



**WHISPERING RIDGE 2nd SUBDIVISION
AMENDED AND RESTATED DECLARATION OF RESTRICTIONS ON REAL ESTATE**

THIS AMENDED AND RESTATED DECLARATION, is made on the date hereinafter set forth by **WHISPER ROCK, INC.**, a North Dakota business corporation, and its successors or assigns, hereinafter referred to as “**DEVELOPER**”.

WHEREAS, DEVELOPER is the owner of certain real property located in Burleigh County, North Dakota, which is more particularly described on Exhibit “A”, which is attached hereto located in **WHISPERING RIDGE 2nd SUBDIVISION**, Burleigh County, North Dakota (hereinafter referred to as the “**PROPERTY**”); and

WHEREAS, DEVELOPER desires to provide for the preservation of the values and amenities on the PROPERTY and for the maintenance of the PROPERTY and any and all related common facilities; and to this end, desires to subject the PROPERTY together with such additions as may hereafter be made thereto, to the covenants, restrictions, reservations, easements, charges and liens, set forth in this Declaration of Restrictions on Real Estate, each and all of which is and are for the benefit of the PROPERTY and each owner of a portion of the PROPERTY; and

WHEREAS, DEVELOPER has deemed it desirable, for the efficient preservation of the values and amenities in WHISPERING RIDGE 2nd SUBDIVISION, to create a homeowners’ association to which will be delegated and assigned the powers to enforce the covenants and restrictions set forth in this DECLARATION and collecting and disbursing the charges and fees of each owner of a part or portion of the PROPERTY; and

WHEREAS, DEVELOPER has incorporated a nonprofit corporation under the laws of the State of North Dakota, known as the **WHISPERING RIDGE 2nd SUBDIVISION HOMEOWNERS’ ASSOCIATION** for the purposes of exercising the functions set forth in this DECLARATION.

WHEREAS, DEVELOPER previously made that certain Declaration of Restrictions on Real Estate dated November 4, 2019 and recorded in the Office of the Recorder of Burleigh County on November 5, 2019 as Document No. 893334 (the “**Original Declaration**”).

WHEREAS, DEVELOPER has made this Declaration to amend and restate in its entirety the Original Declaration.

NOW, THEREFORE, the DEVELOPER declares that the PROPERTY, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, reservations, easements, charges and liens (sometimes hereinafter referred to as “covenants and restrictions”) hereinafter set forth.



**ARTICLE I.
DEFINITIONS**

Section 1.

Glossary. The following words, when used in this Declaration or in any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- a. **“Access Easement”** shall mean and refer to the Access Easement which is more particularly described on Exhibit “A” which is attached hereto and made a part hereof and provides the Association with the legal right of ingress and egress to and from the Sanitary Sewer Treatment System facilities located on Lot 30, Block 1, and the drain field area located on Lot 2 of Auditor’s Lot “D” located in the SE¼ of Section 36, Township 140 N., Rge. 81 W. of the 5th P.M., Burleigh County, North Dakota.
- b. **“Association”** shall mean and refer to the WHISPERING RIDGE 2nd SUBDIVISION HOMEOWNERS’ ASSOCIATION.
- c. **“Property”** shall mean and refer to the real property which is more particularly described in the Plat of Whispering Ridge 2nd Subdivision, County of Burleigh, State of North Dakota, recorded with the Burleigh County Recorder’s office as Document No. 892811, together with any additions which may occur thereto, as are subject to this Declaration, or subject to any Supplemental Declaration under the provisions of Article II hereof.
- d. **“Common Areas and Improvements”** shall mean all Property owned and controlled by the Association for the common use and enjoyment of the Owners. The common areas which are intended to exist and be subject to the provisions of this Declaration are described as all common utilities and dedications in the Plan and the following portions of the Property: i) Lot 30, Block 1, Whispering Ridge 2nd Subdivision, which shall be dedicated for the construction, operation, and maintenance of a Sanitary Sewer Treatment System serving the remaining thirty-nine (39) Lots in Whispering Ridge 2nd Subdivision, Burleigh County, North Dakota (subject to the ASSOCIATION’s rights pursuant to Article V, Section 4, below); ii) Lot 2 of Auditor’s Lot “D” located in the SE¼ of Section 36, Township 140 N., Rge. 81 W. of the 5th P.M., Burleigh County, North Dakota, which shall be dedicated for the construction, operation, and maintenance of the Sanitary Sewer Treatment Systems; iii) the Access Easement; iv) a Utility Easement located over and across Lots 32 and 33, Block 1, Whispering Ridge 2nd Subdivision; and v) two (2) storm water drainage and detention pond easements located in Whispering Ridge 2nd Subdivision which are more particularly described in separate written easements to be filed with the Burleigh County Recorder’s office.
- e. **“Lot or Lots”** shall mean and refer to any lot (excluding Green Lots unless converted to a site for a residential living unit) located within the PROPERTY identified in the Plat of Whispering Ridge 2nd Subdivision filed as Document No.



892811 with the Burleigh County Recorder’s office, which is intended for use as a site for a single family residential living unit with such lots as described in the Plat of Whispering Ridge 2nd Subdivision.

- f. **“Owner”** shall mean and refer to the record owners, whether one or more persons or entities, of the fee simple title to a Lot in Whispering Ridge 2nd Subdivision, but notwithstanding any applicable provision of any mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to a foreclosure or deed in lieu of a foreclosure.
- g. **“Member”** shall mean and refer to all those Owners who are members of the Association as provided for in Article V, Section 1, hereof.
- h. **“Developer”** shall mean Whisper Rock, Inc., a North Dakota business corporation, or
 - i. Any person or entity who succeeds to the title of Developer to all or a portion of the PROPERTY by sale or assignment of all of the interest of the Developer in the PROPERTY, if the instrument of sale or assignment expressly so provides, or
 - ii. Any person or entity to which the power to enforce the provisions of this DECLARATION has been assigned, as permitted by this DECLARATION. Any such person or entity shall be entitled to exercise all rights and powers conferred upon DEVELOPER by the DECLARATION, Articles of Incorporation of the Association, or Bylaws of the Association.
- i. **“Declaration”** shall mean and refer to this Declaration of Restrictions on Real Estate for Whispering Ridge 2nd Subdivision, applicable to the PROPERTY as recorded in the office of the County Recorder for Burleigh County, North Dakota and as subsequently amended and modified.
- j. **“Sanitary Sewer Treatment System”** shall mean the Sanitary Sewer Treatment System which is designed and constructed and implemented by the DEVELOPER to provide a private Sanitary Sewer Treatment System for the benefit and use of the Lot owners in Whispering Ridge 2nd Subdivision, including the following elements: a sanitary sewer main trunk line, a sanitary sewage treatment facility, a holding pond, a drain pipe, and all related ancillary equipment and improvements. Lot 30, Block 1, of Whispering Ridge 2nd Subdivision and Lot 2 of Auditor’s Lot “D” located in the SE¼ of Section 36, Township 140 N., Rge. 81 W. of the 5th P.M., Burleigh County, North Dakota are specifically designated to be a part of this Sanitary Sewer Treatment System.
- k. **“County”** shall mean Burleigh County, a political subdivision of the State of North Dakota.



- l. **“Guidelines”** shall mean the Architectural Guidelines promulgated and amended from time to time by the Architectural Review Committee established under the provisions of Article VIII.
- m. **“Green Lots”** shall mean Lot 30, Block 1, Whispering Ridge 2nd Subdivision, and Lot 2 of Auditor’s Lot “D” located in the SE¼ of Section 36, Township 140 N., Rge. 81 W. of the 5th P.M., Burleigh County, North Dakota unless such Green Lots are converted to a residential lot by the DEVELOPER. The Green Lots shall be used for the Sanitary Sewer Treatment System.

**ARTICLE II.
PROPERTY SUBJECT TO DECLARATION**

The PROPERTY is and shall be held, transferred, sold, conveyed and occupied subject to this DECLARATION and is located in Burleigh County, North Dakota, and is more particularly above. This DECLARATION amends and restates in its entirety the Original Declaration.

As the owner of the PROPERTY, DEVELOPER shall have the unilateral right, privilege, and option, from time to time and at any time until December 31, 2030, to subject additional real property to provisions of this DECLARATION and the jurisdiction of the Association. Such annexation of additional real property shall be accomplished by filing with the Burleigh County Recorder’s office an amendment to this DECLARATION annexing such additional property. Any subsequent Amendment occurring on or before December 31, 2030, shall not require the consent of voting Members in the Association. Any such annexation shall be effective upon filing for record of such subsequent Amendment unless otherwise provided for herein. DEVELOPER shall have the unilateral right to transfer to any other person or entity the right, privilege and option to annex additional property which is herein reserved to DEVELOPER, provided that such transferee or assignee shall be the developer of at least a portion of the PROPERTY and that such transfer is memorialized in a written document which is recorded with the Burleigh County Recorder’s office and has been executed by the DEVELOPER.

