

**WHISPERING BAY
DECLARATION OF RESTRICTIONS ON REAL ESTATE**

THIS DECLARATION, made on the date hereinafter set forth by **WHISPERING BAY CORPORATION**, a North Dakota corporation, 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, and which is hereinafter referred to as the "PROPERTY"; and

WHEREAS, DEVELOPER desires to provide for the preservation of the values and amenities on the PROPERTY which is to be known as "WHISPERING BAY" 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 BAY, 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 under the laws of the State of North Dakota, a nonprofit corporation, known as the Whispering Bay Homeowners' Association for the purposes of exercising the functions set forth in this 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. **"Association"** shall mean and refer to the WHISPERING BAY HOMEOWNERS' ASSOCIATION.

- b. **“Property”** shall mean and refer to the real property which is more particularly described on Exhibit “A” which is attached hereto and made a part hereof, 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.
- c. **“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 follows:
- i. Subdivision signage, walls, structures, landscaping, any irrigation system to be developed, and other similar improvements.
 - ii. Whispering Bay water frontage complete with all landscaping, berms, walls, structures, lighting and entry ways.
 - iii. All other common improvements, including, but not limited to, the bay, the channel connecting the bay to the Missouri River, drainage systems, irrigation systems, pipelines, pumps, and any and all transformers, electrical systems, or other equipment associated therewith.
 - iv. Any landscape or landscape islands or medians located on the public streets located in Whispering Bay.
 - v. Open areas and playgrounds, if any.
 - vi. Green Lots
 - vii. Recreational trails
 - viii. Subdivision entry walls
 - ix. Bay lighting
 - x. The Bay described as Lot 59, Block 3, and the Channel connecting the Bay to the Missouri River described as Lot 1, Block 1.
- d. **“Lot or Lots”** shall mean and refer to any lot located within the PROPERTY identified in the Plat of Whispering Bay filed as Document No. 718676 with the Burleigh County Recorder’s office, which is intended for use as a site for a single family residential living unit (excluding Green Lots unless converted to a site for a residential living unit), with such lots as described in the Plat of Whispering Bay. Lot 2B of Lot 2, Block 1, Whispering Bay is being platted as “The Pointe at Whispering Bay” and shall consist of up to nine (9) lots for residential patio style living units and up to two (2) Green Lots. Lot 2B, block 1, is not subdivided as of the date of this Declaration.
- e. **“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 Bay, 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.

- f. **“Member”** shall mean and refer to all those Owners who are members of the Association as provided for in Article V, Section 1, hereof.
- g. **“Developer”** shall mean Whispering Bay 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.
- h. **“Declaration”** shall mean and refer to this Declaration of Restrictions on Real Estate for Whispering Bay, applicable to the PROPERTY as recorded in the office of the County Recorder for Burleigh County, North Dakota and as subsequently amended and modified.
- i. **“Surface Water or Storm Water Management System”** shall mean a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit storm and surface water in order to prevent or reduce flooding, over drainage and environmental damage. Lot 4, Block 1, and Lot 2, Block 5 of Whispering Bay are specifically designed to be a part of this system as wetland areas.
- j. **“County”** shall mean Burleigh County, a political subdivision of the State of North Dakota.
- k. **“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.
- l. **“Green Lot”** shall mean Lot 26, Block 3, and Lot 1, Block 2, Whispering Bay, unless such Green Lot is converted to a residential lot by the DEVELOPER.

**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 described on Exhibit “A “ which attached to and made a part hereof.

As the owner of the PROPERTY, DEVELOPER shall have the unilateral right, privilege, and option, from time to time and at any time until January 31, 2017, to subject additional real property to provisions of this DECLARATION and the jurisdiction of the Association. The DEVELOPER herein declares that upon final approval and recording of a replat of of Lot 2B of Lot 2, Block 1, Whispering Bay, with such replat to be known as "The Pointe at Whispering Bay", the lots located thereon will be subject to the provisions of this Declaration as well as additional declarations 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 January 31, 2017, 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 its expense 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 January 31, 2017, 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, specifically including "The Pointe at Whispering Bay" as referenced in Article II above. 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 January 31, 2017, 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.

