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## RESTRICTIVE COVENANTS

### PLAT OF McCLELLAND'S BEACH DICKINSON COUNTY, IOWA

Bartels, Bartels and Fox, Limited Partnership, the owner of all of the real estate located within the Plat of McClelland's Beach, Dickinson County, Iowa, hereby makes the following declarations as to limitations, restrictions and uses to which the lots or tracts constituting such subdivision may be put, and hereby specifies that such declaration shall constitute covenants to run with all of the land, and shall be binding on all parties and all persons claiming under them, and for the benefit of, and limitation on, all future owners of property located within said subdivision.

The purpose of these restrictions is to ensure the use of the property 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 community, and thereby secure to each site owner the full benefit and enjoyment of his or her home, with no greater restriction on the free and undisturbed use of each lot than is necessary to ensure the same advantages to the other site owners.

1. Simultaneously with the filing of the final platting documents of the Plat of McClelland's Beach, the developers of said plat will create an Iowa non-

profit corporation to be known as the McClelland's Beach Owners Association, Inc. The purpose of the McClelland's Beach Owners Association, Inc. (hereinafter Owners Association), shall be to provide for the maintenance, upkeep and management of the streets, easements and lake access areas which are dedicated and deeded to the Owners Association. Functions will include but are not limited to snow removal, providing for insurance insuring all properties under the control of the Owners Association, garbage removal, maintenance, improvement and operation of street lights, tree trimming, road maintenance, installation, maintenance and removal of docks, maintenance of entrance areas, payment of real estate or other taxes and assessment levied against any property owned by the association, and other activities to promote the common good within the subdivision.

The Owners Association shall have two divisions, those being the General Membership and the Back Lot Membership. The Back Lot division shall have charge of, and pay all expenses relating to or arising out of ownership, maintenance or operation of the lake access parcels and docks. The back lot division may adopt rules to allocate hoist space among its members; provided, however, that any such rules must establish priority among the various back lots in the order in which back lots were first purchased from the Bartels, Bartels and Fox, Limited Partnership. Thus, for example, the first back lot purchased shall have first right to have a hoist on one of the docks built from the access parcels, and shall also have the first choice as to the location of the hoist, and the second lot sold shall have the second right, and so on.

The General division shall have charge of, and pay all expenses relating to or arising out of, ownership, maintenance or operation all other assets owned or managed by the owners association, and all other activities of the association.

The bylaws of the Owners Association shall govern the manner of election of officers, and the conduct of the affairs of the Owners Association. The Owners Association shall be authorized to pass reasonable rules and regulations relating to

the use of the areas governed by the Owners Association and with respect to garbage removal and nuisance abatement. All garbage shall be disposed of in accordance with the rules and regulations promulgated by the Owners Association and only in designated areas.

None of the roads, streets, lake access parcels or easements deeded to the Owners Association may be partitioned, subdivided or otherwise divided; nor may the Owners Association transfer, alienate or sell those properties; provided, however, that perpetual use of the easements is hereby granted to all utility service providers for their use in providing electricity, gas, communication utilities, water, sewer and such other utilities as may be appropriate.

The Owners Association may adopt rules and regulations for the imposition of fees and dues for the purpose of funding the activities to be performed by the Owners Association. Each division of the Owners Association shall establish an annual budget for the conduct of its operations and present said budget at the annual meeting of that division of the Owners Association for adoption by the members. Once said budgets are adopted, each division of the Owners Association shall levy dues against each membership unit or lot within its division. The dues levied by the General Membership division shall be equally divided among all of the lots in the subdivision, and no lot shall be charged a greater amount than any other lot. The Back Lot division shall only levy dues against those lots not having direct access to Spirit Lake, which shall be in addition to the dues levied against those lots by the General Membership division. The separate dues levied by the Back Lot division shall likewise be levied in an equal amount to each back lot. The Association shall keep separate records and accounts with respect to the Back Lot and General dues, and only dues from the Back Lots shall be expended on expenses relating to the lake access parcels and the docks or other improvements placed or used thereon. The amounts levied against each lot shall be paid by the owners of the lot to the Owners Association as an annual capital contribution no later than April 1 of each year, and in the event that the fees are not paid by said date, then:

a. A late fee may be imposed in such amount or amounts as may be determined by the Owners Association;

b. The Owners Association may develop reasonable rules to prohibit any delinquent lot from participating in the affairs of the Owners Association or using the facilities of the Owners Association;

c. The amount of said fees and late charges as levied by the Owners Association shall constitute a lien against the delinquent lot, and said lien may be enforced by the Owners Association by the filing of an action law, or in equity in the nature of a foreclosure. The foreclosure process shall, as nearly as possible, comport with the laws of Iowa relating to the foreclosure of mortgages. Priority of the Owners Association's lien shall be established by the filing of a Notice of Lien or *lis pendens*, or the filing of an action to foreclose. In the event of an action to foreclose said lien, the owner of the lot shall pay, in addition to the fees and late charges, the Owners Association's reasonable legal fees and the costs of said action.

