

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
WHISPERING RIDGE 1<sup>st</sup> SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WHISPERING RIDGE 1<sup>st</sup> SUBDIVISION ["**Declaration**"], is dated September 6, 2013, by Burnt Creek Group, LLC, of the post office address of 555 Hwy. 1804 NE, Bismarck, ND 58503, ["**Developer**"].

**PRELIMINARY RECITALS**

- A. Terms in this Declaration are defined in **Article I**.
- B. Developer holds legal title to the real property described as Lots 1 to 4, Block 1; Lots 1 to 9, Block 2; Lots 1 to 3, Block 3; Lots 1 to 3, Block 4; Lots 1 to 7, Block 5; Lots 1 to 10, Block 6; and Lots 1 to 6, Block 7; Whispering Ridge 1<sup>st</sup> Subdivision of Burleigh County, North Dakota, as more particularly described on Exhibit "A" which is attached hereto and as detailed in the Plat of Whispering Ridge 1<sup>st</sup> Subdivision ["**Plat**"] filed with the County Recorder's office for Burleigh County, North Dakota on September 3, 2013, at 11:14 a.m., as Document No. 794181 ["**Property**"].
- C. Developer intends to develop the Property into a residential development. As part of the development of the Property, Developer has dedicated portions of the Property for public roadways, drainage, pedestrian crossings, and general public use within the Property, all as contained in the Plat.
- D. Declarant desires to establish for its own benefit, and for the mutual benefit of all future owners, mortgagees, occupants, and other holders of any interest in the Property, or any part or portion thereof, certain mutually beneficial covenants, restrictions, and obligations with respect to the proper development, use and maintenance of the Property.
- E. Developer desires and intends that the owners, mortgagees, occupants, and other holders of an interest in or otherwise utilizing the Property, shall at all times enjoy the benefits of, and shall hold their respective interests subject to the rights, privileges, covenants, servitudes, and restrictions set forth in this Declaration, all of which are declared to be in furtherance of a plan to promote and protect the aesthetic and consistent development aspects of the Property and are established for purposes of enhancing and perfecting the value, desirability, and attractiveness of the Property.
- F. Developer subjects the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens and reservations set forth in this Declaration, and any subsequent supplements or amendments to this Declaration.

- G. In order to cause the Declaration to run with the Property and to be binding upon all owners, mortgagees, occupants and other holders of an interest in the Property from and after the date this Declaration is recorded with the Burleigh County Recorder's office, Developer hereby makes all covenants and conveyances, of the Property, whether or not so provided in any deed of conveyance, subject to the terms and conditions of this Declaration hereinafter set forth; and by accepting deeds, mortgages, leases, easements, or other grants or conveyance to any portion of the Property, the owners, mortgagees, occupants, and other holders of an interest in the Property or for themselves and their respective heirs, executors, administrators, trustees, personal representatives, successors, and assigns, agree that they shall be personally bound by the provisions of this Declaration hereinafter set forth except to the extent such persons may be specifically excepted therefrom under the provisions of this Declaration.

NOW, THEREFORE, the Developer hereby declares the following as the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WHISPERING RIDGE 1<sup>st</sup> SUBDIVISION.

# **ARTICLE I** **DEFINITIONS**

Section 1. The following words, when used in this Declaration, or any supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- a. "Developer" shall refer to Burnt Creek Group, LLC, and its successors and assigns.
- b. "Lot" shall refer to Lots 1 to 4, Block 1; Lots 1 to 9, Block 2; Lots 1 to 3, Block 3; Lots 1 to 3, Block 4; Lots 1 to 7, Block 5; Lots 1 to 10, Block 6; and Lots 1 to 6, Block 7, Whispering Ridge 1<sup>st</sup> Subdivision, Burleigh County, North Dakota. Developer has reserved the right, but not the obligation, to dedicate additional Lots to the project, at Developer's sole discretion.
- c. "Mortgage" shall mean and refer to any mortgage of record or other security instrument by which a Lot or any part thereof is encumbered.
- d. "Mortgagee" shall mean and refer to any person or entity named as a mortgagee under any such mortgage or any successors with an interest of such person under such mortgage.
- e. "Owner" shall refer to the record title owner of a Lot located within the Property.

