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TIMOTHY J. BRIEN
RECORDER

DECLARATION OF SUBMISSION OF PROPERTY TO
HORIZONTAL PROPERTY REGIME FOR
DRUID HILL TOWNHOME CONDOMINIUMS

RECITALS:

WHEREAS, Clarke Company Limited, being the Declarant as herein defined, is the sole and exclusive owner in fee simple of the following described real estate situated in Des Moines, Polk County, Iowa, to-wit:

See **Exhibit A** attached hereto and by this reference incorporated herein; and

WHEREAS it is the desire of the Declarant to submit the above-described property to condominium ownership in order to perpetuate the division and provide for the further development of the property above-described, and to impose certain covenants and restrictions thereon so that said property together with the buildings located and to be located thereon (hereinafter called the "Property") shall constitute a condominium project under the provisions of Chapter 499B of the Code of Iowa, to be known as the Druid Hill Townhome Condominiums, and to permit subsequent conveyance of the Property unit by unit, all in accordance with the terms and conditions hereof; and

WHEREAS, it is intended that this Declaration shall be in force and take effect from and after the date that it is recorded in the office of the Polk County Recorder, subject to further amendment as herein provided;

NOW, THEREFORE, the undersigned owner, as Declarant, does hereby declare that all of the Property is held and shall be held subject to the following covenants, conditions, restrictions, uses, and limitations, all of which are declared and agreed to be in the furtherance of a plan for the improvement of the Property and shall run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and any persons owning or having an interest in the real property, improvements and appurtenances thereto, their grantees, successors, heirs, executors, administrators, demises and assigns.

ARTICLE I
DEFINITIONS AND GENERAL

Section 1. "Act" means the Horizontal Property Act of the State of Iowa.

Section 2. "Association" means the Druid Hill Townhome Condominium Association, Inc., its successors and assigns, an Iowa nonprofit corporation.

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Section 3. "Board" means the Board of Directors of the Association, and shall mean the Board of Administration referenced in the Act. Except for powers expressly reserved to the respective owners themselves by the Act or this Declaration, as amended from time-to-time, actions of the Board of Directors of the Association shall be deemed the actions of the Council of Co-owners referred to in the Act.

Section 4. "Buildings" means the structural improvements located on the Parcel, as hereinafter defined, and forming part of the Property and containing one or more Units.

Section 5. "Bylaws" means the Bylaws of the Association, attached hereto as **Exhibit B** and by this reference made a part hereof, as amended from time-to-time.

Section 6. "Common Elements" means all of the Property except for the Units, and, without limiting the generality of the foregoing, shall include those items defined as "General Common Elements" in the Act, including the following now or hereafter situated on the Parcel, to-wit:

- (a) The Parcel;
- (b) All foundations, floors, bearing walls and columns, exterior walls of each Unit and of the Buildings, ceilings and roofs, halls, lobbies, stairways, and entrances and exits or communication ways, chimneys, pipes, conduits, and electrical wiring;
- (c) Outside parking areas, roofs, yards, and gardens, except as otherwise herein provided or stipulated;
- (d) All compartments or installations of central services such as power, light, gas, water, and the like;
- (e) All shafts, stationary garbage dumpsters and mailbox structures, gatehouse(s), gates, water meter pit, streetlights, stream crossing facilities, fountains, and, in general, all devices or installations existing for common use;
- (f) All other elements of the Property desirably or rationally for common use or necessary to the existence, upkeep, and safety of the condominium regime established by this Declaration, including without limitation, common recreation facilities.

General common elements shall not be converted to Limited Common Elements without an affirmative majority vote of those voting at a regular or special meeting of the Unit Owners.

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Section 7. "Common Expense" means and includes:

- (a) All sums lawfully assessed against the Unit Owners by the Managing Agent or Board;
- (b) All expenses of administration and management, maintenance, operation, repair or replacement of and additions to the Common Elements;
- (c) Expenses agreed upon as common expenses by the Unit Owners;
and
- (d) Expenses agreed upon as common expenses pursuant to this Declaration or by the Bylaws.

Section 8. "Council of Co-Owners" means all of the Unit Owners, which Council of Co-Owners has been incorporated as the Association.

Section 9. "Declarant" shall mean and refer collectively to all of the undersigned Owners. It shall also mean any successor(s) in interest so designated.

Section 10. "Eligible Mortgage Holder" shall mean the holder of a recorded first mortgage on a Unit who has submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders.

Section 11. "Declaration" shall mean and refer to this Declaration of Submission of Property to Horizontal Property Regime, to which the Property is subject.

Section 12. "Limited Common Elements" means all Common Elements serving exclusively a single Unit or one or more adjoining Units as an inseparable appurtenance thereto, the enjoyment, benefit, or use of which is reserved to the lawful occupants of such Unit or Units either in this Declaration, on the Plans or by a majority vote of the Unit Owners. Limited Common Elements shall include, but shall not be limited to, garages assigned to individual Units and the respective driveways serving them, as well as convectors, pipes, conduits, ducts, electrical wiring and conduits located entirely within a Unit or adjoining Units and serving only such Unit or Units; any patios, decks, individual yards or garden plots and such portions of the perimeter walls, floors and ceilings, doors, vestibules, windows, chimneys, entryways and garages serving individual Units exclusively; outside light fixtures serving an individual unit; individual unit storage areas; sump pumps in specified Units; and all associated fixtures and structures, as lie outside the Unit boundaries which serve one or more individual units, all as designated in **Exhibit C** attached hereto and by this reference made a part hereof.

Section 13. "Majority" or "majority of the Unit Owners" means more than fifty percent (50%) of the membership votes in the Association, except as otherwise expressly provided.

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Section 14. "Occupant" means a person or persons in possession of all or any part of a Unit, regardless of whether said person is a Unit Owner. The term includes family, guests, tenants and invitees of an Owner, and the terms and provisions hereof shall be binding upon all Occupants.

Section 15. "Parcel" means the parcel or tract of real estate described in **Exhibit A** attached to this Declaration, and submitted to the provisions of the Act.

