

**AMENDED BY-LAWS OF
THE MISTY WATERS OWNERS' ASSOCIATION**

**ARTICLE I
Misty Waters Owners' Association**

1. Legal Description of Affected Property: The property subject to these By-Laws is known as the Misty Waters (hereinafter "Project or "Subdivision") and is described as follows:

**MISTY WATERS
OF BURLEIGH COUNTY, NORTH DAKOTA**

**Being part of the West Half (W1/2) Section 11 and part of the
East Half (E1/2) of Section 10, T139N-R81W.**

2. Definitions

As used herein the phrase "Owner/Developer" and "Developer" shall refer to Steve McCormick and Karen McCormick.

As used herein, the term "Lot" shall be defined so as to include all lots within the Project. The project consists of 126 lots.

The phrase "Water Lot" shall be defined so as to include both "Bay Lots" and "River Lots", which are described as the following lots within the Project:

"Bay Lots": Block 1- Lot 3

Lots 5 through 12;

Lots 14 through 16;

Lots 18 through 25;

Lots 27 through 29;

Lots 31 through 38;

Lots 40 through 55;

Lots 57 through 62;

Lots 64 through 84;

"River Lots": Lots 6 through 40, Block 3

Note that, for purposes hereof, Lot 40, Block 3 is and shall be deemed, considered and designated only as a "River Lot", not as a Bay Lot.

As used herein, the phrase "Off Water Lots" shall be defined so as to include the following Lots within the Project:

Lots 4, 13, 17,26,30,39,56,63, Block 1

Lots 2 through 5, Block 3

As used herein, the phrase "Green Lots" shall refer to Lot 1, Block 2 and Lot 1, Block 3. Owner/Developer reserves the right to change the designation of the Green Lots to residential or commercial use at Owner/Developer's sole discretion.

As used herein, the phrase "Multi-family Residential Lots" shall refer to Lots 82, 83 and 84, Block 1, and Lots 38,39 and 40, Block 3 upon which Multi-family Structures may be constructed. Owner/Developer reserves the right to a) combine such lots for purposes of establishing Multi-Family residential complexes or b) to further subdivide and/or change the designation of the Multi-family Residential Lots to single family residential lots, all at Owner/Developer's sole discretion.

As used herein, the phrase "Condominium Lots" shall mean Lot 84, Block 1 and Lot 40, Block 2. As provided herein, said Condominium Lots may be converted by Owner/Developer, in Owner/Developer's sole discretion, into single family or other Multi-Family lots.

As used herein, the phrase "Multi-family Structures" shall mean condominiums, townhouses, or twin homes.

As used herein, the phrase "Commercial/Residential Lots" shall refer to Lots 1 and 2, Block 1. Said Lots may be further subdivided and used for residential (multi or single family) or commercial purposes, at Owner/Developer's sole discretion.

As used herein, the phrase "County Park Lot" shall refer to Lot 1, Block 4.

As used herein, the phrase "Common Areas" shall refer to the "Green Lots" and to Lot 85, Block 1 (the Misty Waters bay).

3. Applicability of By-Laws. The provisions of these By-Laws are applicable to all Lots in the Project, as described above, and to the use and occupancy thereof. The phrase "Project" as used herein shall include the land, the structures and buildings, presently constructed or to be constructed on Project land, and all other improvements thereon, all easements, rights and appurtenances belonging thereto and all other property intended to be submitted to the provisions of these By-Laws. Each Water Lot shall be subject to an easement, as depicted on the plat of Misty Waters, which establish and designate easement corridors which shall be and remain available for the repair, maintenance and improvement of the Misty Waters Bay and the stabilization, repair and improvement of the waterfront/shoreline directly adjacent to the bay and the river front.

4. Application. All present and future owners, mortgagees, lessees and occupants of Lots and their employees, and any other persons who may use the facilities of the Project in any manner are subject to these By-Laws, the Declaration and Rules and Regulations pertaining to use and operation of the Project property. The acceptance of a deed or conveyance, or the entering into of a lease, or the act of occupancy of a structure on a Lot shall constitute an acceptance and the ratification of the provisions of these instruments and an agreement to comply therewith.

5. Office. The office of the Association and of the Board of Directors shall be designated from time to time by the Board of Directors or the Association.

ARTICLE II

Board of Directors

1. Number and Qualification. The Owner/Developer shall be deemed the sale directors and officers of the project until such time as the control is assigned to the Owners' Association, (hereinafter referred to as "Owners' Association" or "Association"), as provided herein. The affairs of the Project and of the Owners' Association shall be governed by the Board of Directors. The Board of Directors shall be composed of three (3) persons, all of whom shall be owners, or spouses of owners or mortgagees, of Lots, or, in the case of partnership owners or mortgagees, shall be members or employees of such partnership, or in case of corporate owners or mortgagees, shall be officers, stockholders, or employees of such corporation.