DEVELOPER may convey to the Association additional real estate, improved or unimproved, located within the PROPERTY, which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at the sole expense of the Association for the benefit of all members of the Association in accordance with this DECLARATION.

This Article shall not be amended without the prior written consent of DEVELOPER, so long as the DEVELOPER owns any part or portion of the PROPERTY.

**ARTICLE III.
ANNEXATION**

Section 1.

Annexation Without Approval of Association. Until December 31, 2030, DEVELOPER shall have the right, privilege and option, from time to time, at any time, to annex any additional parcel or parcels of real property to the provisions of this DECLARATION and the jurisdiction of the



Association. Such annexation shall be accomplished by filing in the County Recorder’s office for Burleigh County, North Dakota, an amendment to this DECLARATION annexing such property. Such Supplemental Declaration shall not require the consent of any person other than DEVELOPER. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. DEVELOPER shall have the unilateral right to transfer to any other person, the right, privilege, and option to annex additional property which herein is reserved to the DEVELOPER, provided that such transferee or assignees shall be a developer of at least a portion of the PROPERTY and such transfer is required to be memorialized in a written document recorded with the County Recorder’s office for Burleigh County, North Dakota in a document executed by DEVELOPER.

Section 2.

Acquisition of Additional Common Area. DEVELOPER, until December 31, 2030, may convey to the Association additional real estate, improved or unimproved, upon which conveyance or dedication to the Association shall be accepted by the Association without further action. Such annexation shall be accomplished by filing in the Burleigh County Recorder’s office, a Supplemental Declaration annexing such property executed solely by DEVELOPER. Such Supplemental Declaration shall not require the consent of any person other than DEVELOPER.

Section 3.

Amendments to this Article. This Article shall not be amended without the prior written consent of DEVELOPER so long as DEVELOPER owns any part or portion of the PROPERTY.

**ARTICLE IV.
PROPERTY RIGHTS**

Section 1.

Owners’ Easements of Enjoyment. Every Owner shall have a right of enjoyment and easement to and in the Common Areas and Improvements which shall be appurtenant to and pass with the title to every Lot subject to the following provisions:

- a. The right of the Association to suspend the voting rights for any period during which any assessment against a Lot remains unpaid for a period not to exceed sixty (60) days for any rule breaking of the published rules and regulations of the Association or of any terms of this Declaration.
- b. The right of the Association to dedicate or transfer all or any common properties to any public agency, authority, or utility for such purposes and subject such conditions as may be agreed to by the Members of the Association. No such dedication or transfer shall be effective unless any instrument signed by two-thirds (2/3rds) of the Members of the Association agreeing to such dedication or transfer has been recorded.

Section 2.



Owner's Use of Lots. Use of Lots shall be limited to single family residential purposes as detailed and delineated on the Plat of Whispering Ridge 2nd Subdivision. No commercial use shall be a permitted use of any Lot in Whispering Ridge 2nd Subdivision.

Section 3.

Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, the Owner's right or enjoyment to the Common Area and Improvements to the Members of the Owner's family, the Owner's guests, Owner's tenants, or Owner's contract purchasers who reside on the PROPERTY, which said use shall be subject to the guidelines, rules and regulations promulgated by the Association from time to time and subject to this DECLARATION.

**ARTICLE V.
MEMBERSHIP AND VOTING RIGHTS
IN THE ASSOCIATION**

Section 1.

Membership. Every person or entity who is a record Owner of a fee simple title or an undivided fee simple interest in any Lot which is subject to this Declaration shall be a Member of the Association; provided that any such person or entity who holds such interest merely as security for the performance of an obligation or lien shall not be a Member.

Section 2.

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

- a. Lot Class. Lot Class Members shall be all those Owners of the single family lots located within the PROPERTY. DEVELOPER owned Lots are excluded from the Lot Class. Lot Class Members of single-family residential Lots shall be entitled to one (1) vote for each Lot which they own an interest required to obtain membership in the Association by the provisions of this DECLARATION. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot which is owned by more than one person.
- b. Developer Class. The Developer Class shall consist solely of the DEVELOPER. The Developer Class Member shall be entitled to one (1) vote for each Lot owned by the DEVELOPER, plus three votes for each vote entitled to be cast at any time by the Lot Class Members. The Developer Class member shall cease and terminate no later than six (6) months after the DEVELOPER has conveyed title three-fourths percent (3/4) of the Lots located in the PROPERTY known as Whispering Ridge 2nd Subdivision.

Section 3.



Board of Directors. Until such time as the Developer Class Member ceases to exist, allowing the Lot Owners to control the Association, the Board of Directors of the Association shall consist of individuals appointed by the DEVELOPER.

Section 4.

Duties of Association. The Association shall be responsible for the maintenance, operation, and repair of the Sanitary Sewer Treatment System located on Lot 30, Block 1, Whispering Ridge 2nd Subdivision, and located on Lot 2 of Auditor’s Lot “D” located in the SE¼ of Section 36, the sanitary sewer main used as a part of the Sanitary Sewer Treatment System all Common Areas and Improvements. The Association shall be responsible for the repair and/or replacement of the culverts located in the storm water drainage and detention easements referenced in this Declaration.

Notwithstanding any other provision of this DECLARATION, the ASSOCIATION is granted the unilateral right to change the limited use of Lot 30, Block 1, Whispering Ridge 2nd Subdivision, from being solely dedicated for the construction, operation, and maintenance of a Sanitary Sewer Treatment System, provided the modification of the limited use is for the development of an additional Common Area and Improvement in the form of a multi-use field which will not adversely interfere with the function and operations of the Sanitary Sewer Treatment System. This unilateral authority for the limited change of use does not grant the ASSOCIATION the right to unilaterally modify in any manner the functional elements of the Sanitary Sewer Treatment System and only allows the ASSOCIATION to develop a multi-use field and related improvements as an additional Common Area and Improvement on the surface of Lot 30, Block 1, Whispering Ridge 2nd Subdivision. Any and all costs associated with the development of a multi-use field shall be paid as a part of the annual assessments under the provisions of this DECLARATION unless the DEVELOPER has agreed to pay all or a portion of such costs.

**ARTICLE VI.
COVENANT FOR MAINTENANCE ASSESSMENTS; OTHER COSTS**

Section 1.

Creation of the Lien and Personal Obligation of Assessments. Each initial Owner (other than DEVELOPER) of a Lot within the PROPERTY hereby covenants that by acceptance of a deed from the DEVELOPER for any Lot, whether or not it shall be so expressed in such deed or other conveyance shall be deemed to covenant and agree to pay the Association: a) an initial assessment of Five Hundred Dollars (\$500); b) annual assessments or charges; and c) special assessments for capital improvements; all such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection (specifically including reasonable attorneys’ fees) thereof as hereinafter provided, shall be a charge on each Lot and shall be a continuing lien upon the real property against which each such assessment is made. No assessments may be assessed against the Green Lots. Each such assessment together with such interest thereon and costs of collection (specifically including reasonable attorneys’ fees) thereof as hereinafter provided, shall also be the



personal obligation of the person, persons, or legal entity who was the Owner of such Lot or Lots at the time when the assessment becomes due and payable. Any such assessment, together with such interest thereon, and costs of collection (specifically including reasonable attorneys' fees) shall run with the land and be binding upon any successor to any Owner and the personal obligation for delinquent assessments shall pass to an Owner's successor in title. The Association, in addition to the other remedies under this Article, shall have the right to record a Claim of Lien against a Lot for delinquent assessments, charges, special assessments and work performed by the Association, and the Claim of Lien shall be a lien on the Lot and an obligation of the Owner and shall be enforced in accordance with this Article. Notwithstanding anything to the contrary in this DECLARATION, no assessments of any kind shall be levied or assessed against any Lot held by DEVELOPER.

Section 2.