2. The owner of each lot shall keep up the appearance of all improvements on the premises so that they shall not be dilapidated or out of character with the improvements of other lots in the neighborhood, and shall keep the premises in a clean, tidy, neat and sanitary condition.

3. No business, trade, manufacturing, retail or commercial enterprise of any kind shall be conducted upon any lot within the subdivision, and each lot shall be used only for single family residential purposes. Provided, however, that nothing in this restriction shall prohibit a resident from working in his or her home, so long as doing so does not generate any additional traffic in the subdivision.

4. No lot owner may use their premises in such a way that would result in the pollution or damage of the lake or any wetlands adjoining the premises, or deposit any refuse, sewage or other material that might tend to pollute the lake or the wetlands or otherwise impair the ecological balance of the surrounding lands.

5. The owners of Lots 77, 78, 80, 81, 93, 94, 97, 98, and 99, shall, upon request of any owner of any lot not having direct access to Spirit Lake, execute and deliver to the said back lot owner, any written document requested by the back lot owner, or required by the Iowa Department of Natural Resources, or any other competent legal authority, in order to establish that the owners of Lots 77, 78, 80, 81, 93, 94, 97, 98, and 99 have no objection and agree to the erection of a dock extending into Spirit Lake from the access parcel adjoining their lots, or the installation of boat hoists off of the docks, or to otherwise support an application for a dock permit. Any docks installed from the access parcels shall be no more than four feet wide. Boat hoists shall be installed in such a way as to minimize their intrusion over the extension of the boundaries of the adjoining lots.

6. These restrictions shall operate as covenants running with the land for the benefit of any and all persons who now own or may hereafter acquire an ownership interest in any property within the McClelland's Beach subdivision, and such persons and the McClelland's Beach Owners Association, are specifically given the right to enforce these regulations through any proceedings, at law or in equity, against any person or persons violating or threatening to violate such restrictions, and to recover and damages suffered by them from any violation thereof.

Bartels, Bartels and Fox, Limited  
Partnership.

BY:   
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**BYLAWS**  
**OF**  
**McCLELLAND'S BEACH OWNERS ASSOCIATION, INC.**

**ARTICLE I - OBJECTIVES**

**Section 1.1 Objectives.** To provide a framework for management and maintenance of property owned or administered by the McClelland's Beach Owners Association, Inc. and located within the McClelland's Beach Subdivision, Dickinson County, Iowa.

**Section 1.2 Not for Profit.** This Association is not organized for profit, or organized to engage in an activity ordinarily carried on for profit, and no part of its net earnings shall inure to the separate benefit of any member or individual.

**ARTICLE II - OFFICES**

**Section 2.1 Principal Office.** The principal office of the Association in the State of Iowa shall be located in Dickinson County, Iowa. The Association may have such other offices, either within or without the State of Iowa, as the Board of Directors may determine or as the affairs of the Association may require from time to time.

**Section 2.2 Registered Office and Registered Agent.** The Association shall have and continuously maintain in the State of Iowa a registered office, and a registered agent whose office is identical with such registered office, as required by the Revised Iowa Nonprofit Corporation Act. The registered office may be, but need not be, the same as its principal office in the State of Iowa. The registered office or

the registered agent at such registered office, or both, may be changed from time to time by the Board of Directors by compliance with the applicable provisions of the Revised Iowa Nonprofit Corporation Act.

### ARTICLE III - MEMBERS

Section 3.1 Members Defined. There shall be two classes of Members; those being (1) General Membership and (2) Back Lot Membership. Every lot within the plat of the McClelland's Beach Subdivision, Dickinson County, Iowa shall be entitled to one General Membership unit. In addition, every lot not directly abutting Spirit Lake, shall also be entitled to one Back Lot Membership. The two classes shall function as separate divisions within the same corporation, with the Back Lot Membership class having charge of the access parcels, and the General Membership having charge of all other assets of the corporation. Separate books of account shall be kept regarding the two classes, and the General Membership shall not be charged with any expense relating to the lake access parcels.

All membership units of either class shall stand in the names of those parties who are the record title holders of the respective lots within the subdivision. No member may be voted out of the corporation or removed; provided, however, that membership privileges may be suspended for non-payment of dues as provided in rules and regulations adopted by the association. Each membership unit shall be entitled to one vote, irrespective of the number of parties holding an ownership interest in a lot.

### ARTICLE IV - MEETINGS OF MEMBERS

Section 4.1 Annual Meeting. The annual meetings of the members shall be held on the last Saturday of May of each year, or at such other time as may be designated for the purpose of electing directors and officers, and for the transaction of such other business as may come before the meeting. If the election of directors or officers shall not be held on the day designated for any annual meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the members as soon thereafter as conveniently may be. The meeting of the General Membership shall be held first, followed by a meeting of the Back Lot Membership.

Section 4.2 Special Meetings. The Board of Directors may designate any place in Dickinson County, Iowa, as the place of meeting for any annual meeting or

for any special meeting of the members called by the Board of Directors or the President. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the registered office of the Association.