Owner's Easements of Enjoyment. Every Owner shall have a right of enjoyment and easement to and in the common areas 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 ($\frac{2}{3}$) 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 Bay. No commercial purpose shall be a permitted use of any Lot in Whispering Bay.

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 facilities 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 rules and regulations promulgated by the Association from time to time and subject to this DECLARATION.

Section 4.

Easement for Access and Drainage. The Association shall have a perpetual, non-exclusive easement over all areas designated on the Plat of Whispering Bay for access to the water frontage areas of Whispering Bay and over all other areas of the surface water or storm water management systems for access to operate, maintain or repair the water frontage or any other systems or properties of the Association. By this easement, the Association shall have the right to enter upon those designated portions of any Lot at reasonable times and in a reasonable manner to operate, maintain or repair the water front or the surface water or storm water management systems. Additionally, the Association shall have a perpetual, non-exclusive easement for drainage over the entire surface area and designated storm water management system. No person shall alter the drainage flow of the surface or storm management system, and no person shall alter the water front areas without the approval of the Association and any governmental agency controlling or regulating such water front area.

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 transferred three-fourths percent (3/4) of the Lots located in the PROPERTY to be known as Whispering Bay.

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 initially appointed by the DEVELOPER.

Section 4.

Duties of Association. The Association shall be responsible for the maintenance, operation, and repair of the bay, channel connecting the bay to the Missouri River, all water front areas, together with the surface water or storm water management systems for Whispering Bay and all Common Areas and Improvements. Maintenance of the Common Areas and Improvements and the water front, surface water, and storm water management systems shall mean the exercise of practices which allow the water frontage to be maintained in a manner so as to protect each individual Lot and the entire subdivision to be known as Whispering Bay and to further allow the surface water and storm management systems to provide drainage, water storage, and other water management capabilities. Any repair or reconstruction of the water frontage or repair of the surface water or storm water management systems shall be as permitted, or if modified, as approved by the appropriate governmental entity.

ARTICLE VI. COVENANT FOR MAINTENANCE ASSESSMENTS

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 One Thousand Dollars (\$1,000); 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 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 a Green Lot. Each such assessment together with such interest thereon and costs of collection 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 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 Bay, 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. If any additional land is added to this DECLARATION, consequently bringing new 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 the bay, the Channel, all Common Areas and Improvements, the water frontage river bank and for the surface water or storm water management systems, including, but not limited to, work on all water frontage, work within water retention areas, drainage structures, and drainage easements.

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 unit 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 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 and Subsequent Assessments. The Initial Assessments for the Association shall be One Thousand Dollars (\$1,000) per Lot. Six Hundred Dollars (\$600) of this Initial Assessment shall be paid directly into the reserve account of the Association. Four Hundred Dollars (\$400) 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. Additionally, at the closing of any subsequent sale of a Lot after conveyance by the DEVELOPER, an Initial Assessment as set forth in this paragraph shall be required to be paid by any such subsequent purchaser as a result of such sale. The subsequent Initial Assessment required for transactions after the DEVELOPER has conveyed a Lot shall be allocated to the reserve fund of the Association if one has been established by the Association's Board of Directors in the same proportion as outlined for the initial assessment as set forth in this Section.

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 escape liability for the assessment provided for herein by non-use of the Common Areas and Improvements in Whispering Bay or by abandonment of the Owner's Lot. In any action to enforce any assessment made hereunder, the prevailing party shall be entitled to collect 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 Bay should fail to maintain the Owner's Lot in a manner satisfactory to the Board of Directors after approval of a two-thirds ($\frac{2}{3}$) 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.

Section 11.

Landscape Maintenance. Landscape Maintenance shall include the obligation to replace all dead or declining landscape, sod, trees, plantings, broken irrigation lines, or similar items and to keep planted and sodded areas free from weeds, trash, debris, and the like. It is hereby declared that where grass or weeds exist on any Lot exceeding a height of six (6) inches as to an occupied Lot, or one (1) foot as to any vacant Lot, then said grass or weeds shall be prima facie considered unsatisfactory to the Board of Directors. The foregoing provisions shall not preclude the Board of Directors from determining that the grass or weeds of a lesser height are unsatisfactory or that other conditions are not satisfactory, but is included rather to serve as an encouragement for the Board to act quickly in extreme incidences.

