

**MISTY WATERS
DECLARATION OF RESTRICTIVE COVENANTS
RESIDENTIAL AND CONDOMINIUM LOTS**

WHEREAS, the undersigned are the Owners and grantors of all of Lots Three (3) through Eighty-four (84), inclusive, Block One (1), Lot 1, Block 2, and all of Lots Two (2) through Forty (40), Block Three (3), Misty Waters, being a part of the W½ of Section 11 and part of the E½ of Section 10, T139N-R81W, Burleigh County, North Dakota, and other lands to be developed by Owners; and

WHEREAS, Lots 6 through 40, Block 3, lie directly adjacent to and have direct access to the Missouri River [hereinafter referred to as "**River Lots**"]; and

WHEREAS, Lots 3, 5-12, 14-16, 18-25, 27-29, 31-38, 40-55, 57-62 and 64-84, all in Block 1, lie directly adjacent to and have direct access to the Misty Waters Bay [hereinafter referred to as "**Bay Lots**"]; and

WHEREAS, the River Lots and the Bay Lots shall be collectively referred to as "**Water Lots**"; and

WHEREAS, Lots 4, 13, 17, 26, 30, 39, 56 and 63 of Block 1 and Lots 2 - 5 of Block 3, do not have direct access to either the Missouri River or the Misty Waters Bay, [hereinafter referred to as "**Off Water Lots**"]; and

WHEREAS, Lot 1, Block 2 and Lot 1, Block 3 are designated as "**Green Lots**"; and

WHEREAS, the River Lots, the Bay Lots and the Off Water Lots shall be collectively referred to as "**Residential Lots**" in these Restrictive Covenants; and

WHEREAS, the "Green Lots" and Lot 85, Block 1, are deemed "**Common Areas**";

WHEREAS, the undersigned are desirous of recording the following building and use restrictions to Misty Waters Residential Lots and other properties to be developed by Owners;

NOW, THEREFORE, in consideration of the premises, the undersigned hereby establish and declare the following building restrictions and protective covenants which shall be applicable to all Misty Water Residential Lots as described above:

PURPOSE

The purpose of these restrictions is to insure the use of the Residential Lots for attractive residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the property, and to maintain the desired tone of the subdivision and thereby to secure to each Residential Lot owner the full benefit and enjoyment of his or her home and Residential Lot, with no greater restriction on the free and undisturbed use of the site than is reasonably necessary to insure the same advantages to the other Residential Lot Owners.

PERSONS BOUND BY THE COVENANTS AND RESTRICTIONS

All persons, corporations or other entities, who shall hereafter acquire any interest in and to the above-described Residential Lot hereinafter referred to as grantees, shall be taken to hold and agree and covenant with the Owners of the Residential Lots and with their heirs, trustees and assigns, to conform to and to observe the following covenants, restrictions and stipulations as to the use thereof, and as to the construction of a residence and other improvements thereon. Any and all Owners of Residential Lots in Misty Waters shall be deemed members of "Misty Waters Owners' Association" which Association is created by Declaration of even date herewith. By purchasing an interest in and to a Residential Lot at Misty Waters, said Owners consent to membership in the Association, ratify the Declaration Establishing the Misty Waters Owners' Association and the associated By-Laws of the Association, and agree to be bound by the terms and conditions set forth in the Declaration and By-Laws and these Restrictive Covenants.

BUILDING AND USE RESTRICTIONS

1. **Residential Homes.** Except as provided herein, each Residential Lot shall be utilized solely as a Residential Lot and 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 Residential Lot, other than one single family residential unit. No other structure shall be erected or moved onto any Residential Lot, and no additions shall be added to any residential unit or structure without the prior express written consent of the Architectural Control Committee, as created by the By-Laws of Misty Waters Owners' Association. Developer hereby

reserves the authority and right, but not the obligation, to construct multi-family residential units on Lots Eighty-Two (82), Eighty-three (83) and/or Eighty-Four (84), Block One (1) and Lots Thirty-eight (38), Thirty-nine (39) and/or Forty (40), Block Three (3) of Misty Waters. The owner and developer reserves the right, in owner's/developer's sole discretion, to a) combine such Lots for purposes of establishing a complex of Multi-family structures or b) to further subdivide Lot 84, Block 1, and/or Lot 40, Block 3 into single family residential, twin homes or townhouse Lots. Walk-out basements, if any, shall be in strict accordance with the applicable PUD, as amended.