**Section 4.3 Notice of Meetings.** Written or printed notice stating the place, day and hour of the meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered, either personally or by the mail, to each member not less than seven (7) nor more than thirty days before the date of such meeting, by or at the direction of the Board of Directors, or the President, or the Secretary or persons calling the meeting. If mailed, the notice of the meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at such member's address as it appears on the records of the Association, with postage thereon prepaid.

**Section 4.4 Quorum.** Fifteen percent (15%) of the membership units of each class shall constitute a quorum for that class. If a quorum is not present at any meeting of members, a majority of the members present and entitled to vote at such meeting may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at such meeting as originally called. The members present at any meeting for which a quorum was in attendance at the beginning of the meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

**Section 4.5 Proxies.** At any meeting of members, a member entitled to vote may vote by proxy executed in writing by the member or by the member's duly authorized attorney in fact. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

**Section 4.6 Voting of Members.** A majority of the members entitled to vote and present or represented by proxy shall be necessary for the adoption of any motion unless otherwise provided by law or these Bylaws. Memberships standing in the name of a partnership may be voted by any one of the partners of the partnership; memberships standing in the name of two or more people or entities as co-tenants of any kind may be voted by any one of the co-tenants; and memberships standing in the name of a corporation or association may be voted by such officer or



agent as the Bylaws of such corporation or association may prescribe, or, in the absence of such provision, as the Board of Directors of such corporation or association may determine.

## ARTICLE V - BOARD OF DIRECTORS

**Section 5.1 General Powers.** The affairs of the Association shall be managed by two Boards of Directors, one governing the affairs of the General Membership, and another governing the affairs of the Back Lot Membership.

**Section 5.2 Number, Tenure and Qualifications.** Each of the Boards of Directors shall consist of not less than three nor more than seven as fixed from time to time by the Board of Directors. The number of directors as fixed by the Board of Directors shall be elected at the annual meeting of the members by vote of the members. Each Director shall hold office for a term of three years and until his or her successor shall have been elected or qualified. The initial Board of Directors shall be elected in staggered terms so that one-third of the initial board shall serve three years; one-third for two years; and one-third for one year.

**Section 5.3 Regular Meetings.** Regular annual meetings of the Boards of Directors shall be held without other notice than this Bylaw, immediately after, and at the same place as, the annual meeting of members. The Boards of Directors may provide by resolution the time and place for the holding of additional regular meetings of the Board without other notice than such resolution.

**Section 5.4 Special Meetings.** Special meetings of the Boards of Directors may be called by or at the request of the President or any three directors. The person or persons authorized to call special meetings of the Boards of Directors may fix any place within the State of Iowa as the place for holding any special meeting of the Boards of Directors called by them.

**Section 5.5 Notice.** Notice of any special meeting of a Board of Directors shall be given at least three days previously thereto by written notice delivered personally or sent by mail or e-mailed to each Director at such Director's address as shown by the records of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is given by email, such notice shall be deemed to be delivered when return notice is delivered to the sending party. Any Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the

business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

**Section 5.6 Quorum.** A majority of the number of Directors entitled to vote shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present at any meeting of a Board of Directors, a majority of the Directors present and entitled to vote at such meeting may adjourn the meeting from time to time without further notice.

**Section 5.7 Manner of Acting.** Except as otherwise provided in these Bylaws, the act of a majority of the Directors present and entitled to vote at such meeting at which a quorum is present shall be the act of the Board of Directors.

**Section 5.8 Vacancies.** Any vacancy occurring in the Boards of Directors and, to the extent permitted by law, any directorship to be filled by reason of an increase in the number of Directors, shall be filled by the affirmative vote of a majority of the remaining directors entitled to vote though less than a quorum of the Board of Directors. A Director so elected shall serve for the unexpired term of his predecessor in office shall serve for the unexpired term of his predecessor in office or the full term of such new directorship, as the case may be.

**Section 5.9 Compensation.** Directors as such shall not receive any stated salaries for their services, but nothing herein contained shall be construed to preclude any Director from being reimbursed for expenses incurred in serving the Association or from serving the Association in any other capacity and receiving reasonable compensation therefor.

**Section 5.10 Informal Action by Directors.** Any action required to be taken at a meeting of the Directors, or any action which may be taken at a meeting of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors entitled to vote.

**Section 5.11 Meetings by Conference Telephone.** Members of the Boards of Directors may participate in a meeting of the Board by conference telephone or similar communications equipment. All persons participating in the meeting shall be able to hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at the meeting. Records of the meeting shall be kept as required by Article X of these Bylaws.

**Section 5.12 Presumption of Assent.** A Director of the Association who is present at a meeting of a Board of Directors at which action on any Association matter is taken shall be presumed to have assented to the action taken unless his or

her dissent shall be entered in the minutes of the meeting or unless he or she shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association promptly after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

**Section 5.13 Limitations on Directorships.** Only one Director may be elected from any one membership unit. Thus in the event a membership unit is owned by two or more persons, only one of them may be a director of the Association. Nothing in this section shall prohibit a person from being a director of both the General Membership and the Back Lot Membership.

**Section 5.14 Directors Subject to Removal.** The members may remove a Director by the affirmative vote of a majority of the members. Such a removal vote may be held at any regular meeting of the membership. Further, a special meeting shall be called for the purpose of voting on removal upon the written demand of not less than 60 percent of the membership units.