The cost of any exterior maintenance falling under this provision shall be added to and become a part of the assessment to which such Lot is subject, which shall be due and payable thirty (30) days from the date the assessment is made.

The notice required to be given pursuant to this provision shall be given in writing and shall be mailed to the Owner.

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 AND ITS SUCCESSORS AND ASSIGNS SHALL BE EXEMPT FROM THE REQUIREMENTS SET FORTH IN THIS ARTICLE VIII. The DEVELOPER, and its successors and assigns, shall not be required to comply with the procedure set forth in this Article. This exemption applying to the DEVELOPER, or its successors and assigns shall extend until the DEVELOPER or its successors and assigns has transferred and conveyed the last Lot in Whispering Bay.

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. Although it is not mandatory, each Lot Owner is encouraged 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. All Lots with waterfront on the bay area or on the channel connecting the bay to the Missouri River shall be developed with consistent bay side/channel side rear yard landscaping characteristics. Whispering Bay is designed to have all Lots accessing the waterfront areas from the rear of each Lot. The rear yard area of all Lots shall be developed and graded initially at a consistent slope. The initial graded slope must be maintained on each Lot at all times. Each Lot will be developed at the rear of the Lot and the waterfront boundary to maintain a natural sand beach for at least a portion of the first five to ten feet of the rear of each Lot. All Lots shall then remain at or close to the existing pre-developed grade for approximately twenty-five feet (25') from the intersection of the water to the Lot. At a location approximately twenty-five feet (25') from where the Ordinary Water Elevation intersects with the existing terrain at the rear of each Lot, either a retaining wall structure shall be built by the Owner of each Lot entirely and solely from local North Dakota boulders which are consistent with river bottom development (such boulders consisting of a diameter of approximately two feet to six feet) or the area can be left at the existing finished grade and landscaped. Retaining walls, if constructed on a Lot with waterfront shall be improved through landscaping to integrate planting terraces and other landscape features in a consistent manner. Walls must integrate into existing grade at lot lines. In all locations where waterfront access easements exist over any Lot, the owners of such Lots shall slope the terrain within the access easement area to a 2:1 slope and cover the area with movable landscape features and cover material that is capable of supporting equipment. In addition to the landscaping requirement as detailed above, it is specifically required that 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.

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 matter 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 having a diameter of four (4) inches or more (measured three feet above the ground level) 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 time lines.

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; ii) specimen trees that should, in the opinion of the Architectural Review Committee be preserved; and iii) 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"). 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 BAY 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 Bay. If created, DEVELOPER declares that Whispering Bay shall be held, transferred, sold, conveyed, and occupied subject to the Guidelines, as amended from time to time by the DEVELOPER.
- e. 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.
- f. No Liability. Plans and specifications submitted to the Architectural Review Committee shall not be approved 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 Bay. No other structure shall be erected or moved onto any Lot. There shall be no walk-out basements.

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 Bay, only, and shall exclude the rental of portions of the home, except as provided by the By-Laws 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.

Section 3.

Building Set Back and Location. The plat map of Whispering Bay sets forth the corridors within which all residential living unit structures within Whispering Bay shall be located and constructed. Under no circumstance shall any structure, including decks, patios, bay windows and the like, be constructed within ten (10) feet of the side Lot line of any Lot within Whispering Bay. 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. Each Lot Owner is further notified of the existence of water front maintenance easement areas which lie along all water front areas within

Whispering Bay. In the event Lot Owner or the Association utilizes either of the above-referenced access corridors for purposes of maintaining repairing or improving bank stabilization and/or water front areas of Whispering Bay, then and in that event, said Lot Owner or the Association, as the case may be, shall be fully responsible for the entire cost of returning the easement corridors to their original condition. In the event a Lot Owner or the Association utilizes the access corridors designated on the Plat of Whispering Bay, the Lot Owner and/or the Association, as the case may be, shall effect and complete such maintenance, repairs or improvements and return the corridor to its pre-construction condition as quickly as reasonably possible so as to minimize inconvenience to neighboring lots.