2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Project and Owners' Association, except where such powers and duties by law or by the Declaration or by these By-Laws may not be delegated to the Board of Directors by the Lot Owners. The powers and duties to be exercised by the Board of Directors shall include, but shall not be limited to, the following:

- a. Operation, care, upkeep and maintenance of the common elements (and bank stabilization easement tracts where the owner of the associated Lot fail to maintain the associated water front, as provided herein);
- b. Determination of the amount of funds required for operation, maintenance and other repairs of the Project, including common area operation, repair and maintenance;
- c. Determination of the amount of funds required to establish a capital account for the eventual repair or capital improvement of the bay, the common sewer and water systems;
- d. Billing members for and the collection of the common charges and water and sewer charges from the Lot Owners;
- e. Employment and dismissal of Association employees and independent contractors, as necessary for the efficient maintenance and operation of the common elements;
- f. Adoption and amendment of rules and regulations covering the details of the operation and use of Project common areas;
- g. Opening of bank accounts on behalf of the Project and Owners Association designating the signatories required therefore;

- h. Purchasing Lots at foreclosure or other judicial sales in the name of the Association, or its designees, corporate, or otherwise, on behalf of all Lot Owners, to the extent such sales result from the foreclosure of Association dues liens, only;
- i. Obtaining insurance for the Association and common area property, pursuant to the provision of Article V, Section 2 thereof;
- j. Making repairs, additions and improvements to, or alterations of, the Project common area property, and repairs to and restoration of such property in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings; and
- k. The placement of a lien on any Lot for which assessments have not been paid.

3. Managing Agent. The Board of Directors may employ for the Project a managing agent at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize including, but not limited to, the duties listed in subsections (a), (c), (d), (11), and (i) of Section 2 of this Article II. The Board of Directors may delegate to the managing agent, all of the powers granted to the Board of Directors by these By-Laws other than the powers set forth in subsections (b), (e), (f), and (g) of Section 2 of this Article II.

4. Selection and Term of Office. One (1) board member shall be elected initially for a term of one (1) year, one (1) board member for a term of two (2) years, and one (1) board member shall be elected for a term of three (3) years. Thereafter one (1) board member will be elected each year. The term of each board member shall be three (3) years.

5. Removal of Members of the Board of Directors. At any regular or special meeting of the Owners' Association, anyone or more of the members of the Board of Directors may be removed, with or without cause, by a 2/3rds majority of the available Project votes and a successor shall then or thereafter be elected to fill the vacancy thus created. Any member of the Board of Directors whose removal has been proposed by the Lot Owners shall be given an opportunity to be heard at the meeting considering such proposal.

6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a member thereof by a vote of the Lot Owners, shall be filled by vote of a majority of the remaining board members at a duly noticed special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected may be a member of the Board of Directors until a successor shall be elected at the next annual meeting of the residential Lot Owners.

7. Organizational Meeting. The first meeting of the members of the Board of Directors, shall be held within ten (10) days following the first annual meeting of the Lot Owners.

8. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Directors, but at least one such meeting shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each member of the Board of Directors, by mail or telephone, at least three business days prior to the date specified for such meeting.

9. Special Meetings. Special meetings of the Board of Directors may be called by the president on three (3) business days' notice to each member of the Board of Directors, given by mail or telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the president or secretary in like manner and on like notice on the written request of at least one member of the Board of Directors.

10. Waiver of Notice. Any member of the Board of Directors may, at any time, waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board of Directors shall constitute a waiver of notice by such Director. If all the members of the Board of Directors are present at a meeting of the board, no notice shall be required and any business may be transacted at such meeting.

11. Quorum of Board of Directors. At all meetings of members of the Board of Directors, a majority thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the binding and enforceable decision of the board of Directors of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

12. Compensation. ~~No member of the Board of Directors shall receive any compensation from the Project or Association for acting as such but may be reimbursed for expenses incurred.~~ The Association shall waive the monthly HOA fee for each elected board member during the board member's tenure to defray incidental costs and compensate for personal time required to attend to the matters of the association.

13. Liability of the Board of Directors. The members of the Board of Directors shall not be liable to the Lot Owners for any mistakes of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Lot Owners shall indemnify and hold harmless each member of the Board of Directors against all contractual liability to others arising out of contracts by the Board of Directors on behalf of the Project and the Owners' Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration by these By-Laws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Project and Owners' Association. It is also intended that the liability of any lot Owner arising out of the indemnity in favor of the members of the Board of Directors shall be limited to such proportion of the total liability thereunder as such lot Owner's Lot(s) bears to the interests of all Lot Owners in the common elements.