Purposes of Assessment. The assessments which may be levied by the Association shall be used exclusively for the purposes of the Association and promoting the health, safety, and welfare of the Owners and residents of the Lots included within Whispering Ridge 2nd Subdivision, including specifically, but not by way of limitation, participation in and support of the Association, administrative costs of the Association. The assessment for each Lot by the Association shall be based upon a fraction with the numerator being one (1) and the denominator being the number of Lots in existence, excluding the Green Lots. If any additional land is added to this DECLARATION, consequently bringing new residential lots into existence during any calendar year after the budget and assessments have been established for each Lot for that year, the assessment levied for the Lots and any subsequent phase shall be the same as the assessment for the lots previously in existence; provided, however, no assessment shall be levied against any Lot in a subsequent phase until the first day of the month following the conveyance of each Lot to a purchaser other than the DEVELOPER. At the time the budget is reestablished for the subsequent year, then all assessments will be readjusted based upon the subsequent budget approved by the Association; provided, however, no assessments shall be levied against any Lot held by the DEVELOPER. If at the end of the calendar year there is a surplus of funds remaining in the Association, the surplus of funds shall be allocated to the reserve fund of the Association. Assessments shall also be used for maintenance and repair of (i) the Common Areas and Improvements, (ii) the Sanitary Sewer Treatment System including work on the sanitary sewer main within the easements dedicated on the Plat, and (iii) the maintenance and repair of the storm water drainage areas and the storm water detention/retention system.

Section 3.

Annual Assessments. The amount of the annual assessments shall be in such amounts as adopted or amended from time to time by the Board of Directors, payable quarterly in advance until the amount of the assessments is changed by action of the Board of Directors. It shall be the duty of the Board, at least sixty (60) days before the beginning of the calendar year, to prepare a budget covering the estimated costs of operating the Association during the coming year. At the discretion of the Board of Directors, the budget may include a capital contribution establishing a reserve fund in accordance with the capital budget separately prepared and shall separately list the general expenses. The Board of Directors shall cause a copy of the budget and the amount of assessments to be levied against each Lot for the following year to be delivered to each Owner at least thirty



(30) days prior to the end of any calendar year.

The assessment shall be for the calendar year, but the amount of the annual assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months remaining in such calendar year. The annual assessment shall commence against each Lot on the first day of the month preceding the date on which the record title to the Lot is transferred to a purchaser other than the DEVELOPER.

No Owner may waive or otherwise exempt such Owner from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of the Common Areas and Improvements or by abandonment of any Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner, such obligation to pay assessments shall run with the land. No diminution or abatement of assessment or set off shall be claimed or allowed by reason of any alleged failure of the Association or Board of Directors to take some action or to perform some function required to be taken or performed by the Association or by the Board of Directors under this DECLARATION or under the Bylaws for the Association, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 4.

Initial Assessments. The Initial Assessments for the Association shall be Five Hundred Dollars (\$500) per Lot. Three Hundred Dollars (\$300) of this Initial Assessment shall be paid directly into the reserve account of the Association. Two Hundred Dollars (\$200) of this Initial Assessment shall be payable directly to the working capital of the Association. The Initial Assessment for each Lot shall be due and payable upon the closing of the sale of a Lot from DEVELOPER to any other party, and shall be paid by such purchaser.

Section 5.

Special Assessments. In addition to the annual assessments as authorized above, the Association may levy in any year a special assessment, applicable to that year only, for the purposes of defraying, in whole or in part, the costs of any construction or reconstruction on expected repair or replacement or a described capital improvement upon the Common Areas and Improvements of the PROPERTY. Any such assessment shall have been approved by a majority of the Board of Directors who are voting in person or by proxy at a Board of Directors meeting called for this purpose. Special assessments may also be levied as provided for in Article IX.

A special assessment may be made against any Lot for purposes of collection of any monies due to the Association by such Lot Owner arising under any provision of this DECLARATION, including, but not limited to, fines and enforcement of the covenants.

The due date of any special assessments permitted herein shall be fixed in the Board of Directors resolution authorizing such special assessment.

Section 6.



Date of Commencement of Annual Assessments: Due Date. The annual assessments provided for herein shall commence as to any particular Lot on the first day of the month preceding the date on which the record title to the Lot is transferred to a purchaser other than DEVELOPER. The first annual assessment shall be adjusted in accordance with the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be mailed to each Owner subject thereto at the Lot address, unless the Association is notified otherwise. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid.

Section 7.

Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate permitted by North Dakota law. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot located upon the Lot. No Owner may waive or otherwise avoid liability for the assessment provided for herein by non-use of the Common Areas and Improvements in Whispering Ridge 2nd Subdivision or by abandonment of the Owner's Lot. In any action to enforce any assessment made hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees.

Section 8.

Subordination of the Assessment Lien to Mortgages. The lien of any assessment provided for in this DECLARATION shall be subordinate to the lien of any institutional mortgage or any mortgage held by DEVELOPER recorded prior to the recordation of a claim of lien for unpaid assessments or special assessments. An institutional lender is defined as a state or federal bank or savings and loan association, a credit union, a licensed mortgage broker, an insurance company, a trust company, savings bank, or other institutional mortgage company. A mortgagee who acquires possession, a purchaser at a foreclosure sale, or a mortgagee which has acquired title by deed in lieu of foreclosure or through a foreclosure action, and all persons claiming by, through, or under such purchaser or mortgagee shall hold title subject to the liability and lien of any assessment becoming due after such foreclosure or conveyance in lieu of foreclosure. Any unpaid assessment which cannot be collected as a lien against any Lot by reasons of a foreclosure of a prior mortgage shall be deemed to be an assessment equally divided among, payable by, and a lien against all Lots, including the Lots as to which the foreclosure (or deed in lieu of foreclosure) took place. This Section shall only apply to institutional mortgages and mortgages held by DEVELOPER.

Section 9.

Duty to Enforce. It shall be the legal duty and responsibility of the Association to enforce the payments of the assessments under the provisions of this DECLARATION.

Section 10.



Lot and Exterior Maintenance. In the event an Owner of any Lot in Whispering Ridge 2nd Subdivision should fail to maintain the Owner's Lot in a manner satisfactory to the Board of Directors after approval of a two-thirds (2/3rds) vote of the Board of Directors and the giving of written notice specified below, the Association shall have the right, through its agents, independent contractors or employees to enter upon the said Lot and to repair, clean, mow, trim, maintain and restore the Lot and the exterior of the buildings, structures, or other improvements located thereon. The above right of entry shall include the right to remove unauthorized items from the Lot. Without limiting the generality of the foregoing provision, the duty to maintain the improvements on the Lot shall specifically include adequate painting or other maintenance of all exterior materials and surfaces. The Architectural Review Committee, in its own discretion, shall determine what steps are necessary to repair, restore, or replace defective conditions. Any and all costs incurred by the Association under this Section 10 shall be reimbursed by the applicable Lot Owner, and if not paid by the applicable Lot Owner, shall be assessed against the subject Lot.

Section 11.

Sanitary Sewer Treatment System. At such time as a Lot Owner connects to the Sanitary Sewer Treatment System, which connection is mandatory and not optional, the Lot and the Lot Owner shall be assessed a one-time hook-up fee which shall be payable to the DEVELOPER. The one-time hook-up fee is herein established in the amount of Five Hundred Dollars (\$500). The Association may assign the management of the Sanitary Sewer Treatment System to a qualified operating entity. The ASSOCIATION is further authorized to enter into agreements with one or more third parties to operate, manage, maintain, and repair the Sanitary Sewer Treatment System, and no Lot Owner shall operate a separate sanitary sewer treatment system or enter into any agreement with a third party for sanitary sewer services, except for the connection, maintenance and repair of a Lot Owner's private sewer lines to the common sanitary sewer main trunk line. All costs of operation, maintenance, taxes, and other expenses incident to the operation of the Sanitary Sewer Treatment System shall be paid by the ASSOCIATION. The ASSOCIATION may, from time to time, adopt a written Sanitary Sewer Treatment System policy and cause a copy of the same to be maintained in the offices of the ASSOCIATION. The costs of operation, repair, and maintenance of the Sanitary Sewer Treatment System paid by the ASSOCIATION shall be costs of the ASSOCIATION which shall be included within the assessments which shall be levied by the ASSOCIATION to the Lots and Lot Owners for the health, safety, and welfare of the Lot Owners and the Lots included within Whispering Ridge 2nd Subdivision. The DEVELOPER shall not be exempted from the assessments for the costs of operation and maintenance of the Sanitary Sewer Treatment System for all Lots owned by the DEVELOPER. The ASSOCIATION shall establish, from time to time, reasonable fees for the sanitary sewer services for all Lots connected to the Sanitary Sewer Treatment System. Such fees shall apply to all residential connections on a non-discriminatory basis. The fees for the Sanitary Sewer Treatment System services shall be payable by all Lot Owners on a monthly basis to the Association with the sewer service fees being payable when a Lot Owner connects to the Sanitary Sewer Treatment System. If a Lot Owner (other than the Developer) has not connected to the Sanitary Sewer Treatment System, and until such connection is made, such Lot Owner (i) shall not be required to pay a monthly sanitary sewer service fee through December 31, 2022; (ii) thereafter, shall be required to pay fifty percent (50%) of the then current assessed monthly sanitary sewer service fee through December 31, 2025; and (iii) thereafter, shall be required to pay one hundred percent (100%) of the then current assessed monthly sanitary sewer service fee, regardless of whether the Lot Owner's Lot is or is not