2. **Residential Use Only**. The term "residential" as used herein shall be construed as a single family dwelling unit, 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 Residential 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 neighborhood. However, as provided above, the Owner/Developer reserves the right to construct multi-family residential units on the lots described in paragraph "1", directly above. Professional home offices shall be allowed to the extent the same do not result in parking or traffic issues, in the sole and absolute opinion and discretion of the Homeowner's Association. Inventory associated with such "professional offices" shall not be stored on the premises. No office staff shall be allowed with any such professional home office.
3. **Building Set Back and Location**. THE MISTY WATERS PLANNED UNIT DEVELOPMENT, Ordinance #5435 (as amended and adopted on August 23, 2006), which document is attached hereto as Exhibit "A", and made a part hereof by reference, sets forth the corridors within which all residential structures within the subdivision shall be built. Under no circumstance shall any structure, including decks, bay windows and the like, be constructed within ten (10) feet of the side Lot line of any Lot within the subdivision. 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 Control Committee. Lot Owners must remain aware of "water access easement corridors" located throughout the project. The corridors are intended to provide access from roadways within the subdivision to the water front for maintenance purposes. No structures, including decks, shall be constructed within said easement corridors. Each Water Lot owner is further notified of the existence of water front maintenance easement areas which lie along the water front within the project. In the event a Water Lot owner or the Association utilizes either of the above-referenced access corridors for purposes of maintaining repairing or improving bank stabilization, 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 described directly above, 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 or affected lots.

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. With respect to multi-family condominiums, twin homes or townhome units, if any, the minimum square footage of each condominium, twin home or townhome unit shall be no less than 1,500 square feet, exclusive of open porches and garages.

The Board of Directors of the Owner's Association shall have authority, in its sole discretion, to issue variances with respect to the minimum square footages set forth directly above, on a case by case basis.

5. **Construction Elevation.** Each Lot Owner is notified that, as of September, 2005, the 100 year flood elevation is One Thousand Six Hundred Forty and three tenths (1,640.3) feet (msl) (88 datum). It is necessary that each respective Lot Owner be aware of the then current elevation of the 100 year flood event when establishing the elevation of the Lot Owners' prospective residential structure. The owner/developer is not in a position to and shall not issue any guarantees or warranties concerning present or future flood event elevations or minimum construction elevations. All Lot Owners are notified that basements and crawl space walls, if any, will require engineered footings and walls. Each owner is solely responsible to verify and/or determine the flood event elevations and engineering requirements in effect on the date each owner commences construction on a Lot.
6. **Residential Construction.** All residential structures shall be constructed on site of new materials only. Except with respect to multi-family residential units constructed on Lots 82, 83 and/or 84, Block 1 and/or Lots 38, 39 and/or 40 of Block 3, if any, all residential structures shall have an attached three 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 Residential Lot. All residential structures shall be constructed in precise compliance with the requirements of the Architectural Control Committee; which committee is created by and defined in the By-Laws of the Misty Waters Owners' Association. The Architectural Control Committee shall have total discretion in the approval or rejection of construction plans and the location of all structures to be constructed on each Residential Lot within the Misty Waters. All construction plans must be submitted to the Committee and approved before the commencement of construction. The Committee shall act on all construction plans within 30 days following the Committee's receipt of such plans. 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 permit shall be at Owner's sole cost and expense.

7. **Construction Materials.** No construction material of any nature shall be moved upon the Residential Lot prior to sixty (60) days before the start of construction and any building started shall have its exterior completed within one (1) year from the date of its starting. During the construction process, any and all debris and trash shall be maintained and contained in appropriate trash containers and promptly removed from the premises. All construction sites shall be and remain free of construction debris and trash. All construction debris is to be removed within thirty (30) days after occupancy or finishing of a structure's exterior, whichever occurs first. Residential Lots without structures shall be free of all garages, storage buildings, pets, building materials, detached structures, fences, kennels, trailers, watercraft, vehicles, mobile homes, sheds, shacks, and/or other unsightly debris.
8. **Excavation.** Any and all soils and rock excavated from a Lot within the subdivision shall be deposited, at the Lot Owners' sole cost and expense, in the area(s) designated by the developer. No excavated soils and rocks shall be transported off site without the prior express written consent of the developer. Any and all excavated soils and rocks, including bank stabilization rock, as described herein shall become the sole property of developer without any compensation to the Lot Owner. With the exception of no more than six 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 Control Committee.
9. **Building Exterior.** The composition and color of the exterior of all residential structures, including siding and shingles, shall be determined by the Architectural Control Committee. All decks, awnings and other exterior attachments shall be with the prior approval of the Architectural Control Committee, only.

10. **Tree Planting - Yard Maintenance.** Lot Owners shall submit to the Architectural Control Committee plans and proposals with respect to any and all tree and hedge plantings on each respective lot. All tree and hedge planting shall be allowed only upon the prior written approval of the Architectural Control Committee. All Residential Lots upon which a residential structure has been constructed shall be mowed by the owner thereof at least on a weekly basis during the summer months. All Residential Lots upon which a residential structure has not been constructed shall be mowed at least once per month or as otherwise directed by the Owners' Association, in the Association's sole discretion. Each Residential Lot owner shall be responsible to control and eliminate weeds on such Lot Owner's respective Lot.
11. **Subdivision of Lots.** Excepting Lot 84, Block 1 and Lot 40, Block 3, as described above, no Residential Lots shall be further subdivided without the express prior written consent of the Board of Directors of the Misty Waters Owners' Association. The owner/developer reserves the right, but not the obligation, to a) further subdivide Lot 84, Block 1, and/or Lot 40, Block 3 into single family residential and/or town home Lots, and b) to combine Lots Eighty-Two (82), Eighty-three (83) and/or Eighty-Four (84), Block One (1) and Lots Thirty-eight (38), Thirty-nine (39) and/or Forty (40), Block Three (3) of Misty Waters, for purposes of establishing complexes of multi-family structures. However, a Lot(s) may be subdivided for purposes of combining the entire subdivided Lot with directly adjoining Lots. All such proposed Lot subdivisions shall be subject to the prior approval of the Architectural Control Committee. The subdivision of a Lot and the combining thereof with a directly adjoining Lot shall not affect the assessment percentage or voting rights with respect to the subdivided Lot(s); which voting rights and assessment percentage shall be assumed, on a fractional basis, by the resulting Lot(s).
12. **Exterior Storage.** No trailer, mobile home, boats, pontoons, boat docks/ramps, watercraft, motor home or equipment shall be parked or stored on any portion of the subdivision, unless stored within a garage. No such items shall be stored or parked on a street anywhere within the subdivision for more than 48 consecutive hours or more than 48 cumulative hours per seven (7) consecutive day period. It is intended