ARTICLE III
Meetings – General Association Matters/Affairs

1. Annual Meeting. Within 60 days after the Owner/Developer has transferred control of the Association to the Board of Directors as provided in these Bylaws, a first meeting of the lot Owners shall be called by the Owner/Developer who shall provide notice to all Lot Owners as provided under Section 4 of this Article. Thereafter, the annual meetings of the Lot Owners shall take place no later than the end of each calendar year. ~~not be later than June 1 of each succeeding year.~~ At such meetings, the Board of Directors shall be elected by a vote of the Lot Owners in accordance with the requirements of section 4 of Article II of those By-Laws. The Lot Owners may transact such other business at such meetings as may properly come before them.
2. Place of Meeting. Meeting of the Lot Owners shall be held at the principal office of the Project or at such other suitable place convenient to the owners as may be designated by the Board of Directors.
3. Special Meetings. It shall be the duty of the president to call a special meeting of the Lot Owners if so directed by resolution of the Board of Directors or upon a petition signed and presented to the secretary by Lot Owners having at least 60% of the available association votes. The notice of any special meeting shall state the time, place and purpose of the meeting. No business shall be transacted at a special meeting, except as stated in the notice.
4. Notice of Meetings. Notice required or permitted to be given to any member of the Board of Directors or any lot Owner shall be in writing and may be delivered to any member of the Board of Directors or such Lot Owner either personally or by mail addressed to such board member or Lot Owner at such addresses as provided to the Board in writing. It shall be each respective Lot Owner's responsibility to notify the Board of Directors, in writing, of a change of address or a change of ownership of a Lot. Failure to promptly provide such written notice of change of address or a change or ownership shall be at each respective lot Owner's sole cost and risk. Notice of each annual or special meeting of the lot Owners must be given at least ten (10) but not more than thirty (30) days prior to such meeting, stating the purpose thereof as well as the time and place where the meeting is to be held.
5. Adjournment of Meetings. If any meeting of Lot Owners cannot be held because a quorum has not attended, a majority of the available Association votes of the Lot Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time no less than 48 hours from the time the original meeting was called.
6. Order of Business. The order of business at all meetings of the Lot Owners shall be as follows:
 - a. Roll call;
 - b. Proof of notice of meeting;

- c. Reading of minutes of preceding meeting;
- d. Reports of officers;
- e. Reports of Board of Directors;
- f. Reports of committees;
- g. Election of members of the Board of Directors (when so required);
- h. Unfinished business;
- i. New business.

7. Voting – Available Association Votes. The owner of each Lot, or some person designated by the owner or owners to act as proxy on his or her behalf and who need not be an owner, shall be entitled to cast the votes appurtenant to such Lot at all meetings of Lot Owners. Proxies, if any, shall be in a' written form, only, to be effective. There shall be one (1) vote for each single family residential Lot (a total of 119 votes), two (2) votes, each, for the two (2) condominium Lots (for a total of four (4) votes), and twenty two point five (22.5) votes, each, for the two (2) commercial Lots (for a total of forty-five (45) votes), within the Project, regardless of the number of persons or entities who actually own a given Lot. The Green Lots shall have no votes as long as said Lots remain "green" in nature. There shall thus be a total of One Hundred sixty-eight (168) total votes for the Project [hereinafter referred to as "available Association votes"] on general project matters. See, Exhibit "A". The designation of any such proxy shall be made in writing to the secretary and shall be revocable at any time by written notice to the secretary by the owner or owners so designated.

8. Majority of Available Association Votes. As used in these By-Laws, the term "majority of available Association votes" shall mean more than 50% of the total available Association votes of all Lot Owners present in person or by proxy and voting at any meeting of the Lot Owners.

9. Quorum. The presence in person or by proxy of Lot Owners having one-half of the available Association votes of all Lot Owners shall constitute a quorum at all meetings of the Lot Owners.

10. Majority Vote. The vote of a majority of the available Association votes present at a meeting at which a quorum shall be present shall be binding upon all lot Owners for all purposes except where a higher percentage vote is required by law, by the Declaration, or by these By-Laws.

Meetings -Waterfront or Bay Specific Matters

11. Meetings Regarding Waterfront or Bay Specific Issues. It is noted that the Lots which have water frontage are responsible for costs necessary to improve, maintain and repair the Misty Waters bay and the shorelines of the bay and the Riverfront. Such issues are specific to and pertain only to the owners of River Lots and/or Bay Lots, as the case may be. In the event an issue(s) or proposed assessment(s) affects or pertains only to Bay Lots, such issues shall be considered, voted on by and assessed only against Bay Lots. In the event an issue(s) or proposed assessment(s) affects or pertains only to River Lots, such issues shall be considered, voted on by and assessed only against River Lots. In the event an issue(s) or proposed assessment(s) affects

or pertains only to Water lots, such issues shall be considered, voted on by and assessed only against Water Lots. In such cases, meetings to discuss and resolve such issues shall not include Off Water Lot Owners and Off Water Lot Owners shall not be allowed a vote on nor be assessed for the costs associated with such issues or matters. The meeting requirements as provided in Sections 1 through 10, directly above shall remain in effect, modified to exclude notice to non-interested Lot Owners. In the event of an issue specific to Water Lots, Bay Lots and/or River Lots, only, the available vote total shall be adjusted so as to exclude not-affected Lots, with the votes per Lot remaining the same.

12. Initial Directors. Owner/Developer shall assume the role of the Association Board of Directors from the time the first lot in the Project has been conveyed to a third party until the date a total of eighty (80) Bay and/or River lots in the Project have been conveyed to third parties or three (3) years from the date these Bylaws are recorded with the Burleigh County Recorder, whichever occurs last. Thereafter, the Board of Directors shall be selected by a vote of all Lot Owners, as provided herein. An account of all income and expenses, along with the segregated account balance, is to be turned over to the Board of Directors after the first meeting of the Lot Owners. The Owner/Developer shall be entitled to full credit for sums expended by the Owner/Developer for the maintenance of Association financial records and for the maintenance or repair of the Project common areas, including snow removal, if any.