connected to the Sanitary Sewer Treatment System. Notwithstanding the foregoing, upon a Lot Owner's connection to the Sanitary Sewer Treatment System, such Lot Owner shall immediately be required to pay one hundred percent (100%) of the then current assessed monthly sanitary sewer service fee attributable to such Lot Owner's Lot. The charges and costs for the sanitary sewer fees for the Sanitary Sewer Treatment System shall be paid by each Lot Owner to the ASSOCIATION, and the ASSOCIATION shall be required to tender payment of the monthly sewer service fees to the third parties responsible for the operation, management, maintenance, and repair of the Sanitary Sewer Treatment System. Each Lot Owner shall be solely responsible for the cost of connecting such Lot Owner's private sewer lines to the common sanitary sewer main trunk line and for the costs of maintaining and repairing such Lot Owner's private sanitary sewer lines through and including the connections (saddle) to the common sanitary sewer main trunk line located within the dedicated easements on the Plat. All costs and expenses for the capital repairs and replacement, and the repair and maintenance of the Sanitary Sewer Treatment System located on Lot 30, Block 1, Whispering Ridge 2nd Subdivision and on Lot 2 of Auditor's Lot "D" located in the SE¼ of Section 36, Township 140 N., Rge. 81 W. of the 5th P.M., Burleigh County, North Dakota shall be paid by the Association and shall be assessed to each Lot Owner as provided for under the provisions of this DECLARATION. All costs and expenses for repair, maintenance, snow removal, landscaping, mowing, and other costs and expenses to maintain the Access Easement shall be paid by the Association and shall be assessed to each Lot Owner as provided for under the provisions of this DECLARATION.

The DEVELOPER from time to time and at any time until December 31, 2030, and the ASSOCIATION from time to time and at any time, shall each have the unilateral right, privilege, and option to require that all monthly Sanitary Sewer Treatment System waste disposal fees will be the personal obligations of the Lot Owners directly and shall no longer be paid by the Association. In the event either the DEVELOPER or the ASSOCIATION modify the party obligated to tender payment of the sanitary sewer charges, all Lot Owners shall be notified in writing by the ASSOCIATION, and thereafter the ASSOCIATION or the ASSOCIATION's third-party contractor or designee shall advise each Lot Owner in writing of the amount of the sanitary sewer charges payable by each Lot Owner on a monthly basis to the third-party contractor which has entered into a contract with the ASSOCIATION to maintain, operate, and repair the Sanitary Sewer Treatment System. At all times the cost for maintenance, reconstruction, repair, and extraordinary operational costs and expenses would be shared jointly by all Lot Owners as provided for in this DECLARATION on the basis of a pro rata allocation on a per Lot basis. Under no circumstances will this provision remove, alter, or modify a residential Lot Owner's obligation to maintain such Lot Owner's private sewer line from each residential Lot Owner's residential structure to the point where the joint usage of the Sanitary Sewer Treatment System main commences.

Section 12.

Whispering Ridge 2nd Subdivision Monument Sign. In the event the DEVELOPER installs a monument sign for Whispering Ridge 2nd Subdivision, the costs and expenses of maintenance, repair, and any and all utilities associated with the monument sign shall be paid by the Association and costs shall be assessed to all Lot Owners as provided for in this Declaration.

Section 13.



Transfer Fees. The ASSOCIATION, by and through its Board of Directors, may establish from time to time a reasonable processing title transfer fee to defer the costs of the ASSOCIATION in connection with all title transfers to a Lot within the PROPERTY, which fee shall be paid by the transferee of a Lot at the time of closing of the sale and conveyance of fee simple title to any Lot.

Section 14.

Enforcement. The ASSOCIATION, by and through its Board of Directors, may notify any Owner of a violation or breach by the Owner of any covenant or restriction contained in this DECLARATION, and provide the Owner a reasonable amount of time in which the Owner shall cure the violation or breach. If the Owner fails to cure the violation or breach within the amount of time established by the Board of Directors, the Board of Directors may impose a reasonable fine on the Owner and impose any additional fine(s) for a repeated violation or breach (as an assessment against the Owner’s Lot), and/or the Board of Directors may direct the ASSOCIATION to cure the violation or breach, the costs of which shall be assessed to the Owner’s Lot.

**ARTICLE VII.
INSURANCE**

The Association shall maintain any and all insurance coverage as deemed necessary and appropriate from time to time.

**ARTICLE VIII.
ARCHITECTURAL CONTROL**

Section 1.

Developer Exemption. Notwithstanding the provisions of this Article VIII, the DEVELOPER SHALL BE EXEMPT FROM THE REQUIREMENTS SET FORTH IN THIS ARTICLE VIII. The DEVELOPER shall not be required to comply with the procedure set forth in this Article. This exemption applying to the DEVELOPER shall extend until the DEVELOPER has transferred and conveyed the last Lot owned by the DEVELOPER in Whispering Ridge 2nd Subdivision.

Section 2.

Architectural Control. No building, landscaping, or other structure or any improvement of any nature whatsoever shall be commenced, erected, or maintained (which shall include but not be limited to staking, excavating, filling, clearing, grading, or other site work) upon any Lot within the PROPERTY, nor shall any exterior addition to or change or alteration thereon be made until the plans and specifications shall have been approved in writing by the Architectural Review Committee. Once constructed, any change in exterior appearance or color scheme shall also require approval by the Architectural Review Committee. The plans and specifications shall show, among other requirements, all items required herein or in the guidelines, including but not limited to, the design, nature, character, shape, height and location shall be compatible and harmonious with the surrounding residences and topography. Each Lot Owner is required to submit conceptual drawings and preliminary specifications for exterior elevations of any residential living unit in

advance of submitting all final submittals outlined herein. Conceptual approval is not mandatory and is provided only as a courtesy to Lot Owners and builders retained by Lot Owners so that preparation of plans and specifications, and final approval thereof, will be cost-effective and time-efficient. Conceptual approval plans shall not constitute approval for commencement of construction. The Architectural Review Committee reserves the right to require three-dimensional elevations to be included in any building plan if the exterior elevations submitted are not sufficiently clear and representative of the design and character of the exterior elevation in the sole judgment of the Architectural Review Committee. The DEVELOPER specifically discloses that building plans for a residential living unit that the Architectural Review Committee determines in sole discretion is not compatible in style, design and/or quality may be disapproved, even if disapproval is solely on the basis of aesthetic preference, compatibility, image, taste, or harmony as determined solely and exclusively by the Architectural Review Committee.

Section 3.

Landscaping Plan. At the time building plans are presented for approval, there shall be included a landscaping plan meeting the consistent landscaping criteria set forth above, and also delineating each of, but not necessarily limited to, the following items:

- a. The location and type of each plant, tree, or other type of foliage intended to be included as part of the landscaping plan.
- b. The proposed removal of any existing plant, tree, or other type of foliage which exists on the Lot prior to commencement of any landscaping.
- c. The height, width, size (including container size), spacing and quantity of each variety of plant material.
- d. The tree specifications, including height, spread, number of trunks and trunk caliper and height.
- e. The location of each item of landscaping on the Lot and the design and arrangement of the same.
- f. Landscaping for all Lots shall be planned so as to avoid obstruction of the view of the golf course.

Final approval as required by this Article will not be deemed to be complete until such landscaping is satisfactorily installed, inspected and installation is finally approved by the Architectural Review Committee. The approval of building plans without submission of an approved landscaping plan shall be deemed to be a waiver of the requirement of this Section 3 requiring approval of and inspection of landscaping.

Section 4.

Composition of Architectural Review Committee. An Architectural Review Committee is hereby formed and shall initially consist of the DEVELOPER. The DEVELOPER may, at any time,

appoint qualified individuals in the opinion of DEVELOPER to constitute the Architectural Review Committee. At such time as the DEVELOPER transfers control of the Association to the Association’s Board of Directors, the Board of Directors shall be responsible for the composition of the individuals upon the Architectural Review Committee.

Section 5.