Section 16. "Person" means any natural individual, and any corporation, partnership, trustee or other legal entity capable of holding title to real property.

Section 17. "Plans" means the survey, floor plans and drawings of the Buildings and improvements, attached hereto as **Exhibit C**.

Section 18. "Property" means all the land, property and space comprising the Parcel, and all improvements and structures now or hereafter erected, constructed or contained therein or thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit, or enjoyment of the Unit Owners.

Section 19. "Record" or "Recording" refers to a record or recording in the Office of the Recorder of Polk County, Iowa.

Section 20. "Unit" means an enclosed space consisting of rooms occupying part of a Building, which enclosed space is not owned in common with the Unit Owners of other Units. Each Unit is numbered as shown on the Plans, and the boundaries of each Unit shall be and are the unpainted surfaces of its perimeter interior drywalls, unfinished surface of its floor, the unfinished surface of its ceilings, the unfinished exterior surface of its exterior door(s), and the exterior surface of its windows; and a Unit includes both the portion of the Building so described and the air space so encompassed, excepting Common Elements. Accordingly, all lathe, furring, wallboard, plasterboard, and plaster constituting a part of the wall shall be deemed to be outside of the Unit, and any paneling, tile, wallpaper, paints, carpeting, linoleum, or other wall or floor coverings or furnishings shall be deemed to be included within the Unit. Any Unit may be jointly or commonly owned by more than one person. It is intended that the term "Unit" as used in this Declaration shall have the same meaning as the term "Apartment" as used in the Act.

Section 21. "Unit Owner" or "Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit and of the undivided interest in the Common Elements appurtenant thereto, but shall not include those, out of possession, having an interest in a Unit merely as security for the performance of an obligation. It is intended that the term "Unit Owner" as used in this Declaration shall have the same meaning as the term "Co-Owner" as used in the Act, and the same meaning as the term "member" as may be used in the Declaration, Bylaws and related documents. Multiple Owners of a Unit shall be jointly and severally obligated to observe and perform the obligations imposed

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by the Act, this Declaration, the Bylaws, and rules and regulations of the Association. Violations by one such multiple Owner of a Unit shall be imputed to all of them.

Section 22. Whenever the context so permits or requires, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

Section 23. References to an Owner, the Association, or any person or entity shall include the respective successors, grantees and assigns thereof.

Section 24. The invalidity of any covenant, restriction, agreement, undertaking, or other provision of this Declaration or the Bylaws shall not affect the validity of the remaining portions thereof.

Section 25. Exhibits attached hereto and referred to herein are by this reference made a part hereof with the same force and effect as other provisions of this Declaration.

Section 26. Declarant is, collectively, the title holder of the fee simple title to the Parcel required to establish this Declaration, and expressly intends to do so, and by recording this Declaration does hereby subject the Parcel and the Property to the provisions of the Act.

Section 27. The Plans set forth the descriptions, locations and other data, as required by the Act. The Plans show graphically all particulars of the Buildings including, but not limited to, the following:

- (a) The location, approximate area, number of rooms, and designated number of each Unit;
- (b) The dimensions, area, and location of Common Elements affording access to each Unit;
- (c) The other Common Elements, both limited and general, insofar as possible.

Section 28. The legal description of each Unit shall consist of the identifying number of such Unit as shown on the Plans, a description of the Parcel, the recording information of this Declaration, and its appurtenant undivided interest in the Common Elements. Every deed, lease, mortgage or other instrument shall describe a Unit by its identifying number as shown on the Plans and every such description shall be deemed good and sufficient for all purposes, except as may be otherwise provided in the Act, and shall without further reference be deemed to refer also to the undivided fractional interest in common elements attributable to that Unit. Except as provided in this Declaration and in the Act, no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plans.

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Section 29. The Common Elements shall remain undivided and shall not be the object of an action for partition or division of the co-ownership thereof so long as suitable for a condominium regime, and, in any event, all mortgages of Units must be paid in full prior to bringing an action for partition or the consent of all mortgagees must be obtained, except as otherwise provided in the Act or this Declaration.

Section 30. There has been formed an Association having the name "Druid Hill Condominium Association, Inc.," an Iowa nonprofit corporation, which Association shall be the governing body for all of the Unit Owners, for the maintenance, repair, replacement, administration and operation of the Property, as provided in the Act, this Declaration, and the Bylaws. The Board of Directors of the Association shall be elected and shall serve in accordance with the provisions of the Bylaws. The fiscal year of the Association shall be determined by the Board, and may be changed from time-to-time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. The Association shall maintain and make available for inspection by Unit Owners and lien holders, during normal business hours, current copies of this Declaration, the Association Articles of Incorporation and Bylaws, rules and regulations, and the books, records, and financial statements of the Association. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of Unit Owners in accordance with the provisions of this Declaration and the Bylaws. Each Unit Owner shall be a member of the Association so long as he is a Unit Owner. A Unit Owner's membership shall automatically terminate when he ceases to be a Unit Owner. A Unit Owner's membership in the Association cannot be transferred or hypothecated separate from a transfer or hypothecation of the Unit Owner's ownership interest in his Unit. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, by operation of law or otherwise, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association.

Section 31. The Board shall have the authority to engage the services of an agent (herein sometimes referred to as the "Managing Agent") to maintain, repair, replace, administer and operate the Property, or any part thereof, to the extent deemed advisable by the Board. The Board shall also have the authority (but shall not be obligated) to engage, supervise and control such employees as the Board deems advisable to clean and maintain all or any part of the Units and/or Common Elements to the extent the Board deems it advisable to provide such services; and to contract with a single entity for regular and/or periodic trash removal and other repetitive services. The cost of such services shall be a Common Expense.

Section 32. The Association shall arrange for an annual, audited financial statement for the preceding fiscal year and make the same available for inspection by any Unit Owner and by the holder, insurer, or guarantor of any first mortgage that is secured by a Unit, upon written request. Such audited financial statement shall be available within 120 days of the Association's fiscal year-end.