ARTICLE IV

Officers

1. Designation. The principal officers of the Project and Association shall be the president, vice president, secretary and treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint such other officer as in its judgment may be necessary. The president must be a member of the Board of Directors.

2. Election of Officers. Officers shall be elected each year by the Board of Directors at the annual meeting of each new Board of Directors following the annual meeting of the Lots Owners and shall hold office at the pleasure of the Board of Directors.

3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Directors, any officers may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board of Directors, or at any special meetings of the Board of Directors called for such purpose.

4. President. The President shall be the chief executive officer of the Association. The president shall preside at all meetings of the Lot Owners and of the Board of Directors. The President shall have all of the general powers and duties which are incident to the office of president of a corporation.

5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President or Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President, on an interim basis. The Vice President shall also

perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President.

6. Secretary. The Secretary shall keep the minutes of all meetings of the owners and of the Board of Directors; the Secretary may be charged of such books and papers as the Board of Directors may direct; and shall, in general, perform all duties incident to the office of the Secretary.

7. Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of accounts showing all receipts and disbursements, and for the preparation of all required financial statements. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name of the Board of Directors, and such depositories as may from time to time be designated by the Board of Directors, and the Treasurer shall, in general, perform all duties incident to the office of Treasurer.

8. Agreements. Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Project and Owners' Association shall be executed by two officers or by such other person or persons as may be designated by the Board of Directors, in writing.

9. Compensation of Officers. No officer shall receive compensation from the Association for acting as such, but may be reimbursed for expenses incurred.

ARTICLE V

Insurance

1. Insurance for Fire and Other Perils.

(a) The Association shall be required to obtain and maintain, to the extent obtainable, "blanket" type policy of insurance with extended coverage, and malicious mischief endorsements, insuring the Association and Project common areas, including Green Lots, and improvements thereon, if any. Such insurance shall be in an amount equal to 100% of the current replacement cost of such improvements, exclusive of land, foundation, excavation, and other items normally excluded from coverage. Such policies must also provide that they may not be canceled or substantially modified, without at least ten days prior written notice to the Owners' Association. Such policy must be consistent with state and local insurance laws and at least equal to such coverage as is commonly required by prudent institutional mortgage investors in the area in which the Project is located.

(b) Insurance Required Lot Owners. Each Lot Owner is herein and hereby notified that the Association will not obtain, retain or maintain any casualty, fire, or other peril insurance upon any Lot or improvement within the project, other than common areas, including the "Green Lots". Each Lot Owner shall be required to obtain his or her own casualty insurance for any such perils or improvements.

2. Public Liability Insurance.

(a) Association Public Liability Insurance. The Association shall be required to obtain and maintain, to the extent obtainable, the comprehensive general liability insurance covering all of the common elements, the Green Lots, commercial space owned and leased by the Owners' Association, and public ways of the Project. Coverage limits will be in amounts generally required by private institution mortgage investors for projects similar in construction, location and use. However, such coverage shall be for at least \$2,000,000 dollars for bodily injury, including deaths of persons, and \$250,000 for property damage, per occurrence. The cost of such insurance shall be paid by the Association and charged to the individual Lot Owners as an Association fee. Coverage under this policy shall include, without limitation, a /egal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common and limited common elements, and legal liability arising out of lawsuits related to employment contracts of the Owners' Association. Such policies must provide that the policy may be canceled or substantially modified, by any party, without at least thirty days prior written notice to the Owners' Association and to each holder of a first mortgage on any Lot in the Project which is listed as a scheduled holder of a first mortgage in the insurance policy.

(b) Lot Owner Public Liability Insurance. Each Lot Owner is hereby notified that the Association shall not provide liability or casualty/all risk insurance to or for Lots or individual Lot Owners, other than liability insurance on common areas, including the "Green Lots". Such liability or casualty insurance shall be retained, maintained and paid for by the individual Lot Owners within Misty Waters.

3. Fidelity Bonds. Unless required by a 66.67% majority vote of all available Association votes, blanket fidelity bonds shall not be required to be maintained by the Association for officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association.

ARTICLE VI

Operation of Property

1. Determination of Common Expenses and Common Charges; Assessment Units. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Project, determine the amount of common charges required to meet the common expenses of the Project, and allocate and assess such common charges against each "Lot", which phrase expressly includes vacant Lots within the project, according to their respective interests. Lot 1, Block 2 and Lot 1, Block 3 are presently designated as "Green Lots" and shall not be assessed charges or costs by the Association. Said Green Lots are presently for the benefit of all members of Misty Waters. The "Owners" of said "Green Lots" shall not have votes with respect to Association matters, as long as said "Green Lots" remain "Green" in nature.