Section 4.

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 2,000 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 2,000 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 2,500 square feet with no less than 1,500 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 1,500 square feet at or above ground level.

Section 5.

Construction Elevation. Each Lot Owner is notified that, as of July 19, 2005, the 100-year Base Flood Elevation at the north end of Whispering Bay is 1636.45 feet (NAVD 88), and 1636.30 feet (NAVD 88) at the south end of Whispering Bay as determined by FEMA, Flood Insurance Rate Map No. 38015C0790C. Under current rules and regulations, each Lot Owner is notified that structures to be placed within a floodplain are required to be constructed so that the lowest floor elevation is completed in accordance with all applicable ordinances and rules. Each Lot Owner is further notified that the Base Flood Elevation and the criteria governing the elevation of a structure above the Base Flood Elevation are subject to change in accordance with applicable federal, state, and local laws, rules, and regulations. It is necessary that each respective Lot Owner be aware of the Base Flood Elevation when establishing the elevation of the Lot Owners' prospective residential living unit structure. The DEVELOPER is not in a position to and shall not issue any guaranties or warranties concerning the present or future Base Flood Elevation or minimum construction elevations. All Lot Owners are notified that crawl space walls, if any, may require engineered footings and walls. Each Lot Owner is solely responsible to verify and or determine the Base Flood Elevation and any and all associated engineering and construction requirements in effect on the date each Lot Owner commences construction on a Lot. All Lot Owners are herein notified that as of the date of this Declaration, the Federal Emergency Management Agency, Mitigation Directorate, has issued Technical Bulletin 10-01, entitled "Ensuring That

Structures Built on Fill In or Near Special Flood Hazard Areas Are Reasonably Safe From Flooding in accordance with the National Flood Insurance Program” providing guidance on the construction of buildings on land elevated above the Base Flood Elevation through the placement of fill. The Technical Bulletin 10-01 discusses several methods of construction and makes recommendations concerning construction for areas in or near special flood hazard areas and should be reviewed by Lot Owners before commencing construction on a Lot.

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 two (2) car garage, minimum. No garage doors shall exceed 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 Bay. All river or bay irrigation pumps shall be powered by electricity, only, with all power lines and water lines buried. All irrigation pumps shall be a) submersible or b) contained and operated in enclosed boxes or containers with the top of such box or container being covered and the cover being at or below ground level. All Owners are hereby notified that it will be necessary to obtain a Corp of Engineers permit to operate an irrigation pump, which shall be at Owner’s sole cost and expense.

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 no more than eighteen (18) inches of top soil 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, water craft, motor home or equipment shall be parked or stored on any portion of Whispering Bay, unless stored within a garage. No such items shall be stored or parked on a street anywhere within Whispering Bay 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.

Waterfront Bank Stabilization.

- a. Initial Bank Stabilization. The initial riverfront, channel and bay waterfront areas shall be designed and completed by DEVELOPER. After the initial design and construction by DEVELOPER, all waterfront stabilization shall be the sole obligation of each respective Lot Owner. All Owners shall be solely responsible for securing an appropriate permit with the United States Corps of Engineers for any waterfront stabilization, repair, or maintenance. Further, with respect to all Lots, the type, size and quantity of material(s), panels and/or rock to be utilized to stabilize and maintain the bank shall be determined and established in the sole and absolute discretion of the Association.

- b. Waterfront Bank Stabilization and Maintenance. Except as provided herein, each Lot Owner is and shall be solely responsible for the subsequent maintenance and repair of the waterfront directly adjacent to such Lot. The stabilization, maintenance and repair required of each residential Lot Owner shall include, but not be limited to, supplying panels, rock and fabric for the stabilization of the bank and the maintenance and repair of the stabilized bank. The type, size and quantity of panels, material(s) and/or rock necessary to stabilize, repair and maintain the bank shall be determined and established in the sole and absolute discretion of the Association. The Association shall have sole and absolute authority to determine if and when maintenance of the waterfront is necessary. Upon receipt of written notification from the Association specifying necessary stabilization, maintenance and/or repair procedures, the noticed Lot Owner shall promptly commence and complete the required stabilization and/or maintenance procedures. As used herein, the word "promptly" shall mean within ninety (90) days of the date a Lot Owner receives the written notice from the Association, subject to an extension of time in the event of inclement weather or delays in obtaining necessary Corp of Engineer permits. In the event a Lot Owner fails or refuses to maintain the waterfront as directed by the Association, then and in that event, the Association, in the Association's sole discretion, shall be authorized, but not required, to enter the subject Lot for purposes of implementing those procedures deemed reasonable and necessary, in the absolute discretion of the Association, to maintain and repair the

