

**DECLARATION OF RESIDENTIAL COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
WHISPER RIDGE PLAT 3**

THIS DECLARATION, is made this 19 day of June, 2014.

WHEREAS, Declarant is the owner of certain real property in and known as Whisper Ridge Plat 3, located in West Des Moines, Dallas County, Iowa, more particularly described as:

Lots 1 – 35 of Whisper Ridge Plat 3, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa (the "Plat").

WHEREAS, Declarant is desirous of establishing covenants, restrictions, easements, conditions, uses, limitations and obligations on the above-described property.

NOW, THEREFORE, Declarant hereby publishes and declares that the above property shall be held, sold and conveyed subject to the following terms and conditions, all of which are for the purpose of protecting the value and desirability of the property and all of which shall run with the land and shall be a burden and a benefit to the land and all parties acquiring or owning any right, title or interest in any part of the property, their heirs, successors, assigns, grantees, executors, administrators and devisees:

1. **Definitions.** For the purpose of this Declaration, the following terms shall have the following definitions, except as otherwise specifically provided.

- A. Whisper Ridge Plat 3 - shall mean and refer to the real property located in the residential subdivision described above.
- B. Declarant - shall mean Hidden Creek, L.L.C., their successors and assigns.
- C. Lot - shall mean and refer to any individual parcel of land which is described above as shown upon the recorded plat of Whisper Ridge Plat 3.

- D. Outlot - shall mean and refer to Outlots X and Z as shown upon the recorded plat of Whisper Ridge Plat 3.
- E. Building Plot - shall mean and refer to one or more platted Lots, or one platted Lot and portion or portions of adjacent platted Lots, in Whisper Ridge Plat 3.
- F. Owner - shall mean and refer to the record owner, whether one or more person or entities, of legal or equitable title to any Lot or Building Plot which is a part of Whisper Ridge Plat 3.
- G. Outbuilding - shall mean outbuilding/accessory structures not directly attached to the residence to which it is appurtenant.
- H. Single-Family Dwelling or Dwelling - shall mean a building containing one or more habitable rooms which are occupied or which are intended or designed to be occupied exclusively by one family with facilities for living, sleeping and eating.
- I. Association - shall mean the home owners association contemplated in paragraph 25, its successors and assigns, to be known as Whisper Ridge Two Owners Association, Inc.
- J. Member - shall mean and refer to those persons entitled to membership in the Association, as provided in this Declaration.

2. **Designation of Use.** All Lots shall not be developed with more than one Single-Family Dwelling and attached garage on each Lot, and shall not be improved, used, or occupied for other than private residential purposes, or those uses provided for in the zoning ordinance of the City of West Des Moines, Iowa.

3. **Building Types.**

- A. No building or structure shall be constructed, altered or maintained on any Building Plot other than a detached Single-Family Dwelling with an attached private garage, except as permitted under paragraph 22 herein.
- B. No structure of any kind shall be moved onto any Lot in the Plat.
- C. The exterior of any residence, garage or outbuilding located on any Lot shall be finished in an earthtone conservative color design that will blend well with the abutting subdivisions. All roof material shall be 50 year architectural grade shingles or better.
- D. No Dwelling shall be erected which does not have toilet, bath and kitchen sink connected to the sewage disposal facility available to the Plat.

- E. All exposed concrete, concrete block or tile foundations shall be covered with brick or stone veneer or the equivalent or be painted.
- F. Siding shall be cementitious type, brick or stone. Front elevation to be at least 35% covered by brick or stone, exclusive of glass, doors and any other openings. Minimum roof pitch 5:12. Minimum roof eave 8".
- G. No EIFS style Stucco or Styrofoam backed Stucco shall be used for any exterior application.

4. **Building Area.** No Dwelling shall be constructed in this subdivision unless it meets the following ground floor area requirements:

- A. One-story Dwellings on Lots 1 through 14 must have a main floor finished area of not less than 1,650 square feet, and one-story Dwellings on Lots 15 through 35 must have a main floor finished area of not less than 1,850 square feet.
- B. One and one-half story Dwellings must have not less than 1,400 square feet of finished area on the ground floor and a total of not less than 2,000 square feet on the ground and second floor. This computation shall include plans designed and approved "Bonus Space" to be finished on second level.
- C. Two-story Dwellings must have not less than 1,200 square feet of finished area on the ground floor and a total of not less than 2,400 square feet on the ground and second floor.
- D. Split-level Dwellings must have not less than 1,850 square feet of finished area directly under the roof.

In the computation of ground floor area, the same shall not include any attic space, porches, breezeways, cellars, covered decks or attached or built-in garages.