that there shall be no on street, driveway or parking pad storage of any such items. The Owners' 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.

13. **Waterfront Bank Stabilization.**

- a. **Initial Bank Stabilization.** With respect to Bay Lots, as defined above, the owner/developer shall provide the initial stabilization of the Water Front and shall maintain and repair such stabilization until the *earlier* of a) June 1, 2011 or b) the date the owner/developer transfers control of the Association to the Lot Owners.
- b. **Waterfront Bank Stabilization and Maintenance.** Except as provided herein, each residential Water Lot Owner is and shall be solely responsible for the subsequent maintenance and repair of the waterfront directly adjacent to such Water Lot. The stabilization, maintenance and repair required of each residential Water 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 Owners' Association. Each individual Lot Owner shall be obligated to seek and obtain necessary permits from the Corp. of Engineers before commencing any repair or maintenance procedures. The Misty Waters Owners' 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 Water 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 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 Water Lot Owner fails or refuses to maintain the waterfront as directed by the Owners' Association, then and in that event, the Owners' Association, in the Association's sole discretion, shall be authorized, but not required, to enter the subject Water Lot for purposes of implementing those procedures deemed reasonable and necessary, in the absolute discretion of the Owners' 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 Water Lot. In addition, each individual Lot Owner shall be responsible to maintain vegetation along each Water Lot Owner's respective water front, including weed control. No vegetation shall be allowed to grow in the rocks or panels utilized for bank stabilization. Each Residential Water Lot Owner shall be responsible to eliminate all weeds and vegetation from such areas. However, with respect to the stabilization wall which lies on the southeast boundary of Lot 84, Block 1, and Lot 40, Block 2, said stabilization wall shall be maintained by the Association and such repairs and maintenance shall be deemed and constitute an Association common expense to be paid by the Bay Lot owners as a Bay Lot Specific Expense.

- c. Modification of Shoreline. No Lot Owner shall alter or in any way affect the shoreline of the Misty Waters Bay or the Missouri River without the prior express written consent of the Owner's Association.
- 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.

- 14. Bay Maintenance. Excepting shoreline stabilization procedures as described above, the Owners' Association shall be responsible for any and all maintenance procedures associated with the Misty Waters bay including the channel connecting the bay to the Missouri River, and the fresh water re-circulation line which supplies

fresh water to the bay. Each Bay Lot, only, shall be assessed for bay maintenance and repair expenditures, as provided in the By-Laws of the Association and in Exhibit "B" attached thereto. Off-Water Lots and River Lots shall not be assessed for costs or expenses associated with the maintenance, operation or repair of the Bay or the channel connecting the Bay to the Missouri River.

15. **Pets**. No horses, mules, lamas, cows, hogs, goats, chickens, poultry, pigeons, snakes, prairie dogs or other similar animals shall be kept or maintained anywhere within the subdivision nor shall any chicken yard or similar factory be maintained. Only domestic pets, not to exceed more than two (2) cats and no more than two (2) dogs, per Residential structure, shall be allowed. With respect to multi-family residential units constructed on the multi-family Lots, there shall be not more than one (1) dog and no more than two (2) cats per each residential unit within the multi-family residential structure. 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 Residential 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 unit. All kennels shall be cleaned and maintained so as to reduce, to an absolute minimum, odors. The 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 Control Committee, may be deemed a "nuisance", as said term is defined in the By-Laws of the Association.
16. **Trash and Refuse**. No trash, ashes or other refuse may be thrown, dumped or stored on any Residential 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 Residential Lots which are adjacent to the Residential 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 Residential Lot or anywhere within the subdivision. No garbage or other similar debris shall be stored or allowed to remain on any Residential Lot. All such items shall be promptly removed from each Residential Lot by and at the Residential Lot Owner's sole cost and expense.