waterfront and the stabilization thereof. The cost of such procedure shall be a debt of the subject Lot Owner and shall be assessed against and constitute a lien on the associated Lot.

- c. Modification of Shoreline. No Lot Owner shall alter or in any way affect the shoreline or waterfront areas of Whispering Bay, the channel connecting Whispering Bay to the Missouri River, or the Missouri River frontage without the prior express written consent of the Association and approval of any necessary governmental agency having jurisdiction or control over such shoreline or waterfront area.

- d. Walkways and Steps. Walkways and steps or stair systems leading to or from to the water shall be constructed only of materials that are free of toxic substances and any environmentally hazardous materials. Railroad ties containing creosote or other similar substances are prohibited.

Section 11.

Bay Maintenance. Excepting shoreline and water front area stabilization procedures as described above, the Association shall be responsible for any and all maintenance procedures associated with the Whispering Bay including both the channel connecting the bay to the Missouri River and the Missouri River frontage and the mouth of the channel. Each Lot shall be assessed for channel and bay maintenance and repair expenditures, as provided in this DECLARATION. The channel connecting the bay to the Missouri River is defined in the Plat of Whispering Bay as Lot 1, Block 1, and the bay is defined in the Plat as Lot 59, Block 3.

Section 12.

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, not to exceed more than two (2) cats and no more than two (2) dogs, per single-family lot shall be allowed. 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 By-Laws of the Association.

Section 13.

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. All garbage must be maintained in Association approved steel, metal, plastic or concrete constructed containers. No burning barrels shall be allowed on the premises. 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 14.

Bridge, Street and Bay Lights. All bridge and street lights shall initially be installed by the City through a special assessment process, and thereafter the bridge lights and street lights shall be operated and controlled by the City. The DEVELOPER shall provide each Lot Owner, upon request by the Lot Owner, a bay light together with a pedestal, and it shall thereafter be the obligation of the Lot Owner to install the bay light as approved as a part of the landscaping plan approved by Architectural Review Committee. The bay light will be operated on a photo cell system and all bay lights shall be operated from dusk until at least midnight at all times.

Section 15.

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

Section 16.

Signs. No signs, billboards or advertising devices of any kind, except those used in any subsequent sale of property, shall be placed or otherwise installed on any Lot or building. Signs used in the subsequent sale of the property may not exceed nine (9) square feet in area. The Developer reserves the right to place and install signage identifying Whispering Bay, roads within Whispering Bay, and for such other purposes as the DEVELOPER deems reasonable and necessary.

Section 17.

Pollution Control. In the interest of public health and sanitation, and so that the PROPERTY may be benefitted by a decrease in the hazards of stream pollution and by the protection of water supplies, recreation, wildlife, and other public uses, Owners will not use the PROPERTY for any purposes that would result in the pollution of any waterway by refuse, sewage or other material that might tend to pollute the waters of any stream or impair the ecological balance of the surrounding land.

Section 18.

Septic System. No septic tanks and/or drainage fields shall be constructed anywhere on the PROPERTY.

Section 19.

Boat Docks. Boat docks shall be allowed on the premises only with the prior express written consent of the Architectural Review Committee, which Architectural Review Committee shall have complete and sole discretion with respect to the location, configuration, size, make and model of each boat dock, and all appurtenances thereto. The Architectural Review Committee shall have the absolute right to select and designate one or more companies to supply docks to the subdivision and the model(s) of docks to be utilized in the subdivision, No Owner shall assign, sublease or in any manner, fashion or form transfer dock privileges or rights applicable to a given Lot. Each Lot Owner shall be solely responsible to secure appropriate dock permits from the United States Corps of Engineers or the state of North Dakota, as may be required by law, rule, or regulation.