In order to preserve the general design for the development of the whole of Whisper Ridge Plat 3 as a fine residential section of West Des Moines, Iowa, no structure or improvement of any kind, or any addition thereto, shall be erected upon any Building Plot in Whisper Ridge Plat 3 unless the plan, design, building materials and location thereof shall have been first approved by the Declarant or such person or persons or corporate entity designated by it for this purpose. Approval of a plan shall not be unreasonably withheld.

All buildings, structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.

5. **Proximity and Access to Street.** No Dwelling or other structure shall be located closer than 35 feet to any right-of-way line.

6. **Garages.** No less than a three-car attached or built-in basement garage will be permitted. No recreational vehicle, motor home, boat, snowmobile, motorcycle, truck rated larger than $\frac{3}{4}$ ton, or trailer may be parked or stored upon any Lot unless the same is located within the garage.

7. **Driveways.** No Dwelling or structure shall be constructed, altered or maintained on any Building Plot unless it has a driveway from a street running to the improved premises. All driveways shall be constructed of concrete.

8. **Sidewalks.**

A. All Lots shall have a sidewalk(s), which will be installed by the Owner at its costs. The Owner and/or person in possession of the Lot, whether vacant or improved, shall install the sidewalk(s) on or before, the earlier of: a) obtaining a certificate of occupancy from the City of West Des Moines, or b) two (2) years from the date Whisper Ridge Plat 3 is recorded.

B. The Owner and/or person in possession of Lots 1-35, whether vacant or improved, shall be responsible for their sidewalk(s) snow removal, repair and maintenance.

C. The sidewalk ramps at the intersections of 91st Street and Liberty Court; 91st Street and Autumn Court; and 91st Street and Bridgewood Blvd will be installed by the Declarant.

9. **Temporary Structures or Equipment.** No building or structure of a temporary character, trailer or outbuilding shall be used at any time as a residential Dwelling on any Building Plot, either temporarily or permanently.

10. **Swimming Pools.** No above-ground swimming pools shall be permitted on any Lot; only in-ground swimming pools may be constructed on any Lot.

11. **Fences.** Fences shall not be constructed forward of the Dwelling's back building line, and shall not obstruct any drainage easement, landscape buffer easement or access easement to pond. Fences will be allowed, subject to the below provisions, on Lots 1-35.

Unless otherwise specified, all fences shall be no more than six (6) feet in height, and shall be constructed of wrought iron or aluminum, with all surfaces covered with a black neoprene paint, epoxy or other similar coating. No wood fencing material, solid privacy fencing, or chain-link fencing is allowed.

12. **Signs.** No sign of any kind or description shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except street markers, traffic signs and other signs displayed by the City of West Des Moines or by other governmental units, and except signs which have been approved by Declarant or its authorized agent not exceeding 144 square inches in area upon which there shall only be exhibited the street number or name, or both, of the resident. In the event that any sign, other than those described above, shall be placed

or exposed to view on any of the Lots restricted hereby, the officers or agents of the Declarant are hereby given the right to enter upon those Lots and remove said signs. Real estate signs by the Declarant will be permitted until such development is completed. Signs not exceeding 1,296 square inches in size, to show property for sale, shall be permitted. Developer shall have the right to two (2) 4' by 8' signs installed at the street entrances that accesses Whisper Ridge Plat 3.

13. **Trash Receptacles.** No Trash receptacles or garbage cans shall be permitted to be placed outside a residence, garage, or trash or garbage receptacle enclosure that is fully incorporated with the exterior design of the residence, except as necessary for regular collection.

14. **Utilities.** All Lots will be subject to a onetime sewer connection fee that will be charged by the City of West Des Moines when the building permit is obtained. This fee will be the responsibility of the Owner or person in possession at the time the permit is issued. All utility connection facilities and services shall be underground. No individual water supply system shall be permitted on any Building Plot.

15. **Towers, Antennae and Satellite Receivers.**

- A. No exterior towers or antennae of any kind shall be constructed, modified or permitted on the ground of any Lot or on any Dwelling or garage. All antennae shall be concealed within the attic space of the Dwelling or garage.
- B. Direct broadcast signal parabolic antennae (satellite receivers) shall be no larger than twenty-four (24) inches in diameter and concealed from street view by being incorporated into building roof design or installed on ground post and properly screened by shrubs or bushes.
- C. No light poles shall be used or placed upon any Lot which extend more than ten (10) feet above grade. All light poles shall be of residential design. All pole lights shall be positioned and directed so as not to constitute a nuisance to any other property Owner. (No light shall leave the Lot to which they are installed.)
- D. As to each of the above, in no instance shall the tower, antennae or pole be located closer than twenty (20) feet from any property line.