17. **Street and Yard Lights**. Street lights, only, shall be provided and maintained by the Association. With respect to River and Bay Lots, water side yard lights shall be selected by the Owners' Association and shall be paid for, installed and maintained by each respective Lot owner at the location selected by the Owners' Association. The installation and maintenance of yard light shall be at each respective Lot Owners' sole cost and expense. No other yard or street lights shall be allowed unless such lights are attached directly to the residential structure unit. Additional lighting shall only be upon the prior written approval of the Architectural Control Committee.
18. **Fences**. No fence shall be erected or modified on any Residential Lot without the prior express written consent of the Architectural Control Committee.
19. **Signs**. No signs, billboards or advertising devises of any kind, except those used in any subsequent sale of property, shall be placed or otherwise installed on any Residential 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 the subdivision, roads within the subdivision, and for such other purposes as the developer deems reasonable and necessary.
20. **Pollution Control**. In the interest of public health and sanitation, and so that the land above-described and all other land in the same locality 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, grantee will not use any subdivision property for any purpose 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.

21. **Septic System.** No septic tanks and/or drainage fields shall be constructed anywhere on the subdivision.
22. **Sewer System.** All residential structures shall connect to and use the sewer system offered by the owner/developer and each Lot Owner shall pay disposal and maintenance charges assessed by the Misty Waters Association, or its designee, for the use, maintenance, repair and, if necessary, replacement of the Misty Waters sewer system and of the Misty Waters pro-rata share of the common off-site sewer/disposal system. All residential structures shall use E/One low pressure lift stations, only. Each system shall be acquired and installed at each respective Lot Owner's sole cost and expense. All Residential Lot Owners are herein and hereby notified that a one (1) time hook-up fee will be assessed by the owner/developer when a Residential Lot Owners' sewer line is attached to the Association's main sewer line. Each Residential Lot owner shall be solely responsible for the cost of attaching the Residential Lot Owner's sewer line to the sewer main including, without limitation, the cost of the connections, attachments, pipe and E/One low pressure lift station as described above. Each Lot Owner will be assessed a monthly sewage disposal fee. With respect to condominiums/twin homes built or to be built within the project, all condominium units shall utilize the sewer system offered by the owner/developer. All condominium units/twin homes shall submit, for approval purposes by the Owner's Association, plans and specifications with respect to the sewage systems applicable to each condominium unit/twin homes and condominium complex. Each respective Lot owner is solely responsible for the cost of maintaining, replacing and repairing such Lot owner's sewer line/lift station and system to and including the connection to the Association common sewer main.
23. **Residential Water System.** All residential structures shall connect to and use the residential water system offered by the owner/developer and each Lot Owner shall pay for the residential water utilized by each respective Residential Lot and shall further pay maintenance and repair charges assessed by the Misty Waters

Association, or its designee for the use, maintenance, repair and, if necessary, replacement of the common Misty Waters water system. All Residential Lot Owners are herein notified that a one (1) time hook-up/membership fee will be assessed by the owner/developer when a Residential Lot Owners' water line is attached to the Misty Waters main water line. Each Residential Lot Owner shall be solely responsible for the cost of attaching such Lot Owner's water system to the Misty Waters water main, including all attachments, connections, piping and water meters. Water meters to be utilized by each Residential Lot Owner shall be as approved and directed by the Owners' Association. Each respective Lot Owner will be assessed a monthly residential water fee for water used with respect to such Residential Lot. Each respective Lot owner is solely responsible for the cost of maintaining, replacing and repairing such Lot owner's water line to and including the connection to the Association common water main.

24. **Misty Waters Residential and Waste Water Disposal.** Burleigh Service Company, LLC, has been designated as agent for the Association for purposes of and shall provide management and billing services to all Residential Lot Owners with respect to the Misty Waters residential water and sewer systems. The monthly billing for residential water and residential waste water disposal shall include a management fee to be charged by Burleigh Service Company, LLC. Burleigh Service Company, LLC, shall be authorized to establish and fund a capital account to be utilized for the maintenance, repair or replacement of the common residential water distribution and/or waste water disposal systems. Each Residential Lot shall be assessed a proportionate share of the costs necessary to maintain and repair the water distribution and sewer systems and to establish and maintain the capital maintenance, repair or replacement fund.
25. **Boat Docks.** Boat docks shall be allowed on the premises only with the prior express written consent of the Owners' Association, or its assignee or designee, which Association 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 Owners of River Lots have been notified that the Corp

of Engineers may and, in all likelihood, will not allow "individual" boat docks to service only one (1) Residential River Lot. The Corp of Engineers has notified developer that boat docks must be shared by neighboring Lots. The Owners' Association, with approval from the Corp of Engineer, shall have sole and absolute discretion in determining which Lots shall share a boat dock. Any dispute regarding a boat dock, including, without limitation, the location, configuration, use, maintenance and repair of a boat dock, shall be resolved by the Owners' Association; which Association shall be the sole and final arbitrator of any and all boat dock issues and disputes. The Owner's of Lot 84, Block 1 and Lot 40, Block 3 are notified that boat docks shall not be allowed in the inlet/channel connecting the Misty Waters Bay to the Missouri River. Condominium/twin home owners on Lots 82, 83 and 84, Block 1, and Lots 38, 39 and 40, Block 3, are notified that community docks will be required, which dock systems shall be designed and approved by the Owner's Association, in its sole discretion. The Owner's Association shall have the absolute right to select and designate the company which shall 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. Notice is herein provided that the Misty Waters Association has selected and that, until further notice is given, all docks within the subdivision shall be "Shoremaster Commercial World Class B Rail System" docks, with IPE decking (Brazilian Hardwood). River front lots shall use the same dock system with an aluminum twelve inch box truss. All such docks shall be installed by Misty Waters Marina, LLC, or its assigns, or such other entity as selected by the Association. Each Lot Owner shall be solely responsible to secure appropriate dock permits from the Corps of Engineers or the state of North Dakota. Boat docks shall not be stored on the yard, driveway or on any parking pad on any residential Lot during the winter months.