Section 20.

Boats. There shall be a maximum of two (2) motorized boats/pontoons and two (2) personal water craft for each residential structure in the project. The parking/docking of guest boats shall be limited to a forty-eight (48) hour period. No guest/invitee owned boats shall be on the premises or tied to a dock for more than forty-eight (48) hours per seven (7) day time period. The Architectural Review Committee shall have absolute authority to issue Guidelines restricting the use of water craft within the bay and channel, including a no-wake policy. Swim rafts, trampolines and other similar items shall be allowed on the bay only with the prior approval of the Architectural Review Committee.

Section 21.

Coal Furnaces. Coal and pellet-type furnaces or stoves shall not be utilized within the subdivision. No propane tanks shall be utilized as a fuel source for furnaces on the

premises. Only electric, natural gas, or heat pump type furnaces shall be permitted. Electric generators shall be used for emergency purposes only.

Section 22.

Owner/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 through a city special assessment district, as depicted on the Plat of Whispering Bay and provide access to a city sewer main, city water main for individual residential purposes, and bridge and street lights all as provided herein. Each Lot Owner shall be solely responsible for all applicable special assessments for such improvements and for the entire cost of attaching/connecting to the city-provided main water line and city sewer lines.

Section 23.

Bay Improvements. It is further covenanted by all Owners of Lots within Whispering Bay for themselves, their successors and assigns, that in the event the Owners of sixty percent (60%) of the Lots of Whispering Bay should decide or elect to further improve the bay, including any buried fresh water intake pipe system, the cost of such improvements shall be paid for by the Lot Owners as a special assessment or annual assessment through the Association.

This covenant shall run with the land and the cost of the improvements referred to above shall be the personal obligation of each respective Lot Owner and a charge and lien on the land and whatsoever hands it shall be at the time of such improvements. If payment for an assessment for such improvements is not received within thirty (30) days of the written notice requesting payment thereof, the Board of Directors, acting by and through its officers and agents, is hereby expressly authorized to execute and file a lien on such offending Residential Lot to secure payment of such costs.

Section 24.

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 25.

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 common areas and Green Lots.

Section 26.

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 27.

Driveways. All driveways must be either four inches (4") of concrete or three inches (3") of concrete with a block overlay. Colored concrete and stamped concrete are permitted. All driveways are subject to prior approval and review by the Architectural Review Committee.

Section 28.

Game and Play Structures. All such structures must be located where they 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 29.

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 30.

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. Any privacy fencing or fencing required by

governmental regulations must comply with the restrictions on fences. The maximum pool area is limited to no more than seven percent (7%) of the total Lot square footage. 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.

Section 31.

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

Section 32.

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

Section 33.

Vehicles and Repair. No boat, trailer, camper, or recreational vehicle or other type vehicle may be parked or stored in open view on residential property for longer than a 48-hour period. During the boating season, it is permissible to park and store boats and private water craft on a residential unit 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 34.

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

Section 35.

Statues, Windmills, Fountains/Water Ornaments and Other Ornamental Features. One (1) such feature is permitted per residential living unit. 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 36.

Ice Fishing Houses/Shelters. To the extent permitted by law, no ice fishing house, ice fishing shelter, or other portable ice fishing structure may be placed upon the bay or channel during the ice fishing season.

Section 37.

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).

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 38.

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.

**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 Architectural Review Committee or the DEVELOPER, together with the DEVELOPER'S successors and assigns, 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 together with its successors and assigns, 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 Bay, or to be a positive contribution to surrounding residential living units Whispering Bay. 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.

**ARTICLE XI.
GENERAL PROVISIONS**

Section 1.

AMENDMENTS. In addition to any other manner herein provided for the amendment of the 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 two-thirds (2/3rds) 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 two-thirds (2/3rds) of all Lots (excluding Green Lots) in Whispering Bay. 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, or its successors or assigns. Additionally, any amendment which materially and significantly affects the DEVELOPER'S ability to develop Whispering Bay, 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 required to be sent to any Member of the Association or Owner, the provisions of this DECLARATION shall be deemed to have been properly sent when personally delivered or 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.

