

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR COTTONWOOD COTTAGE TOWNHOMES**

THIS DECLARATION, made on the date hereinafter set forth by Cottonwood Cottage, LLP, a North Dakota Limited Liability Partnership, with its principal office located at 408 East Main, Bismarck, North Dakota (hereinafter referred to as "Declarant.")

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in the County of Burleigh, State of North Dakota, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Property"); and,

WHEREAS, Declarant desires to develop a townhome development in accordance with the Declaration of Covenants, Conditions and Restrictions hereinafter set forth, and

WHEREAS, Declarant reserves the right to develop the property in phases and, at Declarant's option, to suspend or terminate one or more of the phases of development, and to remove part of the Property from the development project, and

NOW, THEREFORE, Declarant hereby declares:

(a) That all of the Property, which is actually developed as a part of this project, and which is thusly developed and conveyed by the Declarant, shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and 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. The Property shall be developed in Phases, as further set forth herein, and the Lots within such Phases are identified, as follows (paranetical reference is made to property addresses on Santa Fe Avenue, Bismarck, North Dakota):

Phase I- Lot 1 (1110), Lot 2 (1112), Lot 3 (1114), Lot 4 (1116), Lot 5 (1117), Lot 6 (1115), Lot 7 (1113), Lot 8 (1111), Lot 9 (1120), Lot 10 (1122), Lot 11 (1124), Lot 12 (1125), Lot 13 (1123), Lot 14 (1121)

Phase II- Lot 15 (1130), Lot 16 (1132), Lot 17 (1134), Lot 18 (1136), Lot 19 (1138), Lot 20 (1139), Lot 21 (1137), Lot 22 (1135), Lot 23 (1133), Lot 24 (1131), Lot 25 (1140), Lot 26 (1142), Lot 27 (1144), Lot 28 (1146), Lot 29 (1148), Lot 30 (1149), Lot 31 (1147), Lot 32 (1145), Lot 33 (1143), Lot 34 (1141)

Phase III- Lot 35 (1160), Lot 36 (1162), Lot 37 (1164), Lot 38 (1166), Lot 39 (1167), Lot 40 (1165), Lot 41 (1163), Lot 42 (1161), Lot 43 (1150), Lot 44 (1152), Lot 45 (1154), Lot 46 (1155), Lot 47 (1153), Lot 48 (1151)

(b) That, the Declarant hereby declares Phase I to be subject to this Declaration, effective upon the filing of this Declaration with the Burleigh County Recorder, and further declares that, prior to the sale of the first Lot in Phase I, Declarant shall convey the following real property, less those parcels platted as Lots, to the Association as Phase I of the project:

The west 194.00 feet of Santa Fe Addition to the City of Bismarck, Burleigh County, North Dakota

(c) That, unless the Declarant withdraws all, or some of, the remaining portions of the Property from the project, as such right is reserved to the Declarant under Article II, Section 4, the Declarant shall thereafter convey additional Phases of the Property, less those parcels platted as Lots, to the Association, when, and if, additional Phases of the project are developed and, upon such subsequent conveyances by Declarant to the Association, the real property so conveyed in the applicable Phase, along with the Lots in that Phase, shall automatically become subject to this Declaration, upon the filing of the Declarant's deed of conveyance with the Burleigh County Recorder.

**ARTICLE I  
DEFINITIONS**

Section 1. "Articles of Incorporation" or "Articles" shall mean the Articles of Incorporation of Cottonwood Cottage Townhome Owners Association, Inc., the original of which has been, or will be, filed in the office of the North Dakota Secretary of State, and any and all subsequent amendments thereto.

Section 2. "Association" shall mean and refer to the Cottonwood Cottage Townhome Owners Association, Inc., a North Dakota non-profit corporation, its successors and assigns.

Section 3. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 4. "Building" shall mean and refer to a structure containing Living Units, constructed or erected on the Property.

Section 5. "Bylaws" shall mean the Bylaws of Cottonwood Cottage Townhome Owners Association, Inc., which shall be recorded following the recordation of this Declaration in the office of the Burleigh County Recorder, along with any and all subsequent amendments thereto.

Section 6. "Common Elements" or "Common Areas" are used interchangeably and shall mean any real estate, easement, or other real property interest, which is owned, held, or leased by the Association, solely or in conjunction with others.

