permitted in the roadways. Exception is made for the parking pad adjacent to Unit 300A which is to be used exclusively by Unit 300A.

- i. **Mailboxes.** Cluster mailboxes are provided for the development at a designated location. Individual boxes are assigned and keyed by the US Postal Service.
- j. **Snow Removal.** Snow removal in the development is provided by the Association and not by the city of Bismarck. Vehicles blocking designated snow dump areas are subject to being towed.
- k. **Garbage.** Garbage collection for the Residential Units is provided by the city of Bismarck. Refuse containers must be kept inside the Units when not out for collection.
- l. **Utilities and Roadways.** Roadways, water, sewer, storm sewer facilities and other utilities are privately owned and maintained by the Association and not by the city of Bismarck.
- m. **Lighting.** Landscape lighting and recessed soffit lighting on the front of the Units is controlled by photosensors which come on automatically at night and provide lighting for convenience and safety. The exterior lighting is owned and maintained by the Association.
- n. **Utility Billing.** Each Unit has its own gas and electric meter and shall receive individual billing. One water and sewer line has been provided for each building. Individual water and sewer costs will be allocated by the Association. Unnecessary or unreasonable water usage is prohibited.
- o. **Watering.** Irrigation for landscaping is on a separate meter owned and maintained by the Association.
- p. **Minimum Maintenance Areas.** Certain minimum maintenance areas are noted on the Project Description (Exhibit A). These areas are not watered and are only mowed and maintained as needed.
- q. **Patio Furniture/Grills.** Patio Furniture and grills need to be stored under a covered patio or deck when not in use.
- r. **Maintenance of Units.** The Association is responsible for the exterior maintenance of the Units and the individual unit owner is responsible for the interior maintenance of the units. Except as described in Article V, Section 4.
- s. **Pets.** Domestic pets are allowed but limited to dogs, cats, fish and birds. The number of dogs and cats are limited to two (2) per Unit. All pets must remain on a leash



963512

\$74.00  
Page: 27 of 28  
2/26/2024 12:13 PM  
Burleigh County

and accompanied by a human when outside of a Unit. Any animal waste deposited in a Common Area must be removed by the owner of the animal.

## ARTICLE VIII RULES AND REGULATIONS

**Section 1. Adoption.** The Board may adopt such rules and regulations as it deems appropriate for the regulation and operation of the Association, including but not limited to the Units, Common Areas/Elements, and Limited Common Elements. Any such rules and regulations shall be for the purpose of providing for the enjoyment and safe use of the Units and all parts of the Property, and for the protection of the value of the same. Such rules and regulations shall be effective upon written notice of any rules and regulations as adopted by the Board being given to the Owners. Any rules and regulations adopted in accordance with this section are not required to be filed or recorded with the office of the Burleigh County Recorder.

## ARTICLE IX MISCELLANEOUS

**Section 1. Invalidity.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws.

**Section 2. Caption.** 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 these Bylaws, or the intent of any provision thereof.

**Section 3. Waiver.** No restriction, condition, obligation, or provision in these Bylaws shall be deemed to have been abrogated or waived by reason or any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

**Section 4. Enforcement.** The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, covenants, conditions, reservations, liens and charges now or hereafter imposed by the provisions of these Bylaws. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 5. Amendments.** These Bylaws may be modified or amended by action of the Board.





965395

K & L HOMES INC

AMENDBY

Page: 1 of 3  
4/29/2024 11:46 AM  
Burleigh County

*Brenda Chroma Deputy*



SPACE ABOVE RESERVED FOR COUNTY RECORDER

**AMENDMENT TO BYLAWS OF**  
**HERITAGE COTTAGES HOMEOWNERS ASSOCIATION, INC.**

THIS AMENDMENT TO BYLAWS OF HERITAGE COTTAGES HOMEOWNERS ASSOCIATION, INC. ("Amendment") is made and executed this 29<sup>th</sup> day of April, 2024, by Chad Moldenhauer, on behalf of the Board of Directors of Heritage Cottages Homeowners Association, Inc. (hereinafter the "'Board" and "Association").