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Section 33. The Board may from time-to-time enter into a management agreement between the Association and a management company to act as Managing Agent for the Property. Such management agreement shall be for a term of one (1) year and shall be renewable by consent of the Association and Managing Agent. The Association and the management company shall each have the option of terminating said management agreement upon sixty (60) days written notice to that effect. The management agreement shall be immediately terminable for cause.

Section 34. The Board shall have authority to purchase, lease and/or mortgage one or more Units or other residential quarters for use by employed personnel. All rental, debt service, and related expenses paid by the Association pursuant to any such lease agreement or mortgage shall be a Common Expense.

Section 35. The directors, Board, officers, and employees of the Association shall not be personally liable to the Unit Owners for any mistake of judgment or for any acts or omissions of any nature whatsoever as such directors, Board, officers, or employees, except for any acts or omissions found by a court to constitute gross negligence, fraud, or intentional wrongdoing. The Unit Owners shall indemnify and hold harmless each of the directors, Board, officers, and employees and their respective heirs, executors, administrators, successors and assigns, in accordance with the provisions of the Bylaws.

Section 36. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of the Declaration or Bylaws, such dispute or disagreement shall be submitted to the Board. The determination of such dispute or disagreement by the Board shall be binding on each and all such Unit Owners, subject to the right of Unit Owners to seek other remedies provided by law after such determination by the Board.

ARTICLE II OWNERSHIP OF UNITS

Section 1. Each Unit Owner shall be entitled to exclusive ownership and possession of his Unit, subject to the provisions of the Act, this Declaration, and Bylaws.

Section 2. Each Unit Owner shall be entitled to the fractional ownership in the Common Elements allocated to the Unit owned by such Unit Owner, as set forth in **Exhibit D**. Said ownership interest in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective fractional ownership. The ownership of each Unit shall not be conveyed separate from the fractional ownership in the Common Elements corresponding to said Unit. The undivided fractional ownership in the Common Elements corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the number of that Unit, or may refer to an incorrect fractional ownership in the Common Elements for that Unit.

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Section 3. Each Unit Owner shall have the right to use the Common Elements (except the Limited Common Elements and portions of the Property subject to leases made by or assigned to the Board) in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend to not only each Unit Owner, but also to his agents, servants, family members, and invitees, and may be assigned to Tenants. However, each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements serving such Unit alone or with adjoining Units. Such rights to use the Common Elements, including the Limited Common Elements, shall be subject to and governed by the Act, Declaration, Bylaws and rules and regulations of the Association. In addition, the Association shall have the authority to rent, lease, grant concessions, or grant easements with respect to parts of the Common Elements, subject to the provisions of the Declaration and Bylaws. All income derived by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, regulations or resolutions as the Board may adopt or prescribe.

Parking areas shall be part of the Common Elements, and may be allocated and re-allocated, from time-to-time, to the respective Unit Owners, and shall be used by such Unit Owners in such manner and subject to such rules and regulations as the Board may prescribe, and parking spaces not so used by Unit Owners may be rented or otherwise used in such manner as the Board may prescribe.

Section 4. Appurtenant to each Unit shall be easements from each Unit Owner to each other Unit Owner and to the Association and from the Association to the respective Unit Owners as follows:

(a) For ingress and egress through the Common Elements and for maintenance, repair, and replacement as authorized by the Declaration or Bylaws;

(b) Through the Units and Common Elements for maintenance, repair and replacement or reconstruction of Common Elements, but access to or through Units shall be only during reasonable hours except in case of emergency;

(c) Through the Units and Common Elements for installation, maintenance, repair, replacement or reconstruction of conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility or other services to one or more of the Units or the Common Elements.

The easement rights reserved to the Association in this Section 4 may, with the prior consent of the Association, be exercised and enjoyed by contractors or assignees of the Association.

Section 5. Each Unit Owner, at his own expense, shall furnish and be responsible for all decorating within his own Unit and Limited Common Elements serving his Unit, as may be required or desirable from time-to-time, including painting, wall papering, washing, cleaning,

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paneling, floor covering, draperies, window shades, curtains, lighting, hanging paintings, hanging mirrors, hanging bookshelves and other furnishings and decorations. Each Unit Owner shall be entitled to the exclusive use of the interior unpainted surfaces of the perimeter drywalls, the unfinished surfaces of the floors and the unfinished surfaces of the ceilings of his Unit and garage, and such Unit Owner shall maintain said interior surfaces in good condition at his sole expense, as may be required from time-to-time. Said maintenance and use of interior surfaces shall be subject to the rules and regulations of the Association, but each such Unit Owner shall have the right to decorate and use such interior surfaces from time-to-time as he may see fit and at his sole expense, and shall have an easement to penetrate the Common Elements surrounding his Unit and garage as may be reasonably necessary in conjunction therewith.

Section 6. If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portion of the Common Elements, or if any Unit shall actually encroach upon another Unit, as the Common Elements and Units are shown on the Plans, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and respective Unit Owners involved, as the case may be, to the extent of such encroachment, so long as the same shall exist.

Section 7. There is also reserved in favor of the City of Des Moines, Iowa, an easement for ingress and egress as may be necessary to utilize and service water mains and water meters, sanitary sewers, and storm sewers located on, under or through Common Elements. Such easement will be exercised at reasonable times and in a reasonable manner. A similar easement, to be exercised in like manner, shall exist in favor of utility and common service companies serving all or any portion of the Property with the consent of the Association.

Section 8. Any Unit may be leased for a term not less than seven (7) days, and each such lease shall be in writing and shall be and remain subject to this Declaration and the Bylaws. No such lease will relieve the Unit Owner of liability to comply with this Declaration, the Bylaws, or the Rules and Regulations of the Association. Each such lease shall by its express terms, state that it is subject to this Declaration, the Bylaws, and the Rules and Regulations of the Association, and obligate the tenant to comply therewith. The Association shall be deemed a third party beneficiary of each such lease.