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.



**AMENDMENT
TO
DECLARATION OF RESTRICTIONS ON REAL ESTATE
RELATING TO
WHISPERING BAY**

THIS AMENDMENT TO DECLARATION OF RESTRICTIONS ON REAL ESTATE [this "Amendment"] is entered into on this 18th day of November 2013, by and between Whispering Bay Corporation, a North Dakota corporation, its successors or assigns ["DEVELOPER"] and Whispering Bay Homeowner's Association, a North Dakota nonprofit corporation [the "ASSOCIATION"].

WHEREAS, DEVELOPER caused to be filed on August 10, 2010, in the office of the County Recorder, Burleigh County, North Dakota, as Document No. 729989, that certain Declaration of Restrictions on Real Estate [the "DECLARATION"], which Declaration affects the real property described on Exhibit "A" attached hereto [the "PROPERTY"]; and

WHEREAS, DEVELOPER and the ASSOCIATION desire to amend the DECLARATION as more particularly described herein; and

WHEREAS, the DEVELOPER has the ability in its sole capacity to amend the DECLARATION in accordance with the provisions of Article XI, Section 1, of the DECLARATION, as the DEVELOPER as of the date of executing this Amendment owns more than two-thirds (2/3rds) of all Lots in Whispering Bay.

NOW, THEREFORE, DEVELOPER and the ASSOCIATION hereby amend the DECLARATION as follows:

1. All defined terms otherwise defined in this Amendment shall have the meanings ascribed to them in the DECLARATION.
2. Article IV, Section 4, is hereby deleted in its entirety and is replaced with the following:

Easement for Access and Drainage. The Association shall have a perpetual, non-exclusive easement over all areas designated on the Plat of Whispering Bay for access to the water frontage areas of Whispering Bay and over all other areas of the surface water or storm water management systems for access to operate, maintain or repair the water frontage or any other systems or properties of the Association. By this easement, the Association shall have the right to enter upon those designated portions of any Lot at reasonable times and in a reasonable manner to operate, maintain or repair the water front or the surface water or storm water management systems. Additionally, the Association shall have a perpetual, non-exclusive easement for drainage over the entire

surface area and designated storm water management system. No person shall alter the drainage flow of the surface or storm management system, and no person shall alter the water front areas without the approval of the Association and any governmental agency controlling or regulating such water front area. In the event any Owner owns two adjacent lots and plans to improve the lots in an area where an easement exists, the Owner will be permitted to request the DEVELOPER or the ASSOCIATION to file a lot modification of the two adjacent Lots terminating the existing easement in the middle of the adjacent Lots, and establishing two new easements, with one new easement to be located on the exterior lot line running to the water on each side of the adjacent Lots.

3. Article VI, Section 1, is hereby deleted in its entirety and is replaced with the following:

Creation of the Lien and Personal Obligation of Assessments. Each initial Owner 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 One Thousand Dollars (\$1,000); 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 DEVELOPER shall not be required to pay the initial assessment, but shall be obligated to pay annual assessments and special assessments. The annual and special assessments, together with such interest thereon and costs of collection 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 a Green Lot. Each such assessment together with such interest thereon and costs of collection 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 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.

4. Article VI, Section 2, is hereby deleted in its entirety and is replaced with the following:



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 Bay, 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. If any additional land is added to this DECLARATION, consequently bringing new 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. 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. 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 the bay, the Channel, all Common Areas and Improvements, the water frontage river bank and for the surface water or storm water management systems, including, but not limited to, work on all water frontage, work within water retention areas, drainage structures, and drainage easements.

- 5. Article VI, Section 3, is hereby deleted in its entirety and is replaced with the following:

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 unit 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. For all Lots conveyed by the DEVELOPER, 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 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.

- 6. Article VI, Section 6, is hereby deleted in its entirety and is replaced with the following:

Date of Commencement of Annual Assessments: Due Date. The annual assessments provided for herein on all Lots acquired by an Owner from DEVELOPER 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 annual assessments provided for herein on Lots owned by DEVELOPER shall continue until such time as a Lot is sold to a purchaser other than DEVELOPER. 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.