WHEREAS, the Bylaws of Heritage Cottages Homeowners Association, Inc., dated February 26, 2024 ("Bylaws"), were recorded in Burleigh County as an attachment to the Declarations (Document No. 963512), affecting the following real property:

Block 1, Lots 14 through 15 (inclusive) of the Heritage Ridge 2nd Addition, Platted in part of the SW 1/4 of Section 8, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, which shall include Units 101-147, 149, 151, 153, 201-248, 300A-300B, 310A-310F, 320A-320F in Heritage Cottages. *City of Bismarck*

(The "Property"); and

WHEREAS, the Board has taken action to amend the Bylaws to add an article identifying the rights and protections of certain mortgagees of the Property;

NOW THEREFORE, the Bylaws of the Association are hereby amended to provide as follows:



965395

AMENDBY: 520.00  
Page: 2 of 3  
4/29/2024 11:46 AM  
Burleigh County

## ARTICLE X RIGHTS OF ELIGIBLE MORTGAGEES

Notwithstanding anything to the contrary in the project documents, and subject to any greater requirements under the law, Eligible Mortgagees shall have the following rights and protections:

**Section 1. Consent to Certain Amendments.** The written consent of Eligible Mortgagees representing at least fifty-one percent (51%) of the Units that are subject to first mortgages held by Eligible Mortgagees (based on one vote per first mortgage owned) shall be required for any amendment to the project documents which causes any change to the following: (i) voting rights; (ii) assessments, assessment liens, or priority of assessment liens; (iii) reallocation of interests in the Common Elements; (iv) redefinition of any Unit boundaries; (v) convertibility of Units into Common Elements or vice versa; (vi) expansion or reduction of the Property; (vii) insurance or fidelity bonds; (viii) leasing of Units; (ix) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; (x) any action to terminate the legal status of the condominium after substantial destruction or condemnation occurs; or (xi) any provisions that expressly benefit Eligible Mortgagees or guarantors of mortgages.

**Section 2. No Right of First Refusal.** The right of an Owner to sell or otherwise transfer his or her Unit shall not be subject to any right of first refusal or similar restrictions.

**Section 3. Priority for Condemnation Awards.** No provision of the project documents shall give an Owner, or any other party, priority over any right of the Eligible Mortgagee of the Unit pursuant to its mortgage in the case of payment to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Unit and/or Common Elements.

**Section 4. Notice Requirements.** Upon written request to the Association, specifying the name and address of the mortgagee or guarantor of a mortgage on a Unit, and the Unit number or address, the mortgagee or guarantor shall be entitled to timely written notice of:

- (i) A condemnation loss or any casualty that affects either a material portion of the Project or the Unit securing its mortgage;
- (ii) A 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage;
- (iii) A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- (iv) A proposed action that requires the consent of a specified percentage of Eligible Mortgagees.




**965395**

AMENDBY LAW  
\$20.00  
Page: 3 of 3  
4/29/2024 11:46 AM  
Burleigh County

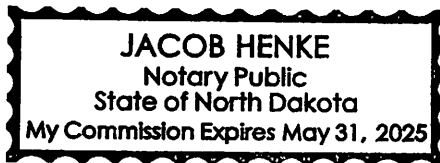
All other remaining provisions of the Bylaws shall remain in full force and effect and are hereby ratified.

**Heritage Cottages Homeowners Association, Inc.,**

By:   
Chad Moldenhauer, President of Heritage  
Development, Inc.

[illegible]

On this 29<sup>th</sup> day of April, 2024, before me, personally appeared Chad Moldenhauer as the managing member and on behalf of Benchmark Development LLC, and known to me to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged that he executed the same.



David M.  
Notary Public