ARTICLE III
ANNEXATION AND ADDITION OF ADDITIONAL
PROPERTIES AND UNITS

Section 1. Declarant's Reserved Rights to Add Units within the Property. The condominium project initially comprises the Property described in **Exhibit A**, and will encompass four buildings containing a total of sixteen (16) Units. There is reserved in favor of the Declarant the right to add additional Units in successive phases. Each additional phase shall be comprised of at least four Units. The maximum number of Units in the condominium project, if all phases are added pursuant to this section, will be thirty-two (32) Units. The Declarant shall

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be under no obligation to proceed beyond the first phase. Should the Declarant choose to proceed with any additional phase(s), the following provisions shall define the Declarant's reserved rights and certain obligations to which the Declarant must adhere:

(a) The Declarant's reserved rights to add any additional Units within the Property in successive phase(s) shall expire twenty-one (21) years after the date of the recording of this Declaration, provided that said reserved rights shall sooner expire upon the first to occur of the following events:

- (i) the total number of Units subjected to the provisions of this Declaration by the Declarant reaches the aforesaid maximum number; or
- (ii) the Declarant records a statement specifically relinquishing any further, unexercised reserved rights to add additional phases.

(b) The Declarant's reserved rights to add any additional phase(s) shall be exercised from time-to-time by the recording of a Supplementary Declaration expressly referencing this section, describing the additional Units being added to the regime, extending this Declaration to such additional Units, and subjecting such Units to the jurisdiction of the Association. Upon such recording the property described in the Supplementary Declaration shall be and become a part of the Property.

(c) The Declarant shall have the right to design and locate future buildings, structures, improvements, and installations however and wherever Declarant determines in its discretion that the same will be appropriate or desirable, without any prior consent or approval from Unit Owners, mortgage holders, or the Association. The Declarant shall also have the unrestricted right of ingress and egress over, under and across the Property in order to construct additional Units and related improvements, and shall have the right to install and connect common utilities and other facilities serving such additional Units and existing Units.

Section 2. Unit Owners' Reserved Rights to Annex Adjoining Properties. After the expiration of the Declarant's reserved rights to add Units to the Property, and subject to the further provisions of this Declaration, all or part of any adjoining property may be annexed from time-to-time to the Property and thereby become part of the condominium regime and subject to the provisions of this Declaration, and to the jurisdiction of the Association, by the written concurrence of not less than sixty-seven percent (67%) of the Unit Owners and not less than fifty-one percent (51%) of the Eligible Mortgage Holders casting one vote for each recorded, first mortgage held on a Unit. Future improvements constructed within the Property or on annexed properties shall be consistent with improvements on the original property (i.e., that property originally specified in and subject to this Declaration) in terms of the quality of construction and appearance, and those on annexed properties shall be substantially complete prior to recording of the Supplementary Declaration provided for in this Article. All such improvements shall be free and clear of liens and encumbrances when so added except for any lien(s) on the added Units themselves.

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Adding additional Units and annexation of additional properties authorized under this Article shall be accomplished by the filing of record in the Office of the County Recorder of Polk County, Iowa, a Supplementary Declaration describing the additional Units and/or additional property to be added or annexed, as the case may be; extending this Declaration to such additional Units and/or properties; and subjecting such Units and properties to the jurisdiction of the Association. Any such Supplementary Declaration which adds additional properties shall be signed by all of the annexed unit owners, as well as the number of existing Unit Owners required for amendment by Article XVI, Section 1 hereof. Upon such recording the property described in the Supplementary Declaration shall be and become a part of the Property.

Section 3. Supplementary Declarations. Each Supplementary Declaration contemplated hereunder which adds additional properties may contain additional or different provisions, covenants, conditions and restrictions not found in this Declaration, provided that such shall be necessary to reflect the different character, if any, of the annexed properties and shall not be inconsistent with the general plan of this Declaration. No provisions, covenants, conditions or restrictions contained in a Supplementary Declaration which adds additional properties shall be considered applicable to any property except property described in a Supplementary Declaration. Each such Supplementary Declaration shall expressly provide that no lien arising from any improvements covered by such Supplementary Declaration will affect the rights of existing Unit Owners or their mortgagees.

Section 4. Effect of Annexation or Adding Units. Upon the recording of a Supplementary Declaration adding additional Units and/or properties, all of the Units and property described or covered by the Supplementary Declaration shall be deemed subject to all of the provisions contained in this Declaration as if, and to the same effect as if, the annexed properties and additional Units were part of the Property except as specifically stated in this Declaration or in the Supplementary Declaration, and to the additional or different provisions, covenants, conditions and restrictions which may be stated in the Supplementary Declaration. The Property shall be deemed to encompass such additional Units and properties and all portions of the Units and properties added or annexed thereto together with all improvements, appurtenances, and facilities thereon or to be constructed as a part thereof; and the Association shall have and shall accept and exercise jurisdiction over such Units and properties as part of the Property. In the event of conflict or inconsistency between a Supplementary Declaration and this Declaration, except as herein permitted, the terms of this Declaration shall prevail.

Section 5. Undivided Fractional Interest in Property. Notwithstanding anything contained herein or in any Supplementary Declaration, addition of Units to the Property and annexation of any adjoining property encompassing additional Units shall change the undivided fractional interest in the Common Elements of the Property owned by each prior Owner of a Unit within the Property appurtenant to such Owner's Unit, as a tenant-in-common with all other Owners of Units, it being understood that said fractional ownership interest attributable to each Unit covered by this Declaration shall always be determined and established as provided in **Exhibit D** hereof subject to Section 6 below. Similarly, Owners of Units on any portion of the property which may be annexed to the Property in the future shall own an undivided fractional

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interest in the total Common Elements of the Property and such interest shall be determined and established as provided in **Exhibit D** hereof subject to Section 6 below. The Association shall administer, manage, operate and maintain the Common Elements wherever located on the Property (including any portion of the property which may be annexed thereto) in a uniform manner; and all Unit Owners within the Property and within property which is annexed thereto shall share the costs thereof, and shall have equal, reciprocal, and nonexclusive rights, privileges, and easements of use and enjoyment in and to the Common Elements wherever located on the Property (including any portion of the property which may be annexed thereto), all as provided in this Declaration. To the extent not inconsistent with this Declaration, the Unit Owners of any property annexed shall be assessed for Common Expenses in accordance with the Supplementary Declaration.