Duties of Architectural Review Committee. The Architectural Review Committee shall have the following duties and powers:

- a. To promulgate from time to time Architectural Guidelines for the PROPERTY and all Lots and any improvements to be constructed thereon. However, any Guidelines shall be set forth in writing and made available to all Owners and prospective Owners of the Association. Any Guidelines promulgated by the Architectural Review Committee shall be subject to final approval of the Board of Directors. The Guidelines shall include any and all matters considered appropriate by the Architectural Review Committee not inconsistent with the provisions of this DECLARATION;
- b. To approve all buildings or other structures which shall be commenced, erected, or maintained on any Lot within the PROPERTY and to approve any exterior additions to or changes to or alterations therein as more particularly described in this DECLARATION, specifically including approval of any and all landscaping plans for each Lot;
- c. To disapprove any such building plans and specifications and Lot grading and landscaping plans, which the Architectural Review Committee determines is not consistent with the planned development of the PROPERTY; and
- d. To require to be submitted for approval any samples of building materials and colors proposed or any other data information necessary for the Architectural Review Committee to reach its decision.

Section 6.

Required Submittals. At the time of each application, each of the following items is required to be submitted to the Architectural Review Committee:

- a. Complete blueprints of proposed construction, including:
 - i. Elevations for any building, structures, or other improvements including but not limited to decks, patios, porches, pools and exterior lighting;
 - ii. Construction plans including cross-sections and floor plans showing the total square footage of the living space.
- b. Specifications, including without limitation, complete description and samples of exterior materials, colors, paint and rough materials.



- c. Site plan showing:
 - i. Locations and dimensions of buildings, structures, walks, driveways, mailboxes and other proposed improvements;
 - ii. Exterior color chart showing the color of all exterior surfaces, materials, roof, walls, trim, glass, hardware and similar items.
- d. A sample of and adequate description of exterior siding and roofing materials.
- e. Site clearing and grading plan, including identification of existing trees) proposed to be removed and showing proposed and existing land grade contours, flow of site drainage, proposed elevations of improvements above the ground level of the public right-of-way detailing any proposed use of fill and any other information requested.
- f. Landscape and irrigation plans.
- g. Any other information required by the Architectural Review Committee in order to insure compliance with the requirements of this DECLARATION and any written Guidelines.
- h. List of all contractors and subcontractors with contact information.
- i. Detailed anticipated construction schedules and construction timelines.

Unless otherwise specifically provided for herein or otherwise required by the Architectural Review Committee at the time of submittal, site plans shall be submitted with the construction plans and shall be the same size as all other sheets of the construction plans. Site plans will be reviewed to determine among other things, if a reverse plan would better serve the PROPERTY based on: i) the location of garages and driveway entry points of the proposed residential living unit, if any, adjoining the Lot in question; and ii) any exterior lighting or other existing structures on a Lot under review.

Section 7.

Review Procedure. The Architectural Review Committee shall either approve, disapprove, or request more specific information regarding any plans or materials submitted to it within thirty (30) days from the date of receipt of all submittals required above. Under no circumstances shall the thirty (30) day period begin to run until all of the items specified in Section 6 of this Article required to be submitted has been received by the Architectural Review Committee. It is the intent of the Architectural Review Committee to make all reasonable efforts to expedite plan approval processes. Applicants requesting review by the Architectural Review Committee are encouraged to make initial submittal packages as complete as possible, and in a case of a request for more information, to respond as quickly as possible in order to prevent delays in the approval process.

The failure of the Architectural Review Committee to either approve, disapprove, or request more specific information within such thirty (30) day period shall be deemed to be and constitute an approval of said plan or materials, subject, however, at all times to the Covenants, Conditions,



Restrictions, and other requirements in this DECLARATION. The failure of the Architectural Review Committee to act within the thirty (30) day period specified above shall not under any circumstances constitute a waiver of the provisions of this DECLARATION.

- a. Initial Construction of an Improvement. The Owner who initially constructs an improvement on any Lot must complete such construction in a timely manner and substantially in accordance with all plans and specifications, landscaping plans, pool plans, and any other plans for construction of any improvements on the Lot (the “**Construction**”). Any construction of an improvement on any Lot shall be substantially completed within twelve (12) months unless otherwise approved in writing by the Architectural Review Committee. Landscaping on a Lot shall be completed within six (6) months from the date the dwelling residence is completed. The Owner shall notify the Architectural Review Committee in writing when the Construction has been completed, and the Architectural Review Committee shall within ten (10) days of receiving such notice, make an inspection to verify completion of the improvements in accordance with the approved plans.

- b. Inspection Rights. The Architectural Review Committee shall have the right to enter upon any Lot to inspect any improvement to insure the improvements conform with the approval granted by the Architectural Review Committee. The right of entry as granted herein and all associated rights of inspection shall extend from the beginning of Construction including site work and continue until thirty (30) days after all improvements have been completed.

- c. Remedies for Non-Compliance. Should the Architectural Review Committee determine that the Construction has not been completed in accordance with approved plans and specifications, the Architectural Review Committee shall notify the Owner in writing citing the deficiencies (**Notice of Non-Compliance**) and the Owner shall within fifteen (15) days after receipt of the Notice of Non-Compliance commence correction of the deficiencies and continue in an expeditious manner until all deficiencies have been corrected. Should any Construction not be completed in a timely manner as determined by the Architectural Review Committee, or not be completed in accordance with the plans and specifications approved by the Architectural Review Committee, the Architectural Review Committee shall have the right to seek specific performance of the Owner’s obligation to complete the Construction as initially approved by the Architectural Review Committee; or, in the alternative, enter upon any Lot and complete the Construction as approved at the expense of Owner, subject, however, to the following provisions. Prior to commencement of any work on a Lot, the Architectural Review Committee must furnish written notice to the Owner that unless the specified deficiencies are corrected within fifteen (15) days, the Architectural Review Committee shall correct the deficiencies at Owner’s expense. The provisions allowing the Architectural Review Committee to enter upon any Lot does not impose any obligations upon the Architectural Review Committee to act in such manner and such election shall be completed at the sole discretion of the Architectural Review Committee. If correction of the deficiencies is not commenced within fifteen (15) days, or if such correction is not continued



thereafter in an expeditious manner, the Architectural Review Committee has the right to seek legal action to force the Owner, or any successor to an Owner, to complete all improvements in accordance with the approved plans and specifications. The Notice of Non-Compliance shall contain the legal description of the Lot. Once recorded, the Notice of Non-Compliance shall constitute a notice to all potential purchasers from the Owner that the Architectural Review Committee shall have the right to enforce completion of all improvements against the Owner, or any successor of the Owner.

Once the Architectural Review Committee determines that all improvements have been completed in accordance with the approved plans and specifications, the Architectural Review Committee shall issue the Owner a Certificate of Approval in a recordable form, which shall make reference to the recorded Notice of Non-Compliance, and be executed by a majority of the members of the Architectural Review Committee. The recording of the Certificate of Approval shall be conclusive evidence that all improvements have been approved by the Architectural Review Committee, but shall not excuse the Owner from the requirement that the plans and specifications for subsequent changes, modifications, or alterations to improvements must be submitted to and approved by the Architectural Review Committee prior to the commencement of any work.

- d. Guidelines, Rules, and Regulations. The DEVELOPER, in order to give guidelines concerning the architectural design, construction, and maintenance of the dwelling units, may promulgate additional Whispering Ridge 2nd SUBDIVISION ARCHITECTURAL GUIDELINES, RULES AND REGULATIONS (“**Guidelines**”). The Guidelines, if created, shall be maintained at the offices of the DEVELOPER so long as the DEVELOPER owns any Lot in Whispering Ridge 2nd Subdivision. If created, DEVELOPER declares that Whispering Ridge 2nd Subdivision shall be held, transferred, sold, conveyed, and occupied subject to the Guidelines, as amended from time to time by the DEVELOPER.
- e. Failure of Owner to Comply with Order of Architectural Review Committee. In the event the failure of an Owner of a Lot to comply with the written directive or order from the Architectural Review Committee, then, in such event, the Architectural Review Committee shall have the right and authority to perform the subject matter of such direction or order and the costs of such performance shall be charged to the Owner of the Lot in question, and may be recovered by the Association for the Architectural Review Committee in an action at law against such Owner. The Association shall have the right to place a lien against a Lot under this provision until all such costs and expenses have been collected and are reimbursed to the Architectural Review Committee. Any lien placed upon a Lot by the Association shall not be deemed slander of title by any Owner and no Owner shall have any right to bring any legal action against the Association or the Architectural Review Committee, or the DEVELOPER on behalf of such lien.
- f. Storage and Removal of Construction Material. Except the DEVELOPER, the Lot Owners may not store construction materials on a Lot for a period exceeding fifteen



(15) days without commencing construction, and if construction does not commence, the DEVELOPER may remove such stored materials. Costs incurred in such removal by the DEVELOPER will become a lien on said Lot, accruing interest at the highest rate permitted by North Dakota law. Construction, once commenced, shall be diligently pursued to completion.