- a. Common Expenses. The common expenses to be assessed against all Lots within Misty Waters (excepting the "Green Lots") shall include, among other things, (a) the cost of all insurance premiums on the policies of insurance required to be or

which have been obtained by Association pursuant to the provisions of Sections 1 and 2 of Article V; (b) road maintenance and repair, to the extent such maintenance and repair is provided by the Association; (c) the cost of Association residential water and sewage disposal system maintenance and repair (which shall be limited to the Association sewer mains and water main lines and common systems and which exclude individual lines or connections to individual lines which supply or service individual Lots within the project); (d) yard and lawn care of Association common areas; (e) snow removal as provided by the Association; f) real estate taxes assessed against Association common property, and g) operation (including electricity and water) and maintenance of the Project common property, including without limitation, an amount for working capital of the Project, for a general operating reserve for a reserve fund for capital or major residential water or sewer improvements/repairs replacements, and to make up any deficit in the common expenses for any prior year. Such common expenses shall be assessed against all Lots pursuant to Exhibit "B" attached hereto. Each lot owner shall be solely responsible for the cost of maintaining, repairing or replacement of the sewer line and/or water line which services each individual lot owner's lot through and including the saddle or connection which connects the individual lot owner's water or sewer line to the sewer or water main. The association will not and shall not pay for the repair or replacement of water or sewer lines which service individual lots.

- b. Bay Maintenance Expenses. With respect to bay maintenance costs and expenses, including expenses necessary to monitor water quality within the bay, the maintenance and repair of the freshwater/re-circulation pipeline, and the general upkeep of the bay itself and the channel connecting the bay to the Missouri River, as are required to be provided by the Association, if any, such costs and expenses shall be assessed only against the "Bay Lots", including the "Multi-family Residential Lots", and the "Commercial/Residential Lots", pursuant to Exhibit "B" attached hereto.

With respect to Bay Lots only, the Owner/Developer shall provide maintenance and repairs to the water front of all Bay Lots (only) until the earlier of 1) June 1, 2011 or 2) the date the owner/developer transfers control of the Association to the Lot Owners of the project. Thereafter, except as provided herein, each Owner of a Condominium Lot, Commercial/Residential Lot, or Bay Lot shall be solely responsible for the entire cost of repairing and maintaining the water front of his or her respective lot. The Owner/Developer shall not provide any maintenance or repair to the river frontage. However, the Association shall, at the Association's cost, maintain the stabilization wall located on the southeast boundary/lot line of Lot 84, Block 1 and Lot 40, Block 2.

- c. River Front Maintenance. With respect to the maintenance and repair of the water front of River Lots within the project, each Owner of a River Lot shall be solely responsible for the entire cost of maintaining and repairing his or her water front. The owner/developer shall provide no additional stabilization, maintenance or

repair of the water front of any River Lot Except as expressly provided herein, the Association will not provide maintenance or repair to the water front of any River Lot in the project. Expenses and costs incurred by the Association regarding such maintenance and repair and stabilization of the river front, *if any*, shall be assessed only against the "River Lots" pursuant to Exhibit "8" attached hereto.

- d. Developers Stabilization Obligations. Developer shall provide initial water front bank stabilization for any and all Bay Lots. Developer has provided some stabilization to the river front of River Lots. Developer shall not be required to provide any additional stabilization for any River Lot in the project.
- e. Association Authority to Require and Implement Maintenance and Repair. With respect to all Water Lots within the project, including River Lots, the Misty Waters Owners' Association shall have sole and absolute authority to 'determine if and when maintenance and repair of the water front is necessary. Upon receipt of written notification from the Association, specifying necessary stabilization, maintenance and/or repair procedures, the noticed Lot Owner(s) shall promptly commence and complete the required stabilization and/or maintenance procedures. As used herein, the word "promptly" shall mean within 90 days of the date a Water Lot Owner receives the written notice from the Owners' 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 noticed Water Lot Owner fails or refuses to repair or maintain the water front as directed by the Owners' Association, then and in that event, the Owners' Association shall be authorized, but not required, to enter the subject Water Lot for purposes of taking those steps deemed reasonable and necessary, in the absolute discretion of the Owners' Association, to maintain and repair the water front and the stabilization thereof. The cost of such services shall be a debt of the subject Water Lot Owner(s) and shall be assessed against and constitute a lien on the affected Water Lot.

At such time as a Lot Owner connects to the Association sewer and water lines, which connection is mandatory and not optional, the Lot and the Lot Owner shall be assessed a one-time hook-up fee and subsequently monthly residential water and sewage disposal fees by the Owner/Developer and/or the Association, or its designee. Both the one-time hook-up fees and the subsequent the monthly sewage disposal and water fees shall be the personal obligation of the Lot Owner(s) and an assessment against the affected Lot. Each Lot Owner shall be solely responsible for the cost of connecting such Lot Owner's private line(s) to the sewer and water mains and for the cost of maintaining and repairing such Lot Owner's private water and sewer lines through and including the connections (saddle) on the common sewer or water mains. Each Lot Owner shall install and maintain, at such Lot Owners' sale cost and expense, electronic water meters as prescribed and directed by the Association, which electronic water meters shall allow for remote water metering, All Lot Owners are notified that the owner/developer has established an entity known as "Burleigh Service Company, LLC", which company has been designated as agent of the Association for purposes of and which entity shall supervise and manage both the water distribution and the sewage disposal systems. Burleigh Service Company, LLC shall,

among other things, shall record water usage by the individual Lot Owner(s), generate billings for water and sewer usage, and collect such billings. Burleigh Service Company, LLC shall be authorized to charge a management fee for providing such services.