#### SECTION VI - OFFICERS

**Section 6.1 Officers.** Each of the two divisions of the Association shall have its own officers. The officers of the each division shall be a President, a Vice-President, and a Secretary/Treasurer, each of whom shall be elected by the directors of that division. Such other officers and assistant officers as may be deemed necessary may be elected by the Boards of Directors and shall have the authority and perform the duties prescribed, from time to time, by the Board of Directors.

The President of the General Membership division shall be the chief executive officer of the entire Association.

**Section 6.2 Election and Term of Office.** The Officers shall be elected annually by a vote of the directors of the relevant division at the regular annual meeting of the directors. If the election of the Officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. The Officers shall hold office until the next regular annual meeting of the directors, and until their successors shall have been duly elected and shall have qualified.

**Section 6.3 Removal.** Any officer may be removed by a vote of a majority of all the members of the relevant Board of Directors whenever in its judgment the best interests of the Association would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

**Section 6.4 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

**Section 6.5 President.** The President shall preside at all meetings of the members and of the relevant Board of Directors. He or she may sign, with the Secretary or any other proper officer of the division of the Association authorized by the Board of Directors, any deeds, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws or by statute to some other officer or agent of the Association; and in general he or she shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

**Section 6.6 Vice-President.** In the absence of the President or in event of his or her inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President shall perform such other duties as from time to time may be assigned by the President or by the Board of Directors.

**Section 6.7 Secretary - Treasurer.** If required by the Board of Directors, the Secretary - Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine, and, if any, the expense of the bond shall be paid by the division being served. He or she shall keep the minutes of the meetings of the members and of the Board of Directors in one or more books provided for that purpose; and in general perform all duties incident to the Office of Secretary and such other duties as from time to time may be assigned by the President or by the board of Directors. He or she shall have charge and custody of and be responsible for all funds and securities of the division from which he or she was elected, and receive and give receipts for moneys due and payable to the division and from any source whatsoever; and deposit all such moneys in the name of the division of the Association in such banks or other depositories as shall be selected in accordance with the provisions of Article VII of these Bylaws; and in general perform all the duties incident to the Offices of Secretary and Treasurer and such other duties as from time to time may be assigned by the President or by the Board of Directors.

Section 6.8 Other Assistants and Acting Officers. The Board of Directors shall have the power to appoint any person to act as an assistant to any officer, or to perform the duties of such officer whenever for any reason it is impractical for such officer to act personally, and such acting officer or assistant so appointed by the Board shall have the power to perform all of the duties of the officer to which he is so appointed to be assistant, or as to which he is so appointed to act, except such power as may be otherwise defined or restricted by the Board of Directors.

Section 6.9 Compensation. Officers may receive such compensation for their services as may be set by the Board of Directors of the relevant division of the corporation.

#### ARTICLE VII - COMMITTEES

Section 7.1 Committees of Directors. Each of the Boards of Directors, by resolution adopted by a majority of the entire Board of Directors, may designate and appoint one or more committees, each of which shall consist of two or more directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board of Directors in the management of the Association; provided, however, that no such committee shall have the authority of the Board of Directors in reference to amending, altering or repealing the Bylaws; amending the Articles of Incorporation; adopting a plan of merger or consolidation with another corporation or association; recommending to the members the sale, lease, exchange or other disposition of all or substantially all of the property and assets of the Association; recommending to the members the voluntary dissolution of the Association or a revocation thereof; adopting a plan for the distribution of the assets of the Association; or amending, altering or repealing any resolution of the Board of Directors. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed upon it or him by law.

Section 7.2 Other Committees. Other committees not having and exercising the authority of the Board of Directors in the management of the Association may be appointed by the President for such purposes and for such duration as the President may from time to time designate. Any member thereof may be removed by the President whenever in the President's judgment the best

interests of the Association shall be served by such removal. The President may terminate any committee so appointed as the President deems appropriate.

**Section 7.3 Term of Office.** Except as otherwise provided by the Board of Directors in the resolution appointing a committee member as provided in Section 7.1 of these Bylaws or by the President in appointing a committee member as provided in Section 7.2 of these Bylaws, each member of a committee shall continue as such until the next annual meeting of the Directors and until his or her successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

**Section 7.4 Vacancies.** Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

**Section 7.5 Quorum.** A majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

**Section 7.6 Rules.** Each committee may adopt rules of procedure not inconsistent with these Bylaws or with rules adopted by the Board of Directors.

**Section 7.7 Informal Action.** Any action required or permitted to be taken by a committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the committee.

**Section 7.8 Meetings by Conference Telephone.** Members of a committee may participate in a meeting of the committee by conference telephone or similar communications equipment. All persons participating in the meeting shall be able to hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at the meeting. Records of the meeting shall be kept as required by Article X of these Bylaws.