- g. No Liability. Plans and specifications submitted to the Architectural Review Committee shall not be reviewed for engineering or structural design or quality of materials. By approving any such plans and specifications, neither the Architectural Review Committee, the DEVELOPER, nor the Association assumes any liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither the Association, the Architectural Review Committee, the Board of Directors of the Association, nor the DEVELOPER, nor any of their respective officers, directors, members or agents shall be liable in damages to anyone submitting plans and specifications for approval, or to any Owner of a Lot within the property affected by these restrictions by reason of a mistake in judgment, negligence, nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person or entity who submits plans or specifications and every Owner agrees that such Owner will not bring any action or suit against DEVELOPER, the Association, the Architectural Review Committee, the Board of Directors of the Association, or their respective officers, directors, or agents to recover any such damages and hereby releases, remises, quit claims, and covenants not to sue for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provide that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

**ARTICLE IX.
RESTRICTIONS**

Section 1.

Living Units. Each Lot shall be utilized solely as a single-family residential living unit. Each Lot shall be sold solely and exclusively for residential purposes. Except as expressly provided herein, no structure shall be erected, altered, placed or permitted on any Lot, other than one single family residential living unit as designated on the Plat of Whispering Ridge 2nd Subdivision. No other structure shall be erected or moved onto any Lot.

Section 2.

Residential Use Only. The term “residential” as used herein shall be construed as single-family living units as designated on the Plat of Whispering Ridge 2nd Subdivision, only, and shall exclude the rental of portions of the home, except as provided by the Bylaws of the Association, and shall exclude professional and commercial uses. No Lot or any portion thereof, shall at any time be used for any trade, profession, manufacturing or business of any description and no noxious or offensive activity shall be carried on nor shall anything be done thereon which may become an

annoyance or nuisance to the subdivision. Notwithstanding the foregoing, an Owner or occupant residing in a residential living unit may keep and maintain his or her business or professional records in such residential living unit and handle matters relating to such business by telephone or correspondence therefrom, provided that such uses are incidental to the residential use, do not involve physical alteration of the residential living unit and do not involve any observable business activity such as signs (except as permitted by the Association pursuant to review by the Architectural Control Committee described in Article VIII hereof and subject to all ordinances and zoning regulations adopted by the City of Bismarck), advertising displays, bulk mailings, deliveries, or visitation or use of the residential living unit by customers or employees. Under no circumstances, however, shall an Owner or occupant maintain a business in his or her residential living unit which involves (i) food preparation for sale and distribution to the public, (ii) retail sales, (iii) industrial products of any type, (iv) distribution of products in bulk, or (vi) hazardous activities or substances.

Section 3.

Building Set Back and Location. The plat map of Whispering Ridge 2nd Subdivision sets forth the corridors within which all residential living unit structures within Whispering Ridge 2nd Subdivision shall be located and constructed. The precise location of all structures to be constructed on a given Lot shall be subject to the prior written consent and approval of the Architectural Review Committee. All building setback and location shall be completed in full compliance with all applicable ordinances, rules and regulations of the City of Bismarck. Any setbacks greater than thirty feet (30') must be approved in writing by the Architectural Review Committee. No construction shall be permitted in the Slope Protection Easement as provided for in Article IX, Section 4, below.

Section 4.

Slope Protection Easement and Storm Water Drainage and Detention Pond Easements. The Plat of Whispering Ridge 2nd Subdivision on file with the Burleigh County Recorder's office identifies for Lots 12 through 29, inclusive, Block 1, Whispering Ridge 2nd Subdivision a dedicated Slope Protection Easement. The purpose of the Slope Protection Easement is to assure that the area within the easement is not altered in any way or used for residential construction purposes of any improvements of any type. The Slope Protection Easement shall be subject to the restrictions and limitations identified on the Plat of Whispering Ridge 2nd Subdivision on file with the Burleigh County Recorder's office. The Slope Protection Easement shall not be disturbed in any manner as a result of excavation, demolition, erosion, plant root growth, lawn sprinkling, or construction of any ancillary improvement related to the residential use of the subject Lots. No buildings of any improvements shall be permitted to be constructed within the Slope Protection Easement. Each Owner of a Lot subject to the Slope Protection Easement shall be required to maintain the Slope Protection Easement on the Owners' respective Lot at the Owners' sole cost and expense. The Plat of Whispering Ridge 2nd Subdivision, separate easements filed of record, and this Declaration establish storm water drainage and detention pond easements which easement areas may not be altered in any way or used for any residential construction purposes for any improvements of any type. The storm water drainage and detention pond easements shall be required to be maintained on the Owners' respective lot at the Owners' sole cost and expense, subject to the obligation of the Association to repair, maintain, and/or replace culverts that may fail within the storm water drainage and detention pond easements.



Section 5.

Square Footage Requirements. Except as provided directly below, under no circumstance shall the above ground square footage of any residential structure, exclusive of open porches and garages, be less than 1,200 square feet. With respect to ranch style homes, the at or above ground living area of each ranch home, exclusive of open porches and garages, shall not be less than 1,600 square feet. With respect to homes of two stories or more above ground, the at or above ground living area of each such residential structure shall be no less than 2,400 square feet with no less than 1,200 square feet on the main/ground level of each home. With respect to split level style homes, the above ground-main level of each such home shall have a minimum of 1,600 square feet at or above ground level.

Section 6.

Residential Construction. All residential living unit structures shall be constructed on site of new materials only. All residential structures shall have an attached three (3) car garage, minimum. No garage doors shall exceed ten (10) feet in height. No other existing or prefabricated dwelling structures, sheds or storage buildings shall be moved, placed or permitted on a Lot. All residential structures shall be constructed in precise compliance with the requirements of the Architectural Review Committee as detailed above. The Architectural Review Committee shall have total discretion in the approval or disapproval of construction plans and the location of all structures to be constructed on each Lot within Whispering Ridge 2nd Subdivision.

Section 7.

Excavation. Any and all soils excavated from a Lot within the subdivision shall be deposited, at the Lot Owners' sole cost and expense, off site or blended. With the exception of topsoil for purposes of establishing landscaping, no "foreign" soils shall be placed or deposited on any Lot within the subdivision without the prior express written consent of the Architectural Review Committee.

Section 8.

Subdivision of Lots. No Lot shall be further subdivided without the express prior written consent of the Association.

Section 9.

Exterior Storage. No trailer, mobile home, boats, pontoons, boat docks/ramps, watercraft, motor home, golf carts, or equipment shall be parked or stored on any portion of Whispering Ridge 2nd Subdivision, unless stored within a garage. No such items shall be stored or parked on a street anywhere within Whispering Ridge 2nd Subdivision for more than 48 consecutive hours or more than 48 cumulative hours per seven (7) consecutive day period. It is intended that there shall be no on street or on driveway storage of any such items. The Association shall have sole and absolute discretion in determining whether a Lot Owner is attempting to avoid or circumvent the intention of this provision by moving such items from location to location within the Subdivision.



Section 10.

Pets. No horses, mules, llamas, cows, hogs, goats, chickens, poultry, pigeons, snakes, prairie dogs or other similar animals shall be kept or maintained anywhere within the Subdivision. Only domestic pets shall be allowed and only to the extent allowed by the ordinances of the City of Bismarck. All domestic pets shall be subject to proper confinement and control so as to not create a nuisance to be offensive to other Owners. The commercial breeding and sale of any animal is forbidden upon any Lot. All dogs shall be either maintained on a leash or otherwise restricted to the owner’s premises so as not to run at large at any time. All kennels shall be erected or placed directly adjacent to the exterior of the residential living unit as approved by the Architectural Review Committee. All kennels shall be cleaned and maintained so as to reduce, to an absolute minimum, odors. The Architectural Review Committee shall reserve the right to require that a kennel wall be of solid wall construction (i.e. no chain link fence). Excessive dog barking and/or the failure to restrict pets to the Owner’s premises, in the discretion of the Architectural Review Committee and/or Board of Directors of the Association, may be deemed a “nuisance” as said term is defined in the Bylaws of the Association.

Section 11.

Trash and Refuse. No trash, ashes or other refuse may be thrown, dumped or stored on any Lot. All trash, or other refuse, and trash cans and containers shall be kept in garages or in enclosures such that they will be concealed from the view of streets and Lots which are adjacent to the Lot on which they are located except on days garbage pickup is made. Absolutely no trash burning shall occur on the premises. Small fire pits and portable fire containers shall be allowed to the extent that the same do not violate any city or county fire code or regulations. There shall be no abandoned, junked, inoperable or wrecked vehicles, trailers, equipment stored on any Lot or anywhere within the subdivision. No garbage or other similar debris shall be stored or allowed to remain on any Lot. All such items shall be promptly removed from each Lot by and at the Lot Owner’s sole cost and expense.