Section 6. This condominium project, including any additional Units added to the Property pursuant to the Declarant's reserved rights to do so, shall have a maximum number of thirty-two (32) Units. This condominium project, including any additional properties annexed pursuant to the Unit Owners' reserved rights to do so, shall have no maximum number of Units. This condominium project shall have a minimum number of sixteen (16) Units. Consequently, and subject to the reconfiguration of the project as a result of partial taking or destruction, each Unit Owner's maximum possible undivided fractional interest in the Common Elements of the Property is 1/16th. Each Unit Owner's undivided fractional interest in the Common Elements of the Property is a fraction, the numerator of which is one and the denominator of which is the total number of Units. Each Unit Owner's minimum possible undivided fractional interest, in the absence of properties annexed by Unit Owners pursuant to this Declaration, is 1/32nd.

ARTICLE IV COMMON EXPENSES AND ASSESSMENTS

Section 1. Each Unit Owner shall pay his proportionate share of the Common Expenses corresponding to that Unit Owner's undivided fractional interest in the Common Elements. Payment of Common Expenses, including any prepayment thereof required by a contract for sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. No Unit Owner shall be exempt from payment of his proportionate share of the Common Expenses by waiver or non-use or non-enjoyment of recreational amenities, or the Common Elements or Limited Common Elements, or by abandonment of his Unit; provided that the Board may, in its sole discretion, waive or abate assessments against particular Units because of special circumstances relating to casualty losses. The amount of each Unit Owner's proportionate share of the Common Expenses, together with costs and attorney fees incurred to collect the same and interest on amounts due calculated at the legal rate for money judgments as may then be permitted under the law of the State of Iowa, or such other rate as may be fixed by Board resolution, accruing from and after the date that said Common Expenses become due and payable, shall constitute a lien on the interest of such Unit Owner in the Property and his Unit from the date that notice thereof is given by the Board.

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Section 2. The Board may bring an action at law against the Unit Owner personally obligated to pay the same, for collection of his proportionate share of the Common Expenses after it becomes due, or foreclose the lien against the Unit or Units owned by such Unit Owner, and interest, costs, and reasonable attorney's fees arising from any such action shall be added to the amount of such assessment. Each Unit Owner, by his acceptance of a deed to a Unit or possession thereof, expressly vests in the Board or its agents the right and power to bring all actions against such Unit Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens. The lien provided for in this section shall be in favor of the Association and shall be for the common benefit of all Unit Owners. The Board acting on behalf of the Unit Owners shall have the power to bid upon an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

Section 3. The lien for Common Expenses payable by a Unit Owner shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Unit Owner, except for the amount of the proportionate share of Common Expenses which becomes due and payable from and after the date on which the mortgagee thereunder either takes possession of the Unit encumbered thereby, accepts a conveyance of any interest therein (other than as security), or files suit to foreclose its mortgage and causes a receiver to be appointed. This Section 3 shall not be amended, changed, modified, or rescinded without the prior written consent of all mortgagees of record holding a first mortgage lien against all or part of the Property.

Section 4. In addition to annual assessments authorized herein, the Association may levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any special assessment obligation for public roads, public utilities, or other public purposes which the City of Des Moines may assess on any project even though the assessment boundaries may only cover a portion of the Property. Any such special assessment shall be spread against all the Unit Owners each for their proportionate share. The Association may enter into a contract and waiver with the City of Des Moines, Iowa, concerning any project involving or potentially involving a special assessment. If contract and waiver is used and adopted, the Association, on behalf of all Unit Owners shall execute all documents required in connection with said contract and waiver in the form generally required by the City of Des Moines, Iowa, and approved by the Board. The Association may execute such documents only after securing a majority vote of all Unit Owners in person or by proxy at a meeting duly called for that purpose. Any contract and waiver agreement shall contain provisions waiving all legal formalities of whatever kind and character otherwise required by the laws of the State of Iowa to be observed by municipalities in the construction of like improvements where expenses of said improvements are to be assessed against a project, district, or designated area, including without limitation, jurisdiction and assessment amounts.

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ARTICLE V
MAINTENANCE, ALTERATION AND IMPROVEMENT

Section 1.

(a) The Association shall maintain all Common Elements, whether limited or general, and shall make assessments therefor as a Common Expense, except where maintenance has been specifically made the responsibility of the respective Unit Owners. The Association shall maintain sump pumps serving more than one Unit and exterior lighting fixtures serving more than one Unit. At the discretion of the Board, maintenance of, repairs to, and replacements within, the Limited Common Elements may be provided and assessed in whole or in part to Unit Owners benefited thereby, and further, at the discretion of the Board, the Board may direct Unit Owners who stand to be benefited by such maintenance of, repairs to, and replacement within, the Limited Common Elements to arrange for such maintenance, repairs and replacements in the name and for the account of such benefited Unit Owners, pay the cost thereof with their own funds, and procure and deliver to the Board such lien waivers and contractor's and subcontractor's sworn statements as may be required to protect the Property from all mechanics' or materialmen's lien claims that may arise therefrom. The respective Unit Owners shall be responsible for the maintenance of, repairs to, and replacement of exterior light fixtures, of uniform appearance, which serve their individual Units. Subject to the second paragraph of the next lettered provision hereof, Unit Owners will be responsible for the floor boards or other floor surface materials of their respective decks, porches, and patios, and the Association will be responsible for the railings and substructure thereof. The cost of complete deck, porch, or patio replacement or enlargement shall be at the sole expense of the benefited Unit Owner, and subject to the prior approval of the Board.