## **ARTICLE VIII - CONTRACTS, LOAN, CHECKS, DEPOSITS AND FUNDS**

**Section 8.1 Contracts.** The Board of Directors of each division may authorize any officer or officers, agent or agents of that division, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances. Provided, however the

Directors of each division shall, at the separate expense of that division, constantly maintain, in full force and effect, insurance with such policy limits as may be determined by the Directors as being sufficient to protect the interests of the association and of that division of the association, and its members, insuring against liability of any kind which may be incurred on account of the ownership, maintenance, operation or use of property under the management or control of this association.

**Section 8.2 Checks, Drafts, etc.** All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the relevant division of this Association, shall be signed by such officer or officers, agent or agents of the division and in such a manner as shall from time to time be determined by resolution of the Board of Directors.

**Section 8.3 Deposits.** All funds of the each of the divisions of this Association shall be deposited from time to time to the credit of that division of the Association in such banks or other depositories as the Board of Directors may select.

**Section 8.4 Gifts.** The Board of Directors may accept on behalf of the Association any contribution, gift, bequest or devise consistent with the objectives of the Association.

## ARTICLE IX - CERTIFICATES OF MEMBERSHIP

**Section 9.1 Certificates.** The Boards of Directors may provide for the issuance of certificates evidencing membership in the Association and in the relevant division of the association, which shall be in such form as may be determined by the Board. All certificates evidencing membership shall be consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the Association. If any certificate shall become lost, mutilated or destroyed, a new certificate may be issued therefor upon such terms and conditions as the Board of Directors may determine.

## ARTICLE X - BOOKS AND RECORDS

**Section 10.1 Books and Records Maintained.** Each of the divisions of the Association shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its members, Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the members entitled to vote.

**Section 10.2 Inspection.** All books and records of the Association may be inspected by any member, or his or her agent or attorney for any purpose at any time during normal business hours.

**Section 10.3 Audit.** The Board of Directors may, in their sole discretion, have the books and records of accounts of the Association audited annually by a certified public accountant and, if so audited, shall present the report at the annual meeting of the members.

#### **ARTICLE XI - FISCAL YEAR**

**Section 11.1 Fiscal Year.** The fiscal year of the Association shall begin on January 1 of each year and shall end on December 31 of each year.

#### **ARTICLE XII - WAIVER OF NOTICE**

**Section 12.1 Waiver of Notice.** Whenever any notice is required to be given under the provisions of the Revised Iowa Nonprofit Corporation Act or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

#### **ARTICLE XIII - INDEMNIFICATION OF MEMBERS, DIRECTORS, OFFICERS AND COMMITTEE MEMBERS. LIMITATIONS ON LIABILITY.**

**Section 13.1 Indemnification, Non-liability.** The Members, Directors, and Officers of the Corporation, and their private property, shall not be liable in any manner for corporate debts, obligations, undertakings, or liabilities; and, except as may be expressly prohibited by the Revised Iowa Nonprofit Corporation Act, the Members, Directors, and Officers shall be exempted and indemnified by the corporation against any personal expense, losses, or liabilities, which may accrue from time to time in any manner by reason of the ownership, administration, or distribution of the corporate property or funds, or by reason of any acts of commission or omission on their part in the conduct of the corporate affairs, so long as they act in good faith. They shall not be liable or accountable in any manner for honest mistakes or errors of judgment, nor for errors or wrongdoing of employees, agents, brokers, attorneys, or servants, nor for interest on funds temporarily idle. They shall have the right at all times and in all matters to act upon any



information or evidence deemed by them reliable, without incurring any personal liability or responsibility of any kind or in any manner. No person dealing with the Members, Directors, or Officers of the Corporation shall be under any obligation to inquire into their power or authority or into the validity, expediency, or propriety of their actions, decisions, or transactions or to see to the proper application of money or property paid over or transferred to the Corporation. Notwithstanding any provision to the contrary, any right to indemnification shall be null and void to the extent that its existence would result in the loss of the tax exempt status of this Corporation or would be a prohibited transaction.

**Section 13.2 Expenses Payable in Advance.** Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Association in advance of the final disposition of such claim, action, suit or proceeding and as such expenses accrue, as authorized in the manner provided in Section 13.4 of these Bylaws upon receipt of an undertaking by or on behalf of the person seeking indemnity to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Association as authorized in this Article.

**Section 13.3 Rights Nonexclusive.** The indemnification provided by this Article shall be in addition to and shall not be deemed exclusive of any other rights to which a person may be entitled under any statute, agreement, vote of members or disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

**Section 13.4 Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, member of a committee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee, member of a committee, agent or trustee of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person of such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against such liability under the provisions of this Article.

#### **ARTICLE XIV - AMENDMENTS**

**Section 14.1 Amendments to Bylaws and Articles of Incorporation.** The Articles of Incorporation and the Bylaws of the corporation may be amended by a process which shall begin with the adoption by the Board of Directors of the

General Membership, of a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the General Membership entitled to vote at either an annual or special meeting. Such resolution shall not be adopted except by the affirmative vote of at least two-thirds (2/3) of the Directors of the General Membership division, or upon the written request of at least fifty percent (50%) of the members of the General Membership division. The resolution shall set forth the amendment proposed and direct that it be submitted to the next annual meeting of members of the General Membership division. Notice of the annual meeting where any amendment is to be proposed shall include the proposed amendment. The proposed amendment shall be adopted and become effective only upon receiving at least eighty percent (80%) of the votes which members of the General Membership division present at such meeting are entitled to cast.