Section 12.

Fences. There shall be no fence, temporary or permanent, constructed or placed on any Lot within the Association, except as approved by the Architectural Review Committee. The Architectural Review Committee shall have the sole authority to establish reasonable criteria and requirements for approval of any fences and shall be the sole judges of whether the criteria are satisfied. In no event shall any privacy fences be permitted on any Lot. Notwithstanding the limitation of fences, Lot 30, Block 1, Whispering Ridge 2nd Subdivision shall have fences as necessary for the safety and security of the Sanitary Sewer Treatment System.

Section 13.

Signs. No signs, billboards, or objects of unsightly appearance or nuisances shall be erected, placed or permitted to remain on any Lot, nor shall any Lot be used in any way or for any purpose which may endanger the health or unreasonably disturb the residents of the Property except that no more than one (1) "for sale" sign or "for rent" sign of not more than five (5) square feet may be



maintained on any Lot. Except as provided in this Section 13, nothing shall be kept on any Lot that will cause any noise that might disturb the peace, comfort or serenity of the occupants on surrounding property. The foregoing restrictions in this Section 13 shall not apply to the commercial activities, signs and billboards, if any, of the DEVELOPER or the use or operation of sales offices by the DEVELOPER during the construction and sales period.

Section 14.

Septic System. No septic tanks and/or drainage fields shall be constructed anywhere other than on Lot 30, Block 1, and any other tract which may in the future be designated by the DEVELOPER for use in the operation of the Sanitary Sewer Treatment System.

Section 15.

Developer Obligations. All Lots shall be conveyed by DEVELOPER as unimproved property without any obligation on the part of the DEVELOPER to improve the same with the exception of the DEVELOPER'S obligation to install paved roads as depicted on the Plat of Whispering Ridge 2nd Subdivision, provide access to a private sewer main trunk line and the Sanitary Sewer Treatment System to be constructed on Lot 30, Block 1, a rural water main for individual residential purposes, and access to residential utilities for electric service, natural gas, telephone, and cable television.

Section 16.

Antennas and Satellite Dishes. Excepting satellite dishes not to exceed 36 inches in diameter, no antennas or satellite dishes may be attached to any residential living unit without the prior express written approval of the Architectural Review Committee. No more than two 36 inch, or less, satellite dishes shall be allowed per residential living unit.

Section 17.

Collection of Real Estate Taxes on Common Areas. The Association shall have the right, power and authority to assess and collect real estate taxes and special assessments with respect to the Common Areas and Improvements and the Green Lots.

Section 18.

Covenants to Run with the Land. This DECLARATION and these covenants and restrictions shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date these covenants and restrictions are recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless and instrument signed by two-thirds (2/3rds) of the then Owners of Lots has been recorded, agreeing to change said covenants in whole or in part. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the provisions which shall remain in full force and effect.

Section 19.

Driveways. All driveways must be a minimum of four inches (4") of concrete or asphalt or other acceptable hard surface approved by the Architectural Review Committee. Colored concrete and stamped concrete are permitted. All driveways are subject to prior approval and review by the Architectural Review Committee.

Section 20.

Game and Play Structures. All such structures must be located where approved by the Architectural Review Committee and where the structure will have a minimum visual impact on adjacent Lots. In most cases, material used **must** match existing materials of the residence constructed upon the Lot and no playhouse may be larger than one hundred (100) square feet. Any metal play equipment, exclusive of wearing surface, will generally be required to be painted to blend into the surrounding environment (earth tone colors comparable to natural surroundings).

Section 21.

Basketball Goals. Any basketball goal backboard must be perpendicular to a primary street, and the backboard must be white, beige, clear, or light gray. Any supporting post for a basketball goal must be painted black, and written approval must be received by any neighbor who may be impacted by play is required to be obtained. One portable basketball goal is permitted rather than a permanently fixed basketball goal.

Section 22.

Swimming Pools. No approval shall be required for children's portable wading pools which are emptied at night and that do not exceed eighteen inches (18") in depth and whose surface area does not exceed thirty-six (36) square feet. Above ground pools are prohibited. For all in-ground pools, the appearance, height, and detailing of all retaining walls must be consistent with the architectural character of the residence constructed on the Lot with some terracing acceptable. Nor fencing of pools shall be permitted. All pools must include covers for safety as required by applicable governmental regulations. No glaring light sources which can be seen from neighboring Lots are permitted. Exterior hot tubs must be screened from adjacent properties and streets, and any screening must comply with fence restrictions and be approved by the Architectural Review Committee. All in-ground pools and any safety features shall be subject to the Architectural Review Committee's approval.

Section 23.

Temporary Structures. No temporary structure shall be permitted to be constructed or located upon a Lot, including ice fishing houses or hunting blinds.

Section 24.

Clotheslines and Above-Ground Tanks. No clothesline or above-grounds tanks of any kind are permitted.



Section 25.

Vehicles and Repair. No boat, trailer, camper, golf cart, or recreational vehicle or other type vehicle may be parked or stored in open view on a residential Lot for longer than a 48-hour period. During the golf season, it is permissible to park and store a golf cart on the driveway of a residential Lot for no more than a forty-eight (48) hour period. During the boating season, it is permissible to park and store boats and private watercraft on the driveway of a residential Lot for no more than seventy-two (72) consecutive hours. All vehicles parked in open view and not in a garage must be operable and may not be unsightly. No vehicle may be parked on any yard.

Section 26.

Solar Devices. Solar devices shall be permitted provided they are approved, in advance, by the Architectural Review Committee.

Section 27.

Statues, Windmills, Fountains/Water Ornaments and Other Ornamental Features. One (1) such feature is permitted per residential living unit provided they are approved, in advance, by the Architectural Review Committee. These features must not create a noise level above twenty (20) decibels and may not be taller than seventy percent (70%) of the first level of any residential living unit. No such feature can produce power other than to operate a water feature itself.

Section 28.

Review Fees. When an Owner, other than the DEVELOPER, submits plans to the Architectural Review Committee for preliminary review or final approval, the submission shall include the "Review Fees" as described below:

- a. **New Home Construction:** The original contemplated alteration of a Lot from its natural state to a single-family residence with submission to include building plans, specifications, and other plans required by this DECLARATION: Five Hundred Dollars (\$500).
- b. **Major Alteration or Addition:** Structural or site modification taking place after the original construction which is significant enough to require the issuance of a building permit by a governmental authority: Five Hundred Dollars (\$500).
- c. **Changes to or Resubmission of Plans:** Whenever a submission for which the Architectural Review Committee has previously granted final approval is resubmitted for final approval to the Architectural Review Committee due to changes in the originally approved plan, or whenever a submission whose approval is previously denied is resubmitted by a builder or by a homeowner: One Hundred Dollars (\$100).
- d. **Additional Review Fees.** In addition to the Review Fees as described above, the

Architectural Review Committee shall be reimbursed by any Owner for such costs and expenses which are incurred by the Architectural Review Committee in the evaluation process, including, but not limited to, ordering surveys of lot lines and easements, and/or engaging the resources of an engineer, architect, attorney, or consultant. Notwithstanding this provision, the Architectural Review Committee is not required or obligated to incur any outside third-party costs in the evaluation process of plans, specifications, or permits.

Reinspection. When a structural improvement fails to pass inspection because of non-compliance with an approved plan and specifications, a reinspection fee shall be imposed as a condition of final approval: One Hundred Dollars (\$100).

Section 29.

Occupancy and Sale. The occupancy of any Lot within the PROPERTY shall be subject to the provisions set forth in this Section. As used herein, a Lot is considered to be leased if it is occupied on a temporary or continual basis by parties other than the Owner or the Owner's family.