(b) As a part of the maintenance of the Common Elements, the Association shall provide exterior maintenance within the Property, as follows: paint, repair, replacement, and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall include storm windows, screens, storm or screen doors, or glass surfaces originally a part of the initial development of the Property or subsequently installed in fulfillment of the Association's responsibilities under this Declaration or the Bylaws. All exterior maintenance for other storm windows, screens, storm or screen doors, or glass surfaces, shall be the responsibility of the individual Unit Owners and maintained in keeping with standards of quality and appearance established by the Board. The Unit Owners shall also be responsible for the maintenance and repair of any water or sewage pipes serving their respective Units and which are within the reach of a ten (10) foot plumbing snake used for clearing debris from said pipes.

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In the event that the need for maintenance or repair of a Unit; Common Elements, whether limited or general; or the improvements thereon; is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the cost of such maintenance shall be added to and become part of the assessment against that Owner's Unit, collectible in the same manner as assessments for Common Expenses.

(c) The Association shall repair incidental damage caused to Limited Common Elements serving a Unit by ordinary wear and tear through ordinary maintenance by the Association and shall assess the cost thereof as a Common Expense, except as otherwise specifically provided herein. As a part of a general plan the Association may elect to separately assess to the benefited Unit(s) the cost of repairing damage to Limited Common Elements attributable to ordinary wear and tear. Also as a part of a general plan the Association may from time-to-time assign to the several Unit Owners responsibility for various routine items of maintenance within the Limited Common Elements reserved for their use, subject to such guidelines and requirements as the Association may deem appropriate.

(d) If a Unit Owner defaults on his responsibilities of maintenance, the Association may, in its discretion, assume such responsibilities and in so doing shall assess the cost thereof against the Owner of such Unit and such assessment shall be collectible as if it were an assessment for Common Expenses.

(e) The Association may, in its discretion, assume responsibility for any maintenance project which requires reconstruction, repair, rebuilding, renovation, restoration or similar work to more than one Unit and the cost thereof may be, in the discretion of the Board, either assessed against each Unit for which such costs were incurred, or assessed against all Units as a Common Expense according to the circumstances.

Section 2.

(a) Each Unit Owner at his own expense shall maintain the interior, including the boundary surfaces, of such Unit, its assigned garage, and its equipment, shall keep such interior in a clean and sanitary condition, shall do all redecorating, painting, and other finishing which may at any time be necessary to maintain his Unit and his assigned garage, and shall be responsible for the maintenance of all personalty including carpets, furnishings, and appliances within such Unit and assigned garage. Each Unit Owner at his own expense shall be responsible for glass replacement and inside/outside window washing of windows serving his Unit and his assigned garage.

(b) Each Unit Owner at his own expense shall be responsible for maintenance of any plumbing fixtures, fireplaces, lighting fixtures, refrigerators,

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dishwashers, washers, dryers, water heaters, furnace, air conditioning unit, disposals, or ranges located in or exclusively serving such Unit. Unit Owners of Units in which a sump pump is located will assure that the same is continuously connected to a power source and will pay utility charges for its operation. At least one Unit in each separate building may have an exterior light fixture serving more than one Unit and the Unit Owner of that Unit will assure that the same is continuously connected to a power source at all times when it is desirable that it be in operation, and will pay for bulb replacements and the utility charges for its operation.

(c) The Unit Owner shall maintain, at his expense, any improvement or other alteration made by him, unless otherwise provided by action of the Board, and shall keep in a presentable condition any deck, porch, or patio area reserved as a Limited Common Element for his Unit, including necessary snow and debris removal, and shall similarly maintain the interior of any garage or garage space reserved as a Limited Common Element for his Unit.

(d) The Owner of each Unit shall promptly report to the Association any defects or other maintenance needs which are the responsibility of the Association.

Section 3. No Unit Owner shall make or permit to be made any structural alteration to a Unit or to a Building or any of the Common Elements, limited or general, without first obtaining written consent of the Association which shall determine the proper insurance of such improvement or other alteration, and the effect of such improvement or alteration on other insurance on the Property, and which shall arrange with such Unit Owner for the payment of the cost of any additional insurance thereby required. The Unit Owner shall furnish to the Association, at his expense, data necessary for the Association to determine whether the alteration or improvement will alter the structural soundness of the Building. The Unit Owner shall also obtain the necessary consents of all applicable government bodies. In the case of alterations within a Unit the consent required by this section shall be immediately granted upon agreement of the Unit Owner to pay the cost of such additional insurance, and a determination that such alteration will not impair the structural soundness of the Building, safety of the Property, or the quiet enjoyment of other Unit Owners. Alterations to the exterior of the Building or Common Element, however, shall not be made, if, in the opinion of the Association, such alteration would not become the integrity and appearance of the Property as a whole. The Board may condition its approval upon such terms and restrictions as it may deem reasonable for the protection of the interests of the Association and other Unit Owners. No Owner shall do any act or work which will impair the structural soundness or integrity of any Building or safety of the Property, or impair any easement.

Section 4. Except for a management agreement and expenditures and contracts specifically authorized by this Declaration, the Bylaws, or the approved annual budget, the Association may not make additions, alterations, or improvements (capital improvements) to the

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Common Elements without the approval of the Unit Owners if the cost exceeds \$5,000 the first year after the filing of this Declaration, such limitation being increased thereafter by 10% per year compounded, unless required for emergency repair, protection or operation of the General or Limited Common Elements. Any additions, alterations, or improvements costing in excess of that limitation shall have been approved by a majority vote of those voting at a meeting of Unit Owners duly called. All such costs shall be assessed as a Common Expense against the Unit Owners, except as otherwise provided herein.