The Board of Directors or its designee shall advise each Lot Owner in writing of the amount of common charges payable by each Lot Owner, and shall furnish copies of all budgets, upon which such common charges are based, to all Lot Owners. Assessments on both sold and unsold Lots shall commence within sixty (60) days after the date of the conveyance of the first Lot of the Project. The Owner/Developer shall receive full credit for the value of materials, machinery, tools, equipment, labor and fuel provided by the Owner/Developer to the Project in maintaining, repairing or improving Project property.

2. Repair or Reconstruction After Damage. In the event of damage to a structure or Lot within the Association, the owner thereof shall arrange for the prompt and complete repair and restoration of all such damage.

3. Reserve Accounts.

(a) The Association shall be authorized to establish and maintain an adequate reserve fund for periodic maintenance, repair, and replacement of improvements to the Project residential water and sewage disposal main lines and systems, common, which the Association is expressly obliged to maintain. The funds shall be maintained out of regular assessments for common expenses.

(b) Additionally, a working capital fund shall be established for the Project operation equal to a two month estimated common area charge for each Lot. Each Lot's share of the working capital fund must be collected and transferred to the Association within one hundred twenty (120) days after the date of conveyance of the Lot by the Owner/Developer to the third party. The purpose of the funds is to insure that the Association will have cash available to pay the first year's insurance premiums, to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the board. Amounts paid into the funds are not to be considered an advance of the regular assessment.

4. Payment of Common Charges – Assessment Units. Each Lot Owner shall be personally obligated to pay the common charges assessed by the Association against said Lot Owner's Lot. Said charges shall also constitute an assessment against the Lot, which assessment may be perfected and secured by the recording of a lien with the County Recorder.

5. Collection of Assessment. The Association shall assess common charges against the Lot Owners from time to time and at least annually and shall take prompt action to collect from a Lot Owner any common charge due which remains unpaid by him or her for more than thirty (30) days from the due date of such common charges, and shall further pay and be responsible for any and all costs of collection, including, without limitation, reasonable actual attorney fees. A lien for past due assessments and common charges may be made a matter of record by recording notice thereof with the County Recorder as provided by North Dakota law.

6. Default in Payment of Common Charges. In the event of default by any Lot Owner in paying to the Association the assessed common or other expenses and charges, such Lot Owner shall be obligated to pay interest at the rate of 18% per annum on such past due common or other expenses and charges thirty days from the due date of such common or other expenses and charges, and shall further pay and be responsible for any and all costs of collection, including, without limitation, reasonable actual attorney fees. The Association shall have the right and duty to attempt to recover such common and other expenses and charges, together with interest thereon and the expenses of the proceedings, in an attempt to recover such common and other expenses and charges, together with interest thereon and the expenses of the proceedings, in an action brought against such Lot Owner, or by foreclosure of the lien on such Lot granted pursuant to the laws of the State of North Dakota. The Association does not intend to extend credit beyond 30 days of the date of billing.

7. Foreclosure of Liens for Unpaid Common and Other Expenses and Charges. In any action brought by the Association to foreclose a lien on a Lot because of unpaid Association expenses and charges, the Association, acting on behalf of all Lot owners, shall have the power to purchase the Lot at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the same. The lien for Association charges referred to in Article VI is inferior to any mortgage given and recorded prior to recording any liens or notices of liens for such Association common expenses and charges.

8. Statement of Common Charges. The Association shall promptly provide any Lot Owner, who makes a request in writing, with a written statement of such Lot Owner's unpaid Association charges.

9. Abatement and Enjoining of Violations. The violation of any rule or regulation adopted by the Board of Directors (including use restrictions), or the maintenance of a Condition deemed as a nuisance by the Association, or the breach of any by-law contained herein, or the violation of the Restrictive Covenants, or the breach of any provision of the Declaration, shall give the Association the right, in addition to any other rights set forth in these By-Laws: (a) to enter any Lot (including the associated easement tract) in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Lot Owner any structure, thing, or condition that may exist herein contrary to the intent and meaning of the provision hereto, and the Association, or any agents thereof, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy such thing or condition by appropriate legal proceedings.

10. Maintenance and Repair.

(a) All maintenance of and repairs to any structure constructed upon a Lot, whether structural or nonstructural, ordinary or extraordinary, (unless necessitated by the negligence, misuse, or neglect of owner of a different Lot, or guest or invitee of a different Lot Owner, in which case such expense shall be charged to such different Lot Owner), shall be made promptly and completely by owner or such Lot. Each Lot Owner shall be responsible for all damages caused to any other Lot or improvements on a Lot or to the common elements resulting from such Lot Owner's failure to promptly effect and complete required maintenance and repairs.

(b) All maintenance, repairs and replacements to the common elements (unless necessitated by the negligence, misuse, or neglect of owner of a Lot, or guest or invitee of a Lot Owner, in which case such expense shall be charged to such Lot Owner), shall be made by the Association and be charged to the Lot Owners as a common expense.

(c) The Architectural Control Committee shall have the power and authority to determine and direct when stain or paint shall be applied to the exterior surface of a structure, including, but not limited to, decks, docks, and railings, and when shingles on a structure shall be replaced.