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## **ARTICLE II**

### **PROPERTY SUBJECT TO DECLARATION**

#### **Section 1. Legal Description of Real Property.**

The Property is and shall be held, transferred, sold, conveyed, or occupied subject to this Declaration.

**Section 2. Public Declaration.** The Developer has dedicated all public rights of ingress and egress and utility easements on the Plat of Whispering Ridge 1<sup>st</sup> Subdivision and does not intend to dedicate any other common areas under the provisions of this Declaration. The Developer does not intend to establish a membership association for Whispering Ridge 1<sup>st</sup> Subdivision and declares that there is no intention of establishing a system of assessments for the Property subject to this Declaration, as there are no dedicated common areas or common improvements which require maintenance by an association.

The Developer has reserved the right, but not the obligation, to dedicate additional property/Lots to Whispering Ridge 1<sup>st</sup> Subdivision.

## **ARTICLE III**

### **ARCHITECTURAL CONTROL**

**Section 1. Developer Exemption.** Notwithstanding the provisions of this Article III, THE DEVELOPER AND THE DEVELOPER'S SUCCESSORS AND ASSIGNS SHALL BE EXEMPT FROM THE REQUIREMENTS SET FORTH IN THIS ARTICLE III. The Developer, together with its successors and assigns, shall not be required to comply with the procedures set forth in this Article. The Developer and its successors and assigns shall be subject to the Use Restrictions set forth in Article IV. The exemption provided for in this Section 1, Article III, applying to the Developer, together with its successors and assigns, shall extend until the Developer, together with its successors and assigns, has transferred and conveyed the last lot in Whispering Ridge 1<sup>st</sup> 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 an 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, including but not limited to, the design, nature, character, shape, height and location shall be compatible and harmonious with the surrounding residences and topography. 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. It is specifically required that at the time building plans are presented for approval, there shall be included a landscaping plan 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 height, width, size (including container size), spacing and quantity of each variety of plant material.
- c. The tree specifications, including height, spread, number of trunks and trunk caliper and height.
- d. The location of each item of landscaping on the Lot and the design and arrangement of the same.

Final approval as required by this Article will not be deemed to be complete until such landscaping is finally approved by the Architectural Review Committee. The approval of building plans without submission of an approved landscaping plan shall not 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 one or more qualified individuals in the opinion of Developer to constitute the Architectural Review Committee. At such time as the Developer has sold one hundred percent (100%) of the Lots in the Property, the Owners of the Lots shall thereafter have the right to appoint 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 Lots. Any Guidelines promulgated

- by the Architectural Review Committee shall be consistent 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 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.

#### **ARTICLE IV** **USE 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 1<sup>st</sup> 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 a single-family living unit and shall exclude professional or commercial uses. No Lot, or any portion thereof, shall at any time, be used for any trade, profession, or business of any description and not noxious or offensive activity shall be carried on nor shall anything be done thereon which might become an annoyance or a nuisance to the Property.

**Section 3. Building Setback and Location.** The Plat of Whispering Ridge 1<sup>st</sup> Subdivision sets forth the corridors within which all residential living unit structures upon the Property shall be located and constructed. Under no circumstances shall any structure, including decks, patios, bay windows, and the like, be constructed within fifteen (15) feet of the side Lot line of any Lot within the Property. The location of all structures to be constructed upon a Lot shall be subject to the prior written consent and approval of the Architectural Review Committee.

**Section 4. Square Footage Requirements.** 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 one thousand six hundred (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 two thousand (2,000)

square feet, exclusive of open porches and garages. With respect to split-level style homes, exclusive of open porches and garages, the above ground main level of each such residential living unit shall have a minimum of one thousand five hundred (1,500) square feet.