16. **Landscaping and Sodding.** When a Dwelling is constructed on a Lot, the areas not landscaped will be fully sodded within one (1) month of completion of construction unless winter conditions prohibit the installation. All lots are to be sodded to the front and sides and to at least 50' back of newly constructed residences. The front yard will also include a minimum of eight (8) 5-gallon shrubs, eight (8) 2-gallon shrubs and 200 square feet of mulch or stone. There will be a minimum of two (2) trees planted per Lot with a minimum 2" caliper of 2' vertically from the ground.

17. **Nuisances.** No noxious or offensive sounds, activities or odors shall be permitted on or to escape from any Building Plot, nor shall anything be done thereon which is, or may become, an annoyance or a nuisance, either temporarily or permanently.

18. **Livestock and Poultry Prohibited.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot thereby restricted, except that dogs, cats and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes. In no event, however, shall more than two dogs and/or two cats (or a combination of any two) be maintained on any one Building Plot at any one time. All such pets must be kept in the Dwelling. No outside pet facilities are allowed.

19. **Easements.** Easements for installation and maintenance of utilities, access, and surface water drainage facilities are reserved as shown on the recorded plat of Whisper Ridge Plat 3. The Owner of a Building Plot shall, at its own expense, keep and preserve that portion of the easement within its property in good repair and condition at all times, and shall neither erect nor permit erection of any building, structure or fences of any kind, nor permit any growth of any kind within said easement which might interfere in any way with the use and maintenance of the utility services and drainage areas located within the easements.

20. **Vegetation and Landscaping Appearance, Maintenance and Weed Control.**

A. The Owner and/or person in possession of each Lot, whether vacant or improved, shall keep the same well maintained, groomed and mowed, free of uncut weeds, rubbish, garbage and debris. Damaged or dead trees and shrubbery shall be trimmed out or removed. If the Owner, within ten (10) days after receipt of written notice by certified mail from the Declarant, fails to mow or cut such vegetation, trim or remove such damaged trees or shrubbery, and/or remove such debris, the Declarant and other Owners may seek any remedy recognized at law or equity.

B. Vegetation in conservancy easements, flowage easements, creek channels, drainage ways and/or timbered areas shall not become overgrown with weeds, but may be planted in ground-cover species appropriate to the topography and land form. Water flowage ways will not be altered so as to direct water flows on to an adjoining Lot in a location significantly different from that in existence when the Plat was originally recorded.

21. **Enforcement.** If any party shall violate or attempt to violate any of the covenants, conditions or restrictions contained herein, it shall be lawful for the Declarant and any Owner to proceed in law or in equity against the person or persons violating or attempting to violate such covenants, conditions or restrictions, and to either prevent him or them from doing so or recover damages for such violations.

22. **Accessory Structures.** Any out structure shall be properly screened by shrubbery. Swimming pools, or other accessory structure or improvements, shall be in the rear yard, not be constructed forward of the Dwelling's back building line and subject to the City of West Des Moines ordinances. Roofs shall be pitched and covered with similar roofing to the principal Dwelling. Siding shall be the same as the principle Dwelling.

23. **Modification of Restrictions.** The covenants, restrictions and provisions in this Declaration shall be deemed covenants running with the land, and shall remain in full force and effect until July 1, 2035, at which time this Declaration may be amended, modified, changed, extended or cancelled, in whole or in part, by a written agreement signed by fifty percent (50%) of the Lots hereby restricted, that shall be recorded in the office of the Recorder of Polk County, Iowa, prior to the original expiration date or to a subsequent expiration date, whichever is applicable.

However, for so long as Declarant owns any Lot, Declarant, without the further consent of any Owner or any other party, shall have the absolute right to form the Association and adopt the documents governing the Association; to appoint, remove and replace the officers and directors of the Association; to create, dedicate and repair easements for drainage, drainage tiles or other utility purposes within any Lot; to amend this Declaration to clarify the responsibilities of the Association and any assessment due by an Owner for common expenses or the Association's promotion of the recreation, health, safety and welfare of the Owners; and to make minor amendments to this Declaration in order to correct any typographical errors without anyone's consent. The Declaration shall also have the right to make minor amendments, to address any oversight, clarify any provision thereof, or to carry out the intent of the Declaration or to address development issues not contemplated at the date hereof or address any issues raised by the City, all without the necessity of obtaining any approval or consent of any Owner or any other person except that the City shall have the right to review and approve such minor amendments other than correction of typographical errors.