26. **Watercraft.** There shall be a maximum of (2) motorized boats/pontoons and (2) personal watercraft for each residential/single family Water Lot and (1) motorized boat/pontoon and (2) personal watercraft for each water condominium unit in the

subdivision. The parking/docking of guest boats shall be limited to a forty-eight (48) hour period. No non-lot owner owned boats shall be on the premises or tied to a dock for more than forty-eight (48) hours per and seven (7) day time period. The Committee shall have absolute authority to issue guidelines and restrictions for the use of watercraft within the bay, including a no-wake policy. Swim rafts, trampolines and other similar items shall be allowed on the bay only with the prior express consent of the Architectural Control Committee. No watercraft shall be stored on the yard, on the driveway, or on a parking pad on any residential Lot.

27. **Coal Furnaces.** Coal 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. Gas generators shall be used for emergency purposes only.
28. **Owner/Developer Obligations.** All Residential Lots conveyed are conveyed as unimproved property without any obligation on the part of the Owner/Developer to improve the same with the exception of the Owner/Developer's obligation to install paved roads, as depicted on the plat of Misty Waters, an Association sewer main and water main (which shall be accessed by the individual Residential Lot Owner(s)), and a street-side light as provided herein. Each Lot Owner shall be solely responsible for the entire cost of attaching/connecting to the Association main water line and Association main sewer lines. Each Residential Lot Owner shall further be liable for any damage to the Misty Waters residential water main or sewer main which may occur when a Lot Owner connects to said Association water or sewer mains.
29. **Snow Removal.** Snow removal services shall be provided by the Owners' Association until such time as Burleigh County, North Dakota, or the City of Bismarck, North Dakota, shall take over said snow removal responsibilities. Each Residential Lot Owner shall be responsible for a pro-rata share of such expenses based upon the total number of Residential Lots within the Misty Waters subdivision. The snow removal shall be limited to roadways. Individual Residential Lot Owners shall be responsible to provide or arrange for the removal of ice and snow on driveways, walkways, steps, landings and porches on each respective

Residential Lot. The Association shall have the power and authority to issue rules and regulations requiring that vehicles be moved from Misty Waters roadways to facilitate the removal of snow from the roadways. When removing snow from driveways or walkways, Lot Owners shall not deposit said snow on Association roadways.

30. **Capital Improvements.**

- a. **General Non-Bay/River Association Improvements:** It is further covenanted by all Owners of Residential Lots within the subdivision for themselves, their successors and assigns, that in the event the grantors, or their successors or assigns, as Owners of sixty percent (60%) of the Residential Lots of the subdivision should decide or elect to further improve the common areas, the roadways, the sewer systems, the residential water system or construct other non-river frontage/non-bay improvements, each Residential Lot shall bear its share of the cost of such improvements as per the attached Cost/Expense Allocation Summary document (Exhibit "B").
- b. **River Front Improvements:** It is further covenanted by all Owners of River Lots within the subdivision for themselves, their successors and assigns, that in the event the grantors, or their successors or assigns, as Owners of sixty percent (60%) of the River Lots of the subdivision should decide or elect to further improve the River Front, each owner of a River Front Residential Lot, as defined above, shall bear his or her share of the cost of such improvements as per the attached Cost/Expense Allocation Summary document (Exhibit "B").
- c. **Bay Improvements.** It is further covenanted by all Owners of Bay Lots within the subdivisions for themselves, their successors and assigns, that in the event the grantors, or their successors or assigns, as Owners of sixty percent (60%) of the Bay Lots of the subdivision, should decide or elect to further improve the bay, including the fresh water intake/re-circulation pipe system, the cost of such improvements shall be paid for by the Bay Lot Owners as per the attached Cost/Expense Allocation Summary document (Exhibit "B").

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.

31. **Maintenance**. It is further covenanted by all Residential Lot Owners within the subdivision, themselves, their successors and assigns that should the Board of Directors determine that, in the best interests of the subdivision, general upkeep and repairs of the roads, common areas or other improvements of the subdivision are necessary, each Residential Lot shall bear its costs of such general upkeep and repairs in proportion to the total number of Residential Lots in the subdivision. However, it is expressly agreed that only Bay Lots shall be assessed for maintenance and repairs of the bay, including the inlet connecting the Bay to the Missouri River and including the fresh water intake/recirculation pipe. It is further covenanted that only River Lots shall be assessed for general upkeep and repairs of the river frontage, to the extent provided by the Association. Regardless of the foregoing, except as expressly provided herein, the owner of each Water Lot is and shall remain solely responsible for bank stabilization and the maintenance and repair of bank stabilization associated with each individual Water Lot. The Association shall not be responsible for any such costs. The assessment allocations shall be pursuant to the Cost/Expense Allocation Summary document attached hereto (Exhibit "B").