11. Additions, Alterations, or Improvements by Board of Directors. Whenever, in the judgment of the Board of Directors, the common elements shall require additions, alterations, or improvements costing in excess of \$20,000, and the making of such additions, alterations or improvements shall have been approved by a majority of the available (and applicable, in the event of a Water Lot specific issue) Association votes, the Association shall proceed with such additions, alterations, or improvements and shall assess all applicable Lot Owners for the cost thereof as a common charge, which shall be assessed and paid as provided in Exhibit "B", attached hereto. Any additions, alterations or improvements costing \$20,000 or less may be made by the Board of Directors without approval of the individual lot owners and the cost thereof shall constitute a common charge, which shall be assessed and paid as provided in Exhibit "8", attached hereto. Off Water Lots shall not be assessed for water front or bay repairs, maintenance or improvements.

12. Additions, Alterations of Other Improvements or Structures. No Lot Owner shall construct any structure or make any structural addition, alteration, modification or improvement to a structure constructed upon a Lot, including the exterior of a structure on a Lot, without the prior express written consent and approval of the Architectural Control Committee as described in Article X by these By-Laws. The Committee shall have the obligation to respond to any written request by a Lot Owner for approval of a proposal to construct a structure or implement a structural addition, alteration or improvement to a Lot within thirty (30) days after the Association actual receipt of such written request, and failure to so respond within the stipulated time shall constitute a consent by the Architectural Control Committee to the proposed structure, addition, alteration or improvement. The Architectural Control Committee shall not be liable to any contractors, subcontractors, or material men or to any person sustaining personal injury or damage for any claim arising in connection with such addition, alteration or improvement. The provisions of this section shall not apply to Lots owned by the Owner/Developer until such time as a Lot shall have been conveyed to a third party. The surface elevation and contour of a Lot shall not be altered without the prior express written consent of the Architectural Control Committee.

13. Right to Access. Each Lot Owner shall grant a right of access to his or her Lot to the managing agent and any other person authorized by the Board of Directors or managing agent, to make inspections or to correct any condition originating in his or her Lot and threatening another Lot in the Project. Request for such entry shall be made in advance and such entry shall be scheduled for a time reasonably convenient to the Lot Owner. However, in case of an emergency, such right of entry shall be immediate, whether the Lot Owner is present or not. The

Association shall have and retain the right to enter easement tracts for purposes of performing necessary repair or maintenance procedures, as provided in these By-Laws and the Restrictive Covenants.

13.14. Irrigation and Access Easement. The original Misty Waters plat map (recorded in Burleigh County as Document No. 644375) and the Misty Waters First Replat (recorded in Burleigh County as Document No. 922016) contains a 20' irrigation and access easement abutting the Missouri River. The ~~for the purpose of this easement is to provide~~ing irrigation access to the ~~Off-Water Lots~~ from the Missouri River.

14.15. Power to Grant Rights and Restrictions in Common Elements. The Owners' Association shall have the right and authority to make and implement rules and regulations concerning a) the use and maintenance of common areas; b) the placement and housing of irrigation pumps and electric connections thereto; c) the type, placement, use and location of boat docks; and d) shall have the right to grant utility easements under, through or over the common elements which are reasonable necessary to the ongoing development and operation of the project. The Association shall have and retain a perpetual easement over and across the easement tracts as depicted on the Misty Waters Plat for bay and waterfront stabilization, maintenance and repair.

15.16. Owner/Developer's Reserved Rights. It is to be noted that the Misty Water's bay (Lot 85, Block 1) is deemed a common area. However, Owner/Developer, and their successors and assigns, reserve the perpetual exclusive right, without charge, to install docks (with ground supports and anchors) and other improvements on those portions of said Lot 85, Block 1, which lie directly adjacent to Lots 1 and 2, Block 1, and to operate, among other things, a commercial marina on such properties and in such areas. The waters of the Misty Waters bay adjacent Lots 1 and 2 shall be reserved exclusively for the operation of the marina. Owner/Developer shall be authorized to implement and enforce rules and regulations with respect to such areas, at Owner/Developer's sole and absolute discretion. Any and all rents and profits collected from such docks and marina shall be the sole and exclusive property of Owner/Developer. Regardless of any other provision in these By-Laws to the contrary, the foregoing retained right shall not be subject to amendment or revision without the prior written consent of Owner/Developer.

ARTICLE VII Condemnation

1. Condemnation. The Association shall represent the Lot Owners in any condemnation proceeding or negotiations, settlement and agreements with the condemning authority for acquisition of the common areas, or part hereof. In the event of taking or acquisition of part or all of the common areas by condemning authority, the award of proceeds of settlement shall be payable to the Association or any Trustee, for the use and benefit of the Lot Owners and their mortgages as their interests may appear. In the event of a taking in condemnation or by eminent domain of part or all of the common elements, the Board of Directors shall arrange for the repair and restoration of the common elements, and the Board of Directors shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. Any expense over condemnation proceeds may be assessed as common expense by the Board. Any surplus shall be distributed to the Lot Owners in proportion to their common

interests, subject to unpaid liens upon such unit. The Board of Directors may appoint a trustee to and on behalf of the Lot Owners, in carrying out the above functions, in lieu of the Owners' Association.