Section 5. The Association shall maintain, construct, reconstruct and keep free of weeds and debris and keep in good repair and condition, at no cost to the City of Des Moines, all interior private streets (except driveways appurtenant to each Unit), public parking areas, drainageways, swales, ditches, watercourses including banks of any watercourses; install and maintain erosion control methods, sidewalks, landscaping, pathways, and other pertinent features located within the Common Elements or outside thereof as shown on the final development plan or amended plan made and provided to the City of Des Moines and approved; and conform to and abide by the ordinances, rules, and regulations adopted and enforced by the City of Des Moines. The Association shall make whatever improvements, repairs, construction, or reconstruction that is necessary to stabilize the banks of and improve the drainage waterways, swales, ditches, and watercourses within and adjacent to the Common Elements which are located on the Property and for which the Association has maintenance responsibility. The maintenance, repair, construction, or reconstruction obligation within this Article shall include any requirements established in adjacent properties or plats by easement or otherwise so as to provide coordination and cooperation with the City in accomplishing an efficient and effective means of dealing with drainage, entry monuments, landscaping, streets, pathways, etc. to provide and promote the aesthetic qualities of the environment of the Property and the surrounding area.

ARTICLE VI
MORTGAGES

Each Unit Owner shall have the right, subject to the provisions herein, to execute separate mortgages for his respective Unit together with his respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to make or create or cause to be made or created from the date hereof any mortgage or other lien on or affecting the Property or any part thereof, except only to the extent of his own Unit and respective fractional interest in the Common Elements appurtenant thereto. All mortgagees appearing on the Association mortgagee roster (which will include any mortgagees, insurer, or guarantor of any mortgage who makes a written request for such notices) shall be notified of any default by their respective Unit Owner under the terms hereof if said default is not cured within thirty (30) days of notice of default to the Unit Owner; any condemnation or casualty loss that affects either a material portion of the Property or the Unit securing its mortgage interest; any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders. All mortgage holders, mortgage insurers and mortgage guarantors shall have access to inspect the Declaration,

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Bylaws and other rules governing the regime, and all books, records and audited financial statements of the Association. Such access shall be at reasonable times, and a reasonable fee may be charged to cover the actual cost of producing documents for such inspection. This Article VI may not be amended without the concurrence of at least fifty-one percent (51%) of the holders of first mortgages on Units.

ARTICLE VII
REAL ESTATE TAXES

Taxes, assessments and other charges of any taxing or assessing authority shall be separately assessed and levied against each Unit Owner for his Unit and his corresponding fractional ownership interest in the Common Elements, as provided in the Act. In the event that any such taxes or assessments for any year are not separately assessed and levied against each Unit Owner, but rather are assessed or levied against the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective fractional ownership interest in the Common Elements, and, in said event, such taxes or assessments shall be a common expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Unit Owners their proportionate share of such taxes or assessments for any year in which taxes are assessed or levied against the Property as a whole, in the same manner as collection for assessments for Common Expenses.

ARTICLE VIII
UTILITY CHARGES

Unit Owners shall be individually responsible for utility charges which they incur for water, telephone, cable television, sewer and other services provided by the municipality or any utility or common service company, in the same manner as persons occupying single-family, detached houses. In the event that such charges are assessed to the Association for Unit Owners collectively, each Unit Owner will be obligated to pay the greater of their proportionate ownership interest in the common elements or charges attributable to actual consumption/usage to the extent that can be reasonably determined.

ARTICLE IX
DESTRUCTION OR DAMAGE

Section 1. In case of fire or any other disaster which causes damage or destruction to all or part of the Property, the Association, with the help of an independent appraiser, shall determine the percentage of the Property that was destroyed or substantially damaged. If less than two-thirds (2/3) of the total Property was destroyed or substantially damaged, the Association shall arrange for the prompt repair and restoration of said Property using the proceeds of insurance on the same for that purpose, and all of the Unit Owners shall be liable for assessment for any deficiency in proportion to their respective undivided fractional interest in the

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Common Elements. Reconstruction of the Property shall mean the restoring of the same to substantially the same condition as was authorized by the Association and existing prior to the damage or destruction, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before.

Section 2. If two-thirds (2/3) or more of the total Property is destroyed or substantially damaged, the Association shall, within thirty (30) days after such destruction or damage, call a special meeting of Unit Owners for the purpose of deciding whether or not the Property shall be repaired and restored. Notice of any such special meeting shall be given at least three (3) days in advance to all mortgagees appearing on the Association mortgagee roster. If at least two-thirds (2/3) of the votes of Unit Owners at such meeting favor repair or restoration, and at least 51% of the votes of Eligible Mortgage Holders at such meeting and voting one vote for each recorded, first mortgage held on a Unit, favors repair or restoration, the Association shall promptly arrange for such repair or restoration, using the proceeds of insurance on the improvements affected for that purpose, and all of the Unit Owners shall be liable for assessment for any deficiency in proportion to their respective undivided fractional interest in the Common Elements. However, in the event that at least two-thirds (2/3) of the total Property is destroyed or substantially damaged, and less than two-thirds (2/3) of the votes at such meeting favor making provision for reconstruction, or less than the required 51% of Eligible Mortgage Holders favor making provision for reconstruction, the Association shall record with the Polk County Recorder a notice setting forth such facts; and upon the recording of such notice: (i) the Property shall be deemed to be owned in common by the Unit Owners; (ii) the undivided interest in the Property owned in common which shall appertain to each Unit Owner shall be the undivided fractional interest previously owned by such Owner in the Common Elements; (iii) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided fractional interest of the Unit Owner in the Property; and (iv) the Property shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, shall be considered as one fund and shall be divided among all Unit Owners in accordance with the undivided fractional interest owned by each Owner in the Property, as set forth in **Exhibit D** of this Declaration, after first paying out of the respective shares of the Unit Owners all sums necessary to satisfy liens on the undivided fractional interests in the Property owned by each Unit Owner and all sums necessary to make the remaining property safe and bring it into compliance with applicable laws. (See also Article XII, Section 1 hereof.)