#### ARTICLE XV - MISCELLANEOUS

**Section 15.1 Corporate Powers and Purposes.** The Corporation shall have unlimited power to engage in and do any lawful act concerning any and all lawful purposes for which corporations may be organized under the provisions of the Revised Iowa Nonprofit Corporation Act, Chapter 504, Code of Iowa.

**Section 15.2 Prohibited Transactions.** No part of the net earnings of this Corporation shall inure to the benefit of any individual, and no part of the activities of this Corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation.

No loans shall be made by the Corporation to its employees, Members, Directors, or Officers. Any Director or Officer who assents to or participates in the making of any such loan shall be liable to the Corporation for the amount of such loan until the repayment thereof.

This Corporation shall not:

- (a) lend any part of its income or corpus, without the receipt of adequate security and a reasonable interest;
- (b) pay any compensation, in excess of a reasonable allowance for salaries and other compensation for personal services actually rendered;
- (c) make any part of its services available on a preferential basis,
- (d) make any substantial sale of securities or any other property, for less than an adequate consideration in money or money's worth to; or

(e) engage in any other transaction which results in a substantial diversion of its income or corpus, to any person.

**Section 15.3 Conflicts of Interest.** The employees, Members, Board, and Officers, herein referred to individually and collectively as "Trustees," are to avoid even the appearance of a conflict of interest in all dealings with the Corporation. The Corporation should maintain as much autonomy as possible in selecting and changing suppliers of goods and services. A Trustee shall be considered to have a conflict of interest if (a) such Trustee has existing or potential financial or other interests which impair or might reasonably appear to impair such Trustee's independent, unbiased, judgment in the discharge of his or her responsibilities to the Corporation, or (b) such Trustee is aware that a member of his or her family (which for purposes of this paragraph shall be spouse, parents, siblings, children, and any other relative), or any organization in which such Trustee (or member of his or her family is an officer, director, employee, member, partner, trustee, or controlling stockholder ("Related Entities") has such existing or potential financial or other interests. All Trustees shall disclose any possible conflicts of interest at the earliest practicable time. No Trustee shall vote on any matter under consideration at a Board or Committee meeting in which such Trustee has a conflict of interest. The minutes of such meeting shall reflect that a disclosure was made and that the Trustee having a conflict of interest abstained from voting. As planners, policy makers, and overseers of the Corporation, Trustees are exposed to much proprietary information. Long-range plans and restricted data about financial matters are examples of the knowledge available only to insiders. Trustees have ethical and legal obligations to maintain those matters as confidential and to refrain from utilizing proprietary information for their personal gain or that of the Related Entities. If a Trustee is in doubt as to the propriety of using for personal purposes information gained through his or her participation as a Trustee, the question should be discussed with the chairperson of the Board and with an attorney who understands the workings of the Corporation and the legal limits on the use of information by insiders.

No contract or other transaction between the Corporation and one or more of the Trustees or the Related Entities shall be either void or voidable because of such relationship or interest, or because such Trustee is present at the meeting of the Corporation's Board of Directors or Committee thereof which authorized, approved, or ratified such contract or transaction; provided, that such person shall disclose his

or her interest to the Board of Directors or any Committee thereof prior to its authorization, approval, or ratification of such contract or transaction and, provided further, such person does not vote at the meeting of the Board of Directors or the Committee thereof on the issue of the authorization, approval, or ratification of such a contract or transaction. He or she may, not with respect to that item, be counted for purposes of establishing the presence of a quorum at any such meeting.

Any disclosure of a person's interest shall appear in the minutes of the meeting of the Board of Directors or Committee thereof.

A trustee who has a conflict of interest shall not take part in the discussion of such matters unless all persons interested in such contract or transaction shall also have the right to take part in the same discussion of such matter. The trustees' participation in the discussion shall be limited to statements concerning the fairness and reasonableness of such contract or transaction.

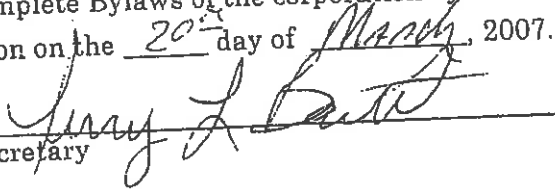
**Section 15.4 Loyalty.** The Members, Board, Officers, and employees (herein referred to individually and collectively as "Trustees"), must refrain from any private or public activity which might be, or appear to be, in conflict with the interests of the Corporation. Loyalty to the Corporation must be in accordance with the highest ethical principles and professional obligations of the Trustees. All Trustees must respect the confidentiality of any inside information acquired through their relationship with the Corporation. Breach of this duty of loyalty and confidentiality shall, in addition to such other rights the Corporation may have, be grounds for dismissal or removal of the Trustee from the position held by such Trustee. All Trustees shall refrain from a breach of the duty of loyalty to the Corporation, or acts or omissions not in good faith, or which involve intentional misconduct or knowing violation of the law, or a transaction from which a Trustee derives an improper personal benefit.