24. **Surface Water.** The topography of Whisper Ridge Plat 3 is such that surface water may flow from certain Building Plots onto other Building Plots. In regard to all matters concerning surface water, each Building Plot shall be subject to such easements as may exist for the flowage of surface water under the laws of the State of Iowa, as may be in effect from time to time and all Owners shall have such rights and obligations with respect thereto as may be provided by such law.

25. **Home Owners Association.**

A. A home owners association to be known as Whisper Ridge Two Owners Association, Inc., will be established to manage common requirements and associated expenses, including but not limited to, expenses for insurance, landscape maintenance, pond maintenance, outlot maintenance, management, common utilities if any, snow removal, sidewalk maintenance, road maintenance, and legal services of the common ground in Whisper Ridge Plat 2 and Whisper Ridge Plat 3. Declarant may convey one or more of the Outlots to the Association or to the City of West Des Moines. The Association's responsibility will include, but not be limited to:

1. Mailbox Clusters
 - Maintenance, upkeep and repair of mailbox clusters and concrete pads.
2. Storm Water Detention Facility (Pond)

- To include, but not be limited to, general maintenance, upkeep and repair or storm water detention facility, pond edge, pond outlet structure and pond outflow.
- B. Every Owner of a Lot shall be a member of the Association (each, a "Member"). Membership is appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership. The Owner of a Lot shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be Members; provided, that, the vote for such Lot shall be exercised as the Owners thereof among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.
- C. Subject to paragraph 25, the voting Member shall elect a Board of Directors of the Association, as prescribed in the Bylaws of the Association. The Board of Directors shall manage the affairs of the Association.
- D. The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against his/her/its Lot remains unpaid.
- E. Unless the Articles of Incorporation or the Bylaws, or similar governing documents, of the Association otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purposes(s) for which the meeting is called, shall be delivered no less than five (5) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the officer(s) or person(s) calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed delivered when deposited in the United States mail, addressed to the Member at his/her/its address as it appears on the Association's records, with postage prepaid thereon.
- F. Upon closing and thereafter annually on or before the first of January, until the first annual meeting of the Association is held as provided in the Bylaws, the Owner of each Lot shall pay an assessment of \$150.00 per Lot to Declarant, which amounts Declarant shall use for the expenses contemplated in this paragraph, with any amounts not so applied to be held in trust for future use by the Association. With 30 days advanced notice to each Owner, the assessment contemplated hereby may be adjusted and special assessments may be made by Declarant based on actual cost of the common expenses.

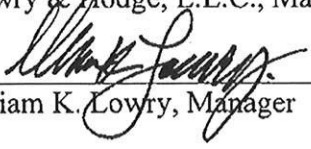
26. **Severability.** Invalidity of any of these covenants, conditions or restrictions by judgment or court shall in no way affect any of the other covenants, conditions or restrictions contained herein which shall remain in full force and effect.

IN WITNESS HEREOF, the undersigned being the Declarant herein, has hereunto set its hand as of the day and year first above written.

DECLARANT:

HIDDEN CREEK, L.L.C.

By: Lowry & Hodge, L.L.C., Manager

By: 
William K. Lowry, Manager

STATE OF IOWA)
 ss.
COUNTY OF POLK)

This record was acknowledged before me on June 19, 2014, by William K. Lowry as Manager of Lowry & Hodge, L.L.C., Manager of Hidden Creek, L.L.C.




NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

CONSENT OF MORTGAGEE

The undersigned, West Bank, is the holder of a mortgage against the property to be encumbered by the Declaration of Residential Covenants, Conditions and Restrictions for Whisper Ridge Plat 3. Such mortgage is dated August 13, 2013 and filed August 20, 2013 in Book 2013 at Page 15637 of the Dallas County, Iowa, records. By its execution of this Consent, the undersigned hereby consents to the foregoing Declaration of Residential Covenants, Conditions and Restrictions for Whisper Ridge Plat 3 and agrees that such Mortgage shall be subject to the terms of the foregoing Declaration of Residential Covenants, Conditions and Restrictions for Whisper Ridge Plat 3.

Dated this 18 day of June, 2014.

WEST BANK

By: Tom Cilek
Tom Cilek, Senior Vice President

By: Lynn E. Rowat
Lynn E. Rowat, Market President

STATE OF IOWA)
 ss.
COUNTY OF JOHNSON)

This record was acknowledged before me on June 18, 2014, by Tom Cilek and Lynn E. Rowat as Senior Vice President and Market President, respectively, of West Bank.

[Signature]
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