Section 7. "Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its Members;
- (b) Expenses for maintenance of the Townhomes as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair or replacement of the Common Elements and Limited Common Elements;
- (d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (e) Hazard, liability or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase, or as the Association may deem appropriate to purchase;
- (f) Ad valorem taxes and public assessments charges lawfully levied against Common Elements and Limited Common Elements;
- (g) The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property and serve both the Property and lands adjacent thereto;
- (h) All expenses agreed by the members to be Common Expenses of the Association; and
- (i) All charges for utilities used in connection with the maintenance of the Common Elements and Limited Common Elements.

Section 7. "Declarant" shall mean and refer to Cottonwood Cottage, LLP, its successors and assigns to whom the rights of the Declarant hereunder are expressly transferred, in whole or in part.

Section 8. "Limited Common Elements" shall mean those portions of the Common Elements, which serve only a single Lot or fewer than all the Lots, and which may include, but specifically are not limited to, driveways, walkways, parking areas or areas serving only specified

Lots, and such other similar areas as may be designated by a plat map of the Property. Unless otherwise specified, the use of the term "Common Elements" also includes the "Limited Common Elements."

Section 9. "Living Unit" shall mean and refer to a townhome dwelling unit constructed on any Lot, where such dwelling unit has been fully constructed and made ready for occupancy as a residence, including, without limitation, completion of the final floor covering, interior paint and wallpaper and all appliances, and for which a Certificate of Occupancy has been issued.

Section 10. "Lot" shall mean and refer to any plot of land shown upon the Plat of the Property designated for separate ownership and for construction of a Living Unit.

Section 11. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 12. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of title to any Lot which is a part of the Property, including the Declarant so long as any Lot 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.

Section 13. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 14. "Phase" shall mean and refer to the incremental phases of construction, which will be used by Declarant to develop this project, and such incremental phases are designated individually as Phase I, Phase II, and Phase III, as more specifically set forth in Paragraph (a) on pages 1 and 2 of this Declaration, and on the Plat (Exhibit B), as the same may be amended from time to time, as provided within this Declaration.

Section 15. "Plat" shall mean that certain Plat of the Property, attached as Exhibit B, as the same may be amended from time to time, as provided within this Declaration.

Section 16. "Property" shall mean and refer to that certain real property hereinbefore described in Exhibit "A," and such additions thereto as may be hereafter brought within the jurisdiction of the Association, but excluding any real property later removed from the jurisdiction of the Association in the event that the Declarant withdraws one or more Phases from the project, as such removal rights are reserved to the Declarant under Article II, Section 4.

**ARTICLE II  
PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements together with and including the right of access, ingress and egress, on and over the driveways, walkways and parking areas of the Common Elements, all of which rights shall be appurtenant to and shall pass with the title to every Lot, in accordance with the purpose for which it is intended and without violating the lawful rights of the other Owners, subject to the following provisions:

a) The right of the Association to suspend the voting rights and the right of use of the recreational or other Common Element facilities (except rights of access to Lots), by an Owner for any period during which any assessment against such Owner's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

b) The right of the Association to dedicate, sell, lease or transfer all or any part of the Common Element, or any interest therein, to any public agency, authority, or utility, or to any other person for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless voted upon and approved by eighty percent (80%) of each class of members in the Association on a written instrument. On such instrument, the Secretary of the Association shall certify that eighty percent (80%) of each class of members have approved the dedication, sale, lease or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes as specified herein may be made by the Association without the consent of the Members;

c) The right of the Association to regulate the use of parking spaces, including but not limited to the right to assign specific parking spaces for the use of specific Lots;

d) The right of the Association, in accordance with this Declaration and its Articles of Incorporation and Bylaws, to borrow money, using the Common Elements as security for such debt, for the purpose of improving the Common Element and facilities;

e) The right of the Association to limit the number of guests of Members;

f) The right of the Association, in accordance with this Declaration and its Articles of Incorporation or Bylaws, to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which rules and regulations may further restrict the use of the Common Elements, and to create Limited Common Elements; and

g) The right of the Declarant to provide, declare, dedicate, and convey, in common interest between the Association and any other person (including but not limited to the Declarant), the common ownership of portions of the Common Elements and/or the joint use of

easement rights upon the Common Elements, including but not limited to walkways and roadways, at any time during the development of the project, or in the event of withdrawal by Declarant of one or more Phases from the project. In such instances, the Declarant, at its option, and in its discretion, shall provide terms and conditions for the maintenance and repair of such commonly owned/enjoyed portions and rights.