**Section 15.5 Roberts Rules of Order.** All meetings of the Members, Board, Executive Committee, and committees will be conducted in accordance with Roberts Rules of Order.

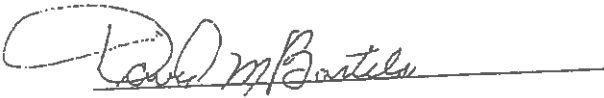
**CERTIFICATION OF SECRETARY**

The undersigned secretary of the corporation hereby certifies that the foregoing Bylaws were adopted as the complete Bylaws of the corporation by the First Board of Directors of said corporation on the 20<sup>th</sup> day of March, 2007.

Secretary

  
\_\_\_\_\_

Attest:

  
\_\_\_\_\_

Prepared by: Michael L. Zenor, Attorney at Law, PO Box 317, Spencer, IA 51301; Telephone: 712/262-1187  
Return to: Michael L. Zenor, Attorney at Law, PO Box 317, Spencer, IA 51301

### AGREEMENT

WHEREAS, Bartels, Bartels and Fox, Limited Partnership, is the current owner of certain property which is being submitted to a subdivision plat to be known as the Plat of McClelland's Beach, Dickinson County, Iowa, and;

WHEREAS, contained within said plat are certain roads and easements, and;

WHEREAS, the property to be subdivided has been previously developed and rented, and it is impracticable to require complete compliance with all zoning and subdivision regulations and as a part of the subdivision process, the developers have requested certain variances, and;

WHEREAS, as a condition of the approval of the subdivision plat, Dickinson County requires agreement that the roads, streets, and easements will remain private roads, streets and easements and that no request will be made now or in the future for the county to acquire ownership and the duty to maintain said roads, streets and easements.

NOW THEREFORE, it is agreed as follows:

1. Simultaneously with the filing of the subdivision plat, the developers will deed the roads, streets, easements and other property, to an Iowa non-profit corporation to be known as McClelland's Beach Owners Association, Inc. Both Bartels, Bartels and Fox, Limited Partnership, as the current owners of said property, and McClelland's Beach Owners Association, Inc., as the future owner of said property, do hereby agree that they will not now, nor will they at any time in

the future, make any request of Dickinson County, Iowa, that the County assume ownership of the roads, streets or easements within the subdivision plat known as McClelland's Beach. Said restrictions shall be noted in the deed conveying the roads, streets and easements to the McClelland's Beach Owners Association, Inc. Perpetual use of the easements shall be granted to all utility service providers for their use in providing electricity, gas, communication utilities, water, sewer and such other utilities as may be appropriate.

2. Dickinson County, Iowa, does hereby grant to Bartels, Bartels and Fox, Limited Partnership, and their successors in interest, a variances for all non-conforming uses within the plat as shown by the subdivision plat of James R. Blum dated 3-19-2007.

3. All lots and structures now existing which do not comply with the Dickinson County Zoning Ordinance are accepted and granted a variance. Nothing in this grant of a variance shall entitle the party receiving the variance to expand on the non-conforming use. Provided, however, that the prohibition against replacing non-conforming buildings or structures which are damaged in an amount exceeding 50 percent of their assessed value, as contained in Article 22, Section 6 of the current Dickinson County Zoning Ordinance, or any similar provision in any subsequent enactment of a Dickinson County Zoning Ordinance, is permanently waived as to the house on Lot 63 of the subdivision.

Bartels, Bartels and Fox, Limited Partnership,

BY: David M Bartels mgr  
David Bartels, Managing Partner

STATE OF IOWA, COUNTY OF DICKINSON } SS

This instrument was acknowledged before me on this 20<sup>th</sup> day of March, 2007, by David Bartels as Managing Partner of Bartels, Bartels and Fox, Limited Partnership.

Michael L. Zenor  
Notary Public - State of Iowa

MICHAEL L. ZENOR  
Commission Number 740634  
My Commission Expires  
May 8, 2009

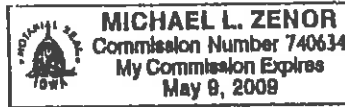
McCLELLAND'S BEACH OWNERS  
ASSOCIATION, INC.,

BY: *David M. Bartels*  
David Bartels, Managing Partner

STATE OF IOWA, COUNTY OF DICKINSON ) SS

This instrument was acknowledged before me on this 20<sup>th</sup> day of March, 2007, by David Bartels as Managing Partner of McClelland's Beach Owners Association, Inc.

*Michael L. Zenor*  
Notary Public - State of Iowa



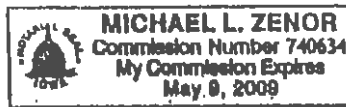
DICKINSON COUNTY, IOWA,

BY: *David H. Gottsche*  
DAVID GOTTSCHÉ NAME  
Chairman, Board of Supervisors TITLE

STATE OF IOWA, COUNTY OF DICKINSON ) SS

This instrument was acknowledged before me on this 20<sup>th</sup> day of March, 2007, by DAVID GOTTSCHÉ as Chair, Bd. of Supervisors of Dickinson County, Iowa.