This covenant shall run with the land, and the cost of the upkeep and repair referred to above shall be a charge on the land and whatsoever hands it shall be at the time of such improvements. If payment of a Residential Lot's share of the above-referenced cost of general upkeep and/or repair is not received within thirty (30) days of written notice requesting payment thereof, the Board of Directors,

acting by and through the officers of the Association and its agents, is herein expressly authorized to execute and file a lien on said Residential Lot to secure payment of said costs.

32. **Common Elements**. The common elements of Misty Waters presently are Lot 1, Block 2, Lot 1, Block 3 and the Misty Waters bay, including the channel to the Missouri River. Except as otherwise provided in the By-laws, the common elements shall be used for the common benefit of all owners of lots within the subdivision. The Owner/Developer, and successor and assigns, has reserved the perpetual exclusive right to use those portions of Lot 85, Block 1 (the bay) adjacent to Lots 1 and 2, Block 1, for use, among other things, as a marina. The Owner/Developer has the right to establish rules and regulations for those areas of Lot 85, Block 1 adjacent to Lots 1 and 2, Block 1. Except as provided herein, the Owners' Association shall have sole power, authority and discretion regarding the use of common elements and the regulation of the use of common elements. The Owners' Association shall be authorized to institute and implement rules and regulations concerning the use of common elements, including the maintenance and operation thereof, which maintenance and operations expenses and costs shall be assessed to Residential Lots Owners as an Association fee. However, as provided herein, Off-Water Lots and River lots shall not be assessed for costs or expenses associated with the maintenance, operation or repair of the Bay; such costs being the sole responsibility of Bay Lot Owners.
33. **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 unit installed on any Residential Lot without the prior express written approval of the Architectural Control Committee. No more than two 36 inch, or less, satellite dishes shall be allowed per residential unit. No clothes lines shall be allowed.
34. **Collection of Real Estate Taxes and Maintenance Expenses on Common Areas**. The Misty Waters Owners' Association shall have the right, power and authority to assess and collect real estate taxes and special assessments, and maintenance expenses, with respect to common areas. Real Estate tax

assessments, and specials, if any, with respect to the Misty Waters bay, if separately assessed by Burleigh County, North Dakota, shall be prorated among all Bay Lots and Residential/Commercial Lots, only.

35. **Future Rules and Regulations.** The Architectural Control Committee and/or the Owners' Association reserves the right to make and implement such other rules and regulations, from time to time, as may be deemed reasonable and necessary for the safety, care, maintenance, repair and cleanliness of the project and for securing the comfort and convenience of all occupants thereof.
36. **Covenants to Run with the Land.** These covenants and restrictions are to 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 sixty-seven (67%) of the then Owners of the Residential 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.

RIGHT TO ENFORCE

The owner or Owners of any of the above lands shall have the right to sue for and obtain an injunction prohibitive or mandatory to prevent the breach of, or to enforce the observance of the covenants and restrictions above set forth, in addition to ordinary legal action for damages; and the failure of the present Owners, or the owner or Owners of any Residential Lot to enforce the covenants and restrictions herein set forth at the time of any violation thereof, shall be in no event deemed as a waiver of the right to do so.

NOTICE AND RATIFICATION

All Lot Owners, and their successors and assigns are hereby notified that portions of Misty Waters have been designated as commercial/residential/multi-family in nature and that such areas may be used for commercial purposes, including, without limitation, a commercial marina with associated facilities, a gasoline/convenience store, and a restaurant, bar and off-sale. In addition, a public boat landing has been constructed on the South side of the bay. Such uses of the commercial properties, including motor vehicle

and boat traffic, night lighting, and odors or noise generated from such uses, as they presently exist or in the future may exist, shall be deemed in all ways approved and ratified by all Owners of Residential Lots in Misty Waters, and their successors and assigns.

Dated this 21 day of March, 2008.



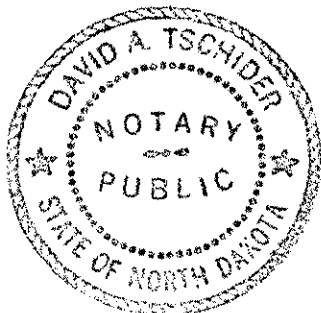
Steve McCormick
Owner/Developer

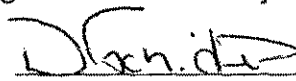


Karen McCormick
Owner/Developer

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

On this 14 day of March, 2008, before me personally appeared Steve McCormick and Karen McCormick, known to me to be the persons who are described in and who executed the within instrument and acknowledged to me that they executed the same.