Section 5. Residential Construction. All residential living unit structures shall be constructed on-site of new materials only. All residential structures shall have an attached three-car garage, minimum. No garage doors shall exceed eight (8) feet in height. No other existing prefabricated dwelling structures, sheds, or storage buildings shall be moved, placed, or permitted on any lot. All residential living unit structures shall be constructed in compliance with the requirements of the Architectural Review Committee as detailed in this Declaration.

Section 6. Excavation. Any and all soils excavated from a Lot within the Property shall be deposited, at the Lot Owner's sole cost and expense off-site or blended with the exception of no more than eighteen (18) inches of topsoil for purposes of establishing final landscaping on a Lot. No "foreign" soil shall be placed or deposited on any Lot within the Property without the prior express written consent of the Architectural Review Committee.

Section 7: Subdivision of Lots. No Lot shall be further subdivided without the express prior written consent of the Architectural Review Committee. The Developer herein declares Developer's intent that no Lot shall be subdivided, unless the subdivision of one or more Lots shall create a larger Lot than currently depicted on the Plat. Any Lot Owner(s) desiring to subdivide any Lots, subject to the written consent of the Architectural Review Committee, shall be required to process any and all Lot modifications required by the City of Bismarck, County of Burleigh, for such action.

Section 8. Temporary Occupancy and Temporary Buildings. No trailer, basement or any incomplete building, tent, shack, garage, or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of improvements approved by the Architectural Committee shall be removed immediately after the completion of construction and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Architectural Committee.

Section 9. Nuisances: Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to the occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Normal construction activities and parking in

connection with the building of improvements on a Lot or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and other property shall be kept in a neat and tidy condition during construction periods, trash and other debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Lot or other property during the construction of improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

Section 10. Diseases and Insects. No person shall permit anything or any condition to exist upon a Lot or other property which shall induce, breed or harbor infectious disease or noxious insects or animals.

Section 11. Antennas. No antenna, serial, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation proposed to be erected, used or maintained outdoors on any portion of the Project, whether attached to a residential unit or structure or otherwise, shall be erected or installed without the prior written consent of the Architectural Committee.

Section 12. Mineral Exploration. No Lot or other property shall be used in any manner to explore for or to remove any water, oil or hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

Section 13. Trash Containers and Collection; Coal Furnaces. No garbage or trash shall be placed or kept on any Lot or other property, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property. No coal furnaces shall be installed upon or used in the subdivision.

Section 14. Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot or other property so as to be visible from neighboring property.

Section 15. Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables

installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee.

Section 16. Overhead Encroachments. No tree, shrub, or planting of any kind shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet.

Section 17. Animals. All Lots shall comply with the ordinances of the City of Bismarck, North Dakota in effect from time to time for animal limitations and animal control.

Section 18. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements or such machinery or equipment which Declarant may require for the operation and maintenance of the Project.

Section 19. Signs. No signs whatsoever (including, but not limited to, commercial, political, "for sale", "for rent" and similar signs) which are visible from neighboring property shall be erected or maintained on any Lot except:

- a. Signs required by legal proceedings.
- b. Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee.
- c. One (1) "For Sale" sign provided the size, color, design, message content, location and type has been approved by the Architectural Committee.

Section 20. Trucks, Trailers, Campers and Boats. No car, van, truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area or on any street so as to be visible from neighboring property, except for: (i) temporary parking of a motor home, camper, recreation vehicle or boat and boat trailer on the concrete driveway situated on a Lot for a period of not more than twenty-four (24) consecutive hours and not more than forty-eight (48) hours within any seven (7) day period for the purpose of loading or unloading such vehicle or equipment; (ii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Committee; (iii) boats and motor vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair; or (iv) motor vehicles not exceeding seven (7) feet in height and twenty (20) feet in length which are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind and which are parked in the garage or on the concrete driveway situated on a Lot.



Section 21. Motor Vehicles. Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other property on the Project, and no inoperable vehicle may be stored or parked on any such Lot or other property so as to be visible from neighboring property or to be visible from any Common Area or any street.