ARTICLE VIII Records

1. Records and Audits. The Board of Directors or the managing agent shall keep detailed records of the actions of the Board of Directors and the managing agent, minutes of the meeting of the unit owners, and financial records and books of account of the Project and Association, including a chronological listing of receipts and expenditures, as well as a separate account of each Lot which, among other things, shall contain the amount of each assessment of common charges against such Lot, and the date when due. Audited financial statements shall be provided only upon a 67% majority vote of all available Association votes.

ARTICLE IX Amendment to By-Laws

1. Lot Owner Amendment. Except as provided directly below, a 67% majority vote of all available Association votes shall be required to amend any provisions of these By-Laws.

2. Owner/Developer Amendment. For a period of one year after recording of these By-Laws, so long as the Owner/Developer owns one-third or more of the Lots in the Project, the By-Laws may be amended so as to comply with the Owner/Developer's mortgage requirements or to correct typographical or other similar errors or omissions.

3. Form of Amendment. All amendments hereto shall be in writing signed by the Owner/Operator or by the required number of residential Lot Owners, and mortgagees and shall be effective upon recording with the office of the Burleigh County Recorder.

ARTICLE X Architectural Control Committee

1. An Architectural Control Committee is hereby formed and shall initially consist of the Owner/Developer. At such time as the Owner/Developer transfers control of the Association to the Board of Directors, the Board of Directors shall constitute the Architectural Control Committee. All plans for construction upon or the improvement of a Lot, including modifications or additions to improvements, shall first be presented to the committee for its approval. The phrase "improvement to the premises" shall specifically include, without limitation, the composition and color of all exterior building surfaces, including windows, siding, trim, and roofing materials, and all landscaping and tree/shrub plantings. The committee shall have discretion and authority to consider and approve or reject a planned improvement without hearing. If necessary or appropriate, the committee shall grant unto each applicant a hearing upon any plan submitted. The committee shall have the exclusive power, discretion and

jurisdiction to approve, modify, or amend plans to cause proposed modification or improvements to be in conformity and to be compatible with the general building and architectural design. As provided in Article VI, above, the Committee shall respond to a written request within 30 days of the Associations receipt of the request.

ARTICLE XI

Rights of Action

1. Owners' Association and Lot Owners. The Owners' Association and any aggrieved Lot Owner shall be granted a right of action against a Lot Owner(s) for failure to comply with the provisions of the Declaration, these By-Laws, the Restrictive Covenants or with decisions of the Owners' Association which are made pursuant to authority granted the Owners' Association in such documents. Lot Owners shall have similar rights of action against the Owners' Association.

ARTICLE XII

Conflicts

1. Conflicts. These By-Laws are set forth to comply with the requirements of the laws of the state of North Dakota. In case of any of these By-Laws conflict with the provisions of such statute or of any Declaration, the provisions of such statute or the Declaration, as the case may be, shall control.

ARTICLE XIII

Miscellaneous

1. Notices. All notices to the Board of Directors shall be by registered or certified mail, in care of the managing agent, or if there is no managing agent, to the office of the Board of Directors or to such other address as the Board of Directors may hereafter designate from time to time. All notices to any Lot Owner shall be sent by registered or certified mail to the buildings or to such other address as may have been designated by such Lot Owner from time to time, in writing, to the Board of Directors. All notices to mortgages of Lots shall be sent by registered or certified mail to their respective addresses as designated by them from time to time, in writing, to the Board of Directors. All notices of change of address which shall be deemed to have been given when received. In the event a Lot is owned by multiple persons or entities, notice to one owner shall be deemed as notice to all owners of such Lot.

2. Invalidity. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity enforceability, or affect the balance of these By-Laws.

3. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of By-Laws, or the intent of any provision thereof.

4. Gender. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

5. Waiver. No restrictions, condition, obligation or provision in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

6. No Severance of Ownership. No Lot Owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to his Lot without including therein the appurtenant interest in common areas.

7. Payment of Assessments. No lot Owner shall convey, mortgage, sell or lease his Lot unless and until he or she shall have paid in full, to the Association, all unpaid common charges theretofore assessed by the Board of Directors against such Owners' Lot.

8. Taxes. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Lot and not to the Project as a whole.

9. Priority. No provision in these By-Laws shall give a Lot Owner or any other party, priority over any rights of the first mortgages of Lots pursuant to their mortgages in the case of a distribution to lot Owners of insurance proceeds or condemnation awards for losses or a taking of Lots and/or common elements.

10. Reports and Financial Statements. The Association shall be required to make available to Lot. Owners and lenders, insurer, or corianders of any first mortgage, current copies of the Declaration, By-Laws, Amendments or other rules concerning the Project and the books, records and financial statement of the Association. These documents and records shall be available for inspection, upon request, during normal business hours or under other reasonable circumstances. Any financial statement requested by the parties listed above entirety thereof shall be furnished by the Association within a reasonable time following such request

IN WITNESS WHEREOF, the undersigned, has executed this Amended By-Laws~~Owner/Developer hereto has set its hand~~ the day, month and year listed below.

Misty Waters Homeowners Association

By: _____

Its: _____President