Notary Public
Burleigh County, North Dakota
My Commission Expires: 3-25-09

h:/data/david/mistywaters/covenants

MISTY WATERS PLANNED UNIT DEVELOPMENT
ORDINANCE NO. 5435 (Adopted June 14, 2005)
MAJOR PUD AMENDEMENT (Adopted August 23, 2006)

EXHIBIT A

WHEREAS, Ordinance No. 5435 was adopted by the Board of City Commissioners on June 14, 2005; and

WHEREAS, Ordinance No. 05-03 was adopted by the Board of County Commissioners on June 6, 2005; and

WHEREAS, Section 1(2) of both ordinances indicates that this PUD shall only be amended in accordance with the provisions of Section 14-04-18(4) of the City Code of Ordinances (Planned Unit Developments); and

WHEREAS, Misty Waters LLC has requested an amendment to the Planned Unit Development for Misty Waters.

NOW, THEREFORE, BE IT RESOLVED by the Bismarck Planning and Zoning Commission of the City of Bismarck, North Dakota, a municipal corporation, that the request to amend the Planned Unit Development for the following described property:

Lots 1-84, Block 1; Lots 1, Block 2; Lots 1-40, Block 3; and Lot 1, Block 4;
Misty Waters

is hereby approved and this PUD is now subject to the following development standards:

1. *Uses Permitted.* Uses permitted include a maximum of ~~135~~ 145 residential units (~~119~~ 115 single-family residential units and up to ~~16~~ 30 residential units constructed in ~~multi-unit buildings~~ condominium associations with two units per building); water-related commercial uses; including a marina with boat slip mooring, dockside fuel, boat rental, a gas station/convenience store with a two-bay boat repair facility, and a restaurant/bar; marina parking facilities; parking facilities for winter storage of marine boats and pontoons; and a public boat ramp with parking to be deeded to Burleigh County. Any change in the proposed uses within the PUD from that indicated herein will require an amendment to this PUD.

2. *Single-Family Residential Development Standards.* Single family residential development shall be located on Lots 2 – ~~838~~ 838, Block 1 and Lots 2-~~39~~ 37, Block 3 (~~119~~ 115 lots with one dwelling unit per lot); the building corridor shown on the development plan submitted with the application for a PUD shall be eliminated; the minimum front yard setback shall be 40 feet on Burnt Creek Loop, 35 feet on Misty Waters Drive and 25 feet on the other interior roadways; the minimum side yard setback shall be 10 feet with no encroachments (decks, bay windows, etc); the minimum rear yard setback shall be 30 feet; the minimum setback from the ordinary high water mark of the Missouri River shall be 100

feet; the minimum setback from the bay shall be elevation 1640.3 (NAVD88) as delineated by the contour line described in the approved LOMR; the maximum building height shall be 35 feet; walkout basements shall be elevated to a minimum of one foot above the base flood elevation; and the maximum lot coverage shall be 30%. Accessory buildings may be allowed in accordance with the provisions of Section 14-03-06 of the City Code of Ordinances (Incidental Uses) and shall be subject to the same setback requirements as the principal structure. Residential building types shall be substantially similar to those submitted in conjunction with the application for a PUD. Any change to the density or building setbacks that are inconsistent with these standards will require an amendment to this PUD.

3. *Multi-family Residential Development Standards.* Multi-family residential development shall be located on the northerly 573.16 feet of the easterly 177.91 feet of Lot 2 and all of Lots 82-84, Block 1, and Lots 38-40, Block 3 (two lots three separate parcels with a separate condominium association for each parcel and with up to two five buildings with up to four no more than two units in each building on each lot parcel); the building corridor shown on the development plan submitted with the application for a PUD shall be eliminated; the minimum front yard setback shall be 35 feet; the minimum side yard setback shall be 15 feet with no encroachments (decks, bay windows, etc); the minimum rear yard setback shall be 30 feet; the minimum setback from the ordinary high water mark of the Missouri River shall be 100 feet; the minimum setback from the bay shall be elevation 1640.3 (NAVD88) as delineated by the contour line described in the approved LOMR; the maximum building height shall be 35 feet; walkout basements shall be elevated to a minimum of one foot above the base flood elevation; and the maximum lot coverage shall be 40%. Accessory buildings may be allowed in accordance with the provisions of Section 14-03-06 of the City Code of Ordinances (Incidental Uses) and shall be subject to the same setback requirements as the principal structure. Residential building types shall be substantially similar to those submitted in conjunction with the application for a PUD. Any change to the density or building setbacks that are inconsistent with these standards will require an amendment to this PUD.

4. *Commercial Development Standards.* Commercial development shall be located on Lot 12 less the northerly 573.16 feet of the easterly 177.91 feet of Lot 2, Block 1 and shall be limited to water-related commercial uses, including a marina with boat slip mooring, dockside fuel, boat rental, a gas station/ convenience store, a two-bay boat repair facility, and a restaurant/bar. The minimum front yard setback shall be 40 feet; the minimum side yard setback shall be 20 feet; the minimum rear yard setback shall be 30 feet; the maximum building height shall be 35 feet; and the maximum lot coverage shall be 70%. Commercial building types shall be substantially similar to those submitted in conjunction with the application for a PUD. Parking areas for commercial uses shall be provided in accordance with Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), based on the square footage and uses. Said parking areas

shall be hard-surfaced and striped in conjunction with site development and regularly maintained. Concrete perimeter curbing of the parking areas will not be required. Any change to the uses or building setbacks that are inconsistent with these standards will require an amendment to this PUD. Any activities requiring a special use permit, such as gas dispensing/filling station or liquor sales, shall be subject to the requirements of Section 14-03-08 of the City Code of Ordinances (Special Uses). Any liquor sales will also be subject to the standards agreed to by Burleigh County and the developer in conjunction with liquor licensing.