Section 2. Delegation of Use. Any owner may temporarily delegate, in accordance with the Bylaws, his right of enjoyment to the Common Element to the members of his immediate family, his tenants, or contract purchasers who reside on the Property.

Section 3. Title to the Common Elements. The Declarant hereby covenants for itself, its successors, and assigns, that it will convey fee simple title to the Common Elements applicable to Phase I to the Association, prior to the conveyance of the first Lot, free and clear of all encumbrances and liens, except encumbrances of record, but subject to the right of the Declarant and the Association to declare future easements under Article VIII, and further subject to the right of Declarant to provide, declare, dedicate, and convey common ownership and joint use of interests in the Common Elements under Article II, Section 1(g). Thereafter, if and when additional Phases are developed, the Declarant will likewise convey the Common Elements applicable to that additional Phase. Until any portion of the Property is actually conveyed to the Association, neither the Association, any Member, nor any Lot Owner shall have any rights, vested or otherwise, in the Property, except that the Declarant covenants that, upon the commencement of the development of a particular Phase, the Declarant will complete that particular Phase and will convey the Common Elements applicable to that particular Phase.

Section 4. Reservation of Development Rights to Declarant. The Declarant reserves the right to develop this project in Phases, at such times, and in such manner, as determined appropriate by the Declarant. By way of example and not by way of limitation, if the Declarant, after the completion of Phase I, decides, for any reason, to decline the development of the additional Phases, the Declarant hereby reserves that right, which can be exercised in the discretion of the Declarant, and which right may be exercised by a written declaration of that decision, signed and recorded by Declarant. In such instance, those portions of the Property, which are not included within an already developed Phase, shall be withdrawn from this project by the Declarant, without the necessity of the consent of the Association, the Members, the Owners, or any Mortgage Holders, and, in such instances, the Declarant shall thereafter have the full and unlimited right and option to convey, develop, or otherwise deal with the property, so withdrawn from the project, in the total discretion of Declarant, without regard to the provisions of this Declaration. The three anticipated Phases of development are set forth on Exhibit B; however, the Declarant further reserves the right to amend or alter the Phases, and/or the extent and nature of such Phases, by the recording of an amended Plat.

**ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every record Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all the Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B. The Class B member shall be the Declarant. The Class B Member shall be entitled to four (4) votes for each Lot in which the Class B Member has an ownership interest; provided, the Class B membership shall cease and be converted to Class A membership on the happening of the following events whichever shall first occur:

- a) Ninety percent (90%) of the 48 Lots that have been proposed for development and which will be platted are deeded from Declarant to Lot Owners other than Declarant; or
- b) On December 31, 2014.

After termination of the Class B membership, if the Declarant still owns Lots, said Declarant shall for all purposes be deemed a Lot Owner and shall be entitled to the same rights and privileges of Class A Members.

Section 3. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association.

**ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses, which shall be payable by the Owner either monthly, quarterly, or annually at the election of the

Association, (2) special assessments for purposes set forth in Article IV, Section 5, including but not limited to extraordinary maintenance and capital improvements, and (3) special assessments for purchase and reconstruction of townhomes. The annual and special assessments together with interest and costs and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of each person who was an Owner of such Lot at the time when the assessment became due. The personal obligation for the delinquent assessments shall not pass to a Lot Owner's successors in title unless expressly assumed by them; however, the lien for such delinquent assessments shall remain as a charge against the Lot.

Notwithstanding any provision herein to the contrary, the assessment for each Lot which does not have a Living Unit thereon shall be twenty-five percent of the assessment of a Living Unit.

The Association shall also have the authority, to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof, by way of a properly filed lien, to the Association arising from breach by such owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money, or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns to pay each assessment levied by the Association on his Lot by the due date as established by the Board, and further covenants that if said assessment shall be in default and become a lien upon said Owner's Lot as provided herein then such lien shall continue to be enforceable, both against the Owner and against the Owner's successors in title to the Lot, until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property, and in particular, but not limited to, for the acquisition, improvement and maintenance of the Property, services, equipment, and facilities, for the exterior maintenance of the Buildings and for the use and enjoyment of the Common Elements, including, but not limited to, the cost of repairs, replacements and additions; the cost of labor, equipment, materials, management and supervision; the payment of taxes and public assessments assessed against the Common Elements; the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board; the employment of counsel, accountants and other professionals for the Association when necessary; and such other needs as may arise.

Section 3. Reserve/Replacement Fund. Out of the annual assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Elements and any Limited Common Elements which the Association may be obligated to maintain.