- a. All leases or non-owner occupancy arrangements must be in writing and shall each have a minimum term of one (1) year, unless a shorter period is permitted specifically by the Association. At the time of entering into a lease, the Owner and the Owner's tenant shall provide the Association with an executed copy of the lease and pay a review fee of One Hundred Dollars (\$100).
- b. Each lease shall contain, or shall be deemed to contain the following:
 - i. The lease shall designate the parties who are entitled to occupy the Lot and shall state that no other parties are permitted to occupy such Lot.
 - ii. The lease shall provide that continued violation of any provisions of this DECLARATION shall constitute cause for termination of the lease and eviction of the tenant.
- c. In the event of a continued violation of this DECLARATION and the restrictions and conditions set forth herein on a lease or non-owner-occupied Lot, the Board of Directors of the Association have the right to give notice to the Owner directing the Owner to institute proceedings to evict the tenants. In the event the Owner has not initiated and completed eviction proceedings within thirty (30) days, the Association shall have the right, but not the duty, to institute eviction proceedings on behalf of the Owner. For this purpose, each Owner hereby irrevocably appoints the President of the Association as the Owner's attorney-in-fact for purposes of initiating said eviction action. Any and all court costs and attorneys' fees expended by the Association pursuant to any eviction action under this provision shall be the responsibility of the Owner and shall be paid within thirty (30) days of written notice from the Association requesting payment. In the event such costs and fees are not paid, the costs and fees shall become a special assessment against the Owner and against the Owner's Lot and, if not paid shall be subject to the lien and foreclosure procedure contained in this DECLARATION.



- d. At the time of the sale of any Lot, the Owner, except DEVELOPER, is required to provide the Association the following:
 - i. Name, address, and telephone number of Buyer;
 - ii. Date of closing;
 - iii. Copy of the deed transferring title;
 - iv. Signed Receipt and Acknowledgement of Homeowners' Association Documentation

**ARTICLE X.
WAIVER OF VIOLATION**

Where an improvement on any Lot is submitted to the Architectural Review Committee for approval or where a building has been erected or the construction thereof is substantially advanced and the construction would constitute a violation of this DECLARATION or is situated on any Lot in such a manner that the same constitutes a violation or violations of any of this DECLARATION, the Board of Directors or the DEVELOPER shall have the right to release such Lot or portion thereof from such part of the provisions of this DECLARATION which are violated; provided, however, said Architectural Review Committee or DEVELOPER shall not release a violation or violations of any such covenant except as to a proposed waiver either the Architectural Review Committee or the DEVELOPER, in their respective sole discretions, determine to be not seriously detrimental to the neighborhood of Whispering Ridge 2nd Subdivision, or to be a positive contribution to surrounding residential living units Whispering Ridge 2nd Subdivision. For example, but not by way of limitation, preservation of existing trees might be a circumstance. Waivers may also be appropriate where a proposed material, design, or treatment, while in not strict compliance, is a positive element or is indistinguishable from a permitted material, design, or treatment or possesses the same visual quality. A violation of any provision of this DECLARATION or the decision of the DEVELOPER or the Architectural Review Committee to waive or otherwise grant and authorize variances from any terms or restrictions herein shall not be deemed to be a defense to establish a basis for others to violate any of the terms, conditions, covenants, or provisions contained in this DECLARATION.

**ARTICLE XI.
GENERAL PROVISIONS**

Section 1.

AMENDMENTS. In addition to any other manner herein provided for the amendment of this DECLARATION, the covenants, conditions, restrictions, easements, charges, and liens of this DECLARATION may be amended, changed, added to, modified, or deleted at any time from time to time upon the approval of three-fourths (3/4ths) of the total vote of the Lot Class at a regular or special meeting of the Association for such purpose. So long as the DEVELOPER is the Owner of or holds a mortgage on any Lot affected by this DECLARATION, the DEVELOPER'S consent to any amendment to this DECLARATION must be obtained in writing. Additionally, the DEVELOPER shall have the right in the DEVELOPER'S sole discretion, to amend this



DECLARATION until such time occurs that the DEVELOPER sells or conveys or no longer holds a mortgage on three-fourths (3/4ths) of all Lots (excluding Green Lots) in Whispering Ridge 2nd Subdivision. All subsequent grantees of the PROPERTY hereby grant to DEVELOPER their powers of attorney to effect any change, amendment, modification deemed to be required by DEVELOPER. Additionally, any amendment which materially and significantly affects the DEVELOPER'S ability to develop Whispering Ridge 2nd Subdivision, sell improved or unimproved Lots, modify or terminate any rights or reservations granted to the DEVELOPER in this DECLARATION must be approved and executed by the DEVELOPER. Further, for an amendment to be effective, a Supplemental Declaration certifying the amendment shall be executed by the President and Secretary of the Association and shall be recorded in the County Recorder's office for Burleigh County, North Dakota. No amendment or termination shall require the consent or joinder of any mortgagee or lienholder holding a lien upon any part or portion of the Lot.

Section 2.

Notice to Lot Owners. As to any notice to be sent to any Member of the Association or Owner, such notice shall be deemed to have been properly sent when (i) personally delivered, (ii) mailed, postage pre-paid, to the Lot address of the Owner who own the Lot, or at such other address as may be provided by an Owner or Member of the Association in writing to the Association, or (iii) transmitted by electronic transmission to any email address or cellular telephone number of the Owner or Member of the Association contained in the files or records of the Association.

Section 3.

Severability. Invalidation of any one of these covenants or restrictions set forth in this DECLARATION or any part thereof by judgment or court order shall in no way affect the other provisions of this DECLARATION which shall remain in full force and effect.

Section 4.

Governing Law. It is expressly understood that the laws of the State of North Dakota shall govern the interpretation and enforcement of this DECLARATION and all provisions contained herein.

Section 5.

Easement for Inspection. All Owners of a Lot within the PROPERTY agree that the DEVELOPER and/or representatives of the Architectural Review Committee will be allowed to inspect each Lot for purposes of making sure such Lot is in compliance with the provisions of this DECLARATION and conduct all activities reasonably necessary to carry out such inspection. Each Owner waives any and all claims for a trespass on a Lot arising from such inspection.

Section 6.

DEVELOPER'S Storm Water and Erosion Control. DEVELOPER will use best practice to prevent storm water and erosion problems relating to the Lots owned by the DEVELOPER. In the event of DEVELOPER'S inability or failure to prevent the loss, transfer, or migration of any soil, silt,



**AMENDED AND RESTATED DECLARATION
OF RESTRICTIONS ON REAL ESTATE**

EXHIBIT "A"

Lots 1 to 40, inclusive, Block 1, Whispering Ridge 2nd Subdivision, Burleigh County, North Dakota.

-and-

Lot 2 of Auditor's Lot "D" located in the SE¹/₄ of Section 36, Township 140 N., Rge. 81 W. of the 5th P.M., Burleigh County, North Dakota

-and-

An Access Easement described more particularly as follows:

A tract of land being a part of Auditor's Lot "A" of the SE¹/₄ of Section 36, Township 140 North, Range 81 West of the 5th Principal Meridian, Burleigh County, North Dakota, being 15.00 feet wide and 7.50 feet on each side of the following described centerline:

Commencing at the southeast corner of Section 36, T140N-R81W; thence North 00° 45' 02" East along the east boundary line of said Section 36 for 349.15 feet; thence North 89° 14' 58" West, for 232.96 feet to the Point of Beginning; thence North 19° 52' 52" West for 69.90 feet to the P.C. (Point of Curvature) of a curve to the Left having a radius of 85.00 feet; thence along said curve to the Left (the chord of which bears North 47° 53' 20" West, 79.83 feet) an arc length of 83.10 feet to the P.T. (Point of Tangency) of said curve to the Left; thence North 75° 53' 49" West for 45.44 feet to the P.C. of a curve to the Left having a radius of 400.00 feet; thence along said curve to the Left (the chord of which bears North 82° 45' 10" West, 95.50 feet) an arc length of 95.73 feet to the P.T. of said curve to the Left; thence North 89° 36' 32" West for 48.26 feet to the P.C. of a curve to the Right having a radius of 175.00; thence along said curve to the Right (the chord of which bears North 68° 03' 47" West, 128.54 feet) an arc length of 131.62 feet to the P.T. of said curve to the Right; thence North 46° 31' 03" West for 65.45 feet; thence North 38° 14' 24" West for 496.69 feet to the P.C. of a curve to the Left having a radius of 350.00; thence along said curve to the Left (the chord of which bears North 50° 14' 47" West, 147.07 feet) an arc length of 148.18 feet to the P.T. of said curve to the Left; thence North 62° 22' 29" West for 74.08 feet to the P.C. of a curve to the Right having a radius of 300.00 feet; thence along said curve to the Right (the chord of which bears North 50° 44' 16" West, 121.03 feet) an arc length of 121.86 feet to the P.T. of said curve to the Right; thence North 39° 06' 03" West for 218.37 feet to the P.C. of a curve to the Left having a radius of 75.00 feet; thence along said curve to the Left (the chord of which bears North 68° 51' 49" West, 74.46 feet) an arc length of 77.92 feet to the P.T. of said curve to the Left; thence



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South 81° 22' 24" West for 50.89 feet to a point on the westerly boundary line of Auditor's Lot "A" of the SE1/4 of said Section 36, said point also being the Point of Termination.



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Burleigh County

Debbie Kroshus