*Michael L. Zenor*  
Notary Public - State of Iowa





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JAN BORTSCHELLER  
RECORDER  
DICKINSON COUNTY, IOWA  
FEE \$ 207<sup>00</sup>

Prepared by: Michael L. Zenor, Attorney at Law, PO Box 317, Spencer, IA 51301; Telephone: 712/262-1187  
Return to: Michael L. Zenor, Attorney at Law, PO Box 317, Spencer, IA 51301

**PLAT OF McCLELLAND'S BEACH  
(A Subdivision)  
(Dickinson County, Iowa)**

**DEDICATION**

We, the undersigned, Bartels, Bartels and Fox, Limited Partnership, hereby certify that Bartels, Bartels and Fox, Limited Partnership, is the owner in fee simple absolute, of all of the real estate embraced within the limits of the plat of McClelland's Beach, in Dickinson County, Iowa, which plat is attached hereto and by this reference, made a part of this Dedication.

Bartels, Bartels and Fox, Limited Partnership, the undersigned, does further hereby certify and declare that said plat was made with its consent, and that this Dedication is the free act and deed of the undersigned.

1. All of the access parcels as shown on the final subdivision plat as Lots 138, 141, 142, 143 and 144, together with all of the streets and easements, will be conveyed to the McClelland's Beach Owners Association, Inc., an Iowa non-profit corporation, which shall perpetually own and hold said streets, easements and access parcels for the benefit of the lot owners owning lots in the Plat of McClelland's Beach. This does not constitute a dedication to the public and all of said parcels shall remain privately held and for the benefit only of the owners of the lots in the subdivision, and with the access parcels being held for the benefit only of the Back Lot Division of the Owners Association. Provided, however, that perpetual

use of the easements is hereby granted to all utility service providers for their use in providing electricity, gas, communication utilities, water, sewer and such other utilities as may be appropriate.

The McClelland's Beach Lot Owners Association, Inc., shall enter into a contract with Dickinson County, Iowa, whereby the owners association will agree, as a condition of the approval of this subdivision plat, that neither it nor any successor in interest, shall ever make application to Dickinson County, Iowa, requesting that Dickinson County acquire ownership or dominion over said roads or easements or access parcels.

2. In addition to the foregoing, a limited access easement for ingress and egress is hereby created in favor of Lot 98. The terms and conditions of said access easement are as follows:

1. The access easement shall consist of 2 parcels, each parcel being 5 foot in width, and each 5 foot wide parcel being directly adjacent to the access parcel known as Lot 144. The access easement is as shown upon the final plat of the subdivision of McClelland's Beach.

2. This easement is created only to allow the occasional passage of commercial or other large vehicles for access to Lot 98 for purposes such as construction and delivery of furniture or other personal property or other similar purposes. It is intended that the owners of Lot 98 will be allowed to make only occasional use of this easement when the same is made necessary by virtue of the need for transportation of items which cannot reasonably be conveyed by traveling on the 10 foot wide access parcel.

3. This easement shall not be used for parking or for any other permanent or long-term purpose.

3. Easements are hereby created in favor of the McClelland's Beach Owners Association, Inc. and burdening Lots 77, 78, 80, 81, 93, 94, 97, 98 and 99. These easements are granted for the purpose of allowing the McClelland's Beach Owners Association, Inc. to construct docks from the access parcels adjoining those lots which are burdened by these easements, and to install boat hoists adjacent to

said docks. No dock shall be more than 4 feet in width. Boat hoists must be installed in such a way as to minimize their intrusion over the extension of the boundaries of the adjoining lots. This easement permits the obstruction of view and interference with aquatic use caused by the erection of docks and the installation of boat hoists in conformity with this paragraph, even though said boat hoists may extend beyond the extension of the boundary line of the adjoining lot. The easement hereby created further requires the owners of Lots 77, 78, 80, 81, 93, 94, 97, 98 and 99 to execute and deliver to any back lot owner, or to the McClelland's Beach Owners Association, Inc., any written document requested by the back lot owner or the Owners Association, or required by the Iowa Department of Natural Resources, or any other competent legal authority, in order to establish that the owners of Lots 77, 78, 80, 81, 93, 94, 97, 98, and 99 have no objection and agree to the erection of the docks or the installation of boat hoists contemplated by this paragraph, or to otherwise support an application for a dock permit.

4. A use restriction is specifically created encumbering Lot 139. No part of said Lot may be used by the general public for parking or for access to Spirit Lake.

Dated at Spencer, Iowa, this 20<sup>th</sup> day of March, 2007.

Bartels, Bartels and Fox, Limited Partnership,

By [Signature]  
David Bartels, Managing Partner

STATE OF IOWA, COUNTY OF DICKINSON ) SS

This instrument was acknowledged before me on this 20 day March, 2007, by David Bartels as Managing Partner of Bartels, Bartels and Fox, Limited Partnership.

[Signature]  
Notary Public - State of Iowa