Section 22. Diminution. The Architectural Review Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Architectural Committee determines in its sole discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner of a Lot or in the event of a change of circumstances since the recording of the Declaration has rendered such restriction obsolete, and (ii) that the activity permitted under the variance will not have a substantial adverse effect on the Owners, of a Lot in the Property. If any restriction set forth in this Article is adjudged or deemed to be invalid or unenforceable by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

Section 23. Drainage. No residential structure, structure, building, landscaping, fence, wall or other improvement shall be constructed, installed, placed or maintained in a manner that obstructs, interferes with or changes the direction or flow of surface water.

Section 24. Fences. No fence shall be erected or modified on any Lot without the prior express written approval from the Architectural Review Committee.

Section 25. Propane Tanks. No propane tanks shall be located upon the Property, except propane tanks used for outdoor grills, fireplaces, or similar improvements upon a Lot.

Section 26. 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 residents constructed on a Lot with some terracing acceptable. Any privacy fencing or fencing required by governmental regulations must comply with restrictions on fences. No glaring light sources which can be seen from neighboring Lots shall be permitted. Exterior hot tubs must be screened from adjacent properties, and any screening must comply with fence restrictions.

Section 27. 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 residential living unit with submission to include the building plans required by this Declaration: \$500.
- b. Major Alteration or Addition: Structural or site modifications taking place after original construction which is significant enough to require the issuance of a building permit by a governmental authority: \$500.
- c. Changes to or Resubmission of Plans: Whenever a submission for which the Architectural Review Committee has previously granted approval is resubmitted for a final approval due to changes in the originally approved plans, or whenever a submission whose approval is previously denied is resubmitted by a builder or Owner of a Lot: \$100.

Instructions shall be provided to an Owner of a Lot as to the party entitled to receive the Review Fees detailed above depending upon the structure and appointment of individuals or entities acting as the Architectural Review Committee under the provisions of this Declaration.

Section 28. Covenants to Run with the Land. This Declaration and these covenants and restrictions shall run with the land and shall be binding upon the parties and all persons claiming under them for a period of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions shall be automatically extended for periods of ten (10) years, unless an instrument signed by two-thirds (2/3rds) of the then Owners of Lots in the Property has been recorded, agreeing to change the covenants and restrictions in whole or in part. Invalidity of any of the covenants or restrictions set forth in this Declaration by a judgment or court order shall in no way affect the provisions which shall remain in full force and effect.

## **ARTICLE V**

### **GENERAL PROVISIONS**

Section 1. Notices. Any notices required to be sent to any Owner under this provision of this Declaration shall be deemed to have been properly sent when mailed to the last known address of the person and/or persons who appear as an Owner at the time of such mailing.

Section 2. Enforcement of Covenants. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restrictions, either to restrain the violation or to recover damages. Failure of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so.

Section 3. Interpretation. The singular shall be deemed to include the plural, wherever appropriate, and unless the context clearly indicates to the contrary, any obligations of the Owner shall be joint and several.

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.

IN TESTIMONY WHEREOF, the undersigned, being the Developer herein, has executed this Declaration the day and year first above written.

DEVELOPER:

BURNT CREEK GROUP, LLC

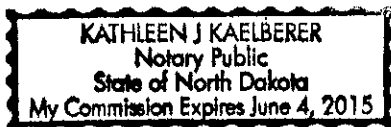
Ronald M. Knutson  
Ronald M. Knutson, Chief Manager

Attas Boutrous II, Secretary

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF BURLEIGH     )

On this 6<sup>th</sup> day of September 2013, before me personally appeared Ronadl M. Knutson and Attas Boutrous II, known to me to be the Chief Manager and Secretary, respectively, of Burnt Creek Group, LLC, the limited liability company that is described in and that executed the within and foregoing instrument and acknowledged to me that such limited liability company executed the same.

Kathleen J. Kaelberer  
\_\_\_\_\_, Notary Public



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Debbie Hoskins