5. *Marina Parking Facilities.* Marina parking facilities, including parking facilities for winter storage of marine boats and pontoons, shall be located on Lot 21, Block 1, in accordance with Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), based on a ratio of one parking space per 1.5 boat slips. Said parking areas shall be hard-surfaced and striped in conjunction with site development and regularly maintained. Concrete perimeter curbing of the parking areas will not be required. A marina restroom and concession facility may be constructed on Lot 21, and each shall be no larger than 500 square feet in area, no more than one story in height, be architecturally similar to other commercial buildings in the development and be subject to the same development standards as outlined for commercial uses. Any changes to the location of marine parking facilities will require an amendment to this PUD.

6. *Public Boat Ramp.* A public boat ramp and parking facilities shall be located on Lot 1, Block 4. Said boat ramp and parking facilities shall be developed in accordance with the agreement between the Developer and Burleigh County. Upon conveyance of the property to Burleigh County, the County may construct other complementary facilities, such as restrooms, fish cleaning stations, and picnic shelters.

7. *Signage.* Development identification signage may be installed on Lot 1, Block 2, in accordance with the requirements of Section 14-03-05(9) of the City Code of Ordinances (Residential Area Identification Signs). Signage for the commercial uses on Lot 12, Block 1, shall be limited to one pylon sign no more than 35 feet in overall height with a face not exceeding 96 square feet, one monument sign with a face not exceeding 48 square feet, and up to two wall signs per building (one facing the marina and one facing the entrance to the commercial area) in accordance with the provision of Chapter 4-04 of the City Code of Ordinances (Signs and Outdoor Display Structures).

8. *Landscaping.* Landscaping and buffer yards shall be provided in accordance with Section 14-03-11 of the City Code of Ordinances (Landscaping and Screening). The perimeter parking lot landscaping requirements for the marina parking facilities on Lot 1, Block 1 and the commercial uses on Lot 2 less the northerly 573.16 feet of the easterly 177.91 feet of Lot 2, Block 1 may be modified by the City Forester and/or City Planner to recognize the setting of the development and to incorporate deer and drought-resistant plant materials.

provided the overall intent of the landscaping requirements, if not the specific plant quantities, are met.

9. *Common Elements.* Maintenance of all common elements, including the bay/inlet (Lot 85, Block 1) and open space lots (Lot 1, Block 2 and Lot 1, Block 3), shall be the responsibility of the ~~home~~ property owner's association.

10. *Lot Modifications.* Any subsequent modification of lots shall be subject to the requirements of Section 14-09-02 of the City Code of Ordinances.

11. *No-Build Easement.* A no-build easement is shown on the face of the plat of Misty Waters over a portion of Lots 1 and 2, Block 1. The intent of this easement is to prohibit construction of structures within this area, as it is part of the Northern Bridge Corridor. The easement reserves the area for the future bridge and related roadways, but does not dedicate the property for this purpose.

12. *Changes.* This PUD shall only be amended in accordance with Section 14-04-18(4) of the City Code of Ordinances (Planned Unit Developments). Major changes require a public hearing and a majority vote of the Bismarck Planning & Zoning Commission.

EXHIBIT "B"

MISTY WATERS

COST/EXPENSE ALLOCATION SUMMARIES

SUBDIVISION LOT SUMMARY

A. Residential Lots: Excluding Condominium Lots		
1. Bay Lots (excluding condominium lots)	73	
2. River Lots	34	
3. Off Water Lots	12	
4. Condominium Lots (Lot 84, Bk 1; Lot 40, Bk 2)	<u>2</u>	
Subtotal		121
B. Commercial Lots		2
C. County/City Park Lot		1
D. Green Lots		<u>2</u>
Total Subdivision Lots		<u>126</u>

SCHEDULE A

General Expense/Improvement Allocations*

Residential Lots (Excluding condominium Lots): .65%/lot	77.350%
Condominium Lots: 1.1325%/lot	2.650%
Commercial Lots:	<u>20.00%</u>
Total General Allocation	<u>100.00%</u>

SCHEDULE B

Bay Lot Specific Expense/Improvement Allocations

Residential Lots (Excluding Condominium Bay Lot): .9333%/lot	68.1309%
Condominium Bay Lot (Lot 84, Bk 1): 1.8691%	1.8691%
Commercial Lots:	<u>30.000%</u>
Total Allocation	<u>100.000%</u>

SCHEDULE C

River Lot Specific Expense/Improvement Allocations

Residential River Lots (Excluding Condominium River Lot): 2.778%/lot	94.452%
Condominium River Lot (Lot 40, Bk 2): 5.548%/lot	<u>5.548%</u>
Total Allocation	<u>100.000%</u>

*Note that "Green" Lots shall not be assessed for general expenses/improvements.