- 7. Article VIII, Section 3, is hereby deleted in its entirety and is replaced with the following:

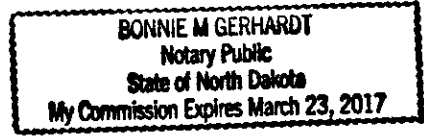
Landscaping Plan. All Lots with waterfront on the bay area or on the channel connecting the bay to the Missouri River shall be developed with

consistent bay side/channel side rear yard landscaping characteristics. Whispering Bay is designed to have all Lots accessing the waterfront areas from the rear of each Lot. The rear yard area of all Lots shall be developed and graded initially at a consistent slope. The initial graded slope must be maintained on each Lot at all times. Each Lot will be developed at the rear of the Lot and the waterfront boundary to maintain a natural sand beach for at least a portion of the first five to ten feet of the rear of each Lot, provided each Lot must include reasonable controls in the natural sand beach area to minimize any erosion of the natural sand beach. All Lots shall remain at or close to the existing pre-developed grade for approximately twenty-five feet (25') from the intersection of the water to the Lot. At a location approximately twenty-five feet (25') from where the Ordinary Water Elevation intersects with the existing terrain at the rear of each Lot, either a retaining wall structure shall be built by the Owner of each Lot entirely and solely from local North Dakota boulders which are consistent with river bottom development (such boulders consisting of a diameter of approximately two feet to six feet) or the area can be left at the existing finished grade and landscaped. Retaining walls, if constructed on a Lot with waterfront shall be improved through landscaping to integrate planting terraces and other landscape features in a consistent manner. Walls must integrate into existing grade at lot lines. In all locations where waterfront access easements exist over any Lot, the owners of such Lots shall slope the terrain within the access easement area to a 2:1 slope and cover the area with movable landscape features and cover material that is capable of supporting equipment. In addition to the landscaping requirement as detailed above, it is specifically required that 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.

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

On this 10th day of November 2013, before me personally appeared Michael Todd and Niles Hushka, known to me to be the President and Secretary respectively, of Whispering Bay Corporation, the corporation that is described in and that executed the within and foregoing instrument and acknowledged to me that such corporation executed the same.




Bonnie M Gerhardt

Burleigh County, North Dakota, Notary Public

WHISPERING BAY
DECLARATION OF RESTRICTIONS ON REAL ESTATE
EXHIBIT "A"

THAT TRACT OF LAND WHICH IS LOCATED ON AUDITOR'S LOT M-1 OF PART OF THE NORTHEAST 1/4 AND THE SOUTHEAST 1/4; LOTS 3B, 4B, & 5B, GOVERNMENT LOT 4 IN SECTION 18; PART OF GOVERNMENT LOT 3 IN SECTION 18; PART OF LOT 6 AND ALL OF LOT 7, BLOCK 1, REPLAT OF LOTS 1A, 2A, AND PART OF 3A OF MILLS FIRST SUBDIVISION; TOGETHER WITH AN UNPLATTED PORTION OF MILLS AVENUE RIGHT OF WAY AND AN UNPLATTED PORTION OF THE NORTHEAST 1/4, ALL LOCATED IN SECTION 18, TOWNSHIP ONE HUNDRED THIRTY-EIGHT (138) NORTH, RANGE EIGHTY (80) WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA, ALL DEFINED WITHIN THE FINAL PLAT OF WHISPERING BAY CONSISTING OF LOTS 1, AND 3, BLOCK 1, LOT 1, BLOCK 2, LOTS 1 THROUGH 59, BLOCK 3, LOT 1, BLOCK 4, AND LOT 1, BLOCK 5. LOT 2, BLOCK 1, LOT 4, BLOCK 1 AND LOT 2, BLOCK 5, OF WHISPERING BAY IS INCLUDED WITHIN THE PLAT, BUT IS SPECIFICALLY EXCLUDED FROM THE DECLARATIONS.



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TSCHIDER & SMITH LAW
Melissa S. Fisher Deputy
AMDECRES \$31.00
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Burleigh County