ARTICLE X
INSURANCE

Section 1. The Association shall obtain and maintain at all times, to the extent reasonably available, at least the following insurance (hereinafter referred to as "Condominium Property Insurance"):

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(a) Insurance on the Property in an amount equal to the full replacement value (i.e., 100% of "replacement cost") of the Property (as determined annually by the Association) and with a replacement cost endorsement which provides for the payment of all losses in accordance with such terms as may be determined by the Board. Such coverage shall at least afford protection against the following:

- (i) loss or damage by fire or other hazards covered by the standard extended coverage endorsement and additional extended coverage endorsement;
- (ii) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, machinery explosion or damage, and such other insurance as the Association may from time-to-time determine; and

(b) Public liability insurance in such amounts and in such forms as may be considered appropriate by the Association including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile and any and all other liability incident to the ownership and/or use of the Property or any portion thereof; and

(c) Worker's compensation insurance to the extent necessary to comply with applicable laws; and

(d) Appropriate fidelity bond coverage for any person or entity handling funds of the Association, including but not limited to, employees of any professional management firm; and

(e) Such other policies of insurance, including Director's and officer's liability insurance and insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Association.

Section 2. The premiums for the insurance coverage shall be a Common Expense to be paid by monthly assessments levied by the Association against Unit Owners.

Section 3. The Association, or its designee, shall have the exclusive authority to adjust losses under the insurance policies.

Section 4. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Unit Owners or their respective mortgagees.

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Section 5. Each Unit Owner may obtain additional insurance at his own expense upon his Unit provided that no Owner shall maintain insurance coverage which will tend to decrease the amount which the Association may realize under any insurance policy which it may have in force on any portion of the Property.

Section 6. All policies shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to any and all insured persons named thereon, including any and all mortgagees of the Units whether named individually or as a class.

Section 7. The Association may from time-to-time designate an Insurance Trustee. The Association shall be responsible for fees and expenses of the Insurance Trustee which shall constitute a Common Expense. The Board may, alternatively, choose to act as the Insurance Trustee. In the absence of any contrary, formal action, the Board will be deemed to act as the Insurance Trustee.

Section 8. Except as hereinafter provided, the Association or Insurance Trustee so designated shall receive and hold the amount payable under the Condominium Property Insurance and apply the same to the cost of reconstruction or repair as herein provided. The Owner of a damaged or destroyed Unit shall be obligated to commence the work of repairing or reconstruction of the Unit within sixty (60) days from the date of the damage or destruction. The work shall be accomplished in accordance with the same plans and specifications by which the Unit was originally constructed, subject, however, to the prior written approval of the Association. The Association or Insurance Trustee shall make available and pay to the Owner the amount of insurance proceeds received by the Association or Insurance Trustee for the reconstruction and repair of the Unit. The payment of the proceeds of insurance shall be made as the work progresses at such time and upon compliance by the Owner with such conditions as the Association or Insurance Trustee shall impose, in order to assure full restoration or repair of the damaged portions of the Unit in a workmanlike manner, free and clear of any mechanic's and materialmen's liens and any encumbrances, liens, claims, or charges.

Section 9. Any insurance obtained pursuant to the requirements of this Article shall be subject to the following provisions:

(a) All policies shall be written with a company or companies licensed to do business in the State of Iowa and approved by the Association.

(b) Exclusive authority to negotiate losses under said policies shall be vested in the Association or its authorized representative, including any trustee with which the Association may enter into any Insurance Trust Agreement, or any successor trustee, each of which shall herein elsewhere be referred to as the "Insurance Trustee" and all proceeds covering any loss shall in such event be payable to the Insurance Trustee, or to his successor. All proceeds from an insured loss under such policy shall be held for the use and benefit of the Association and the Owners of all Units and their respective mortgagees as their

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interests may appear, and subject to the provisions of Section 8 above. Such insurance proceeds shall be applied and distributed in accordance with the articles relating to insurance in the Declaration and Bylaws, and rules, regulations and resolutions of the Board not inconsistent therewith.

(c) All fire and other hazard insurance policies shall provide that, notwithstanding any provisions thereof which give the carrier the right to erect a structure or restore damage in lieu of making a cash settlement, such option shall not be exercisable when in conflict with the provisions of the Declaration or the Bylaws.

(d) All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Board of Directors of the Association, their agents and employees, the respective Unit Owners, their resident employees, agents and guests, except with respect to acts of intentional wrongdoing. Independent contractors shall not be considered agents, employees or servants of the Association or of the respective Unit Owners, within the meaning of said waiver.

(e) The insurance policy shall contain a provision that the insurance shall not be prejudiced:

(i) By any act or neglect of any occupants or Owners when such act or neglect is not within the control of the Unit Owners collectively; or

(ii) By failure of the Unit Owners collectively to comply with any warranty or condition with regard to any portion of the premises over which the Unit Owners collectively have no control.

(f) The Owner of any Unit (including the holder of any mortgage thereon) may obtain additional insurance at his own expense. Such insurance shall be written either by the same carrier as that providing coverage purchased by the Association pursuant to this Article, or, if written by another carrier, shall provide that it shall be without contribution as against the same. Such insurance shall contain the same waiver of subrogation provision as set forth in Section 9(d) of this Article. **Each Owner of a Unit in the project has the sole responsibility for obtaining, in addition to the insurance hereinabove provided to be obtained by the Association, any "Tenant's Policy", or equivalent, to insure against loss or damage to personal property used or incidental to the occupancy of the Unit, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "condominium unit owner's endorsement" covering losses to improvements and betterments to the Unit made or acquired at the expense of the Owner.**

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ARTICLE XI
EMINENT DOMAIN

Payment for the taking of a portion of a Unit or of the Common Elements by eminent domain or the conveyance under threat thereof shall be deemed to be proceeds from insurance on account of casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee. And, in the event of failure to do so, in the discretion of the Association, a special assessment shall be made against a defaulting Unit Owner in the amount of his award, and the amount of such award shall be set off against the sums hereinafter made payable to such Unit Owner. All mortgagees appearing on the mortgagee roster shall be notified by the Association of any Eminent Domain proceeding. The proceeds of the award shall be distributed or used in a manner heretofore provided for insurance proceeds except that when the Regime is not to be terminated, and one or more Units are taken in part, the taking shall have the following effects:

(a) If the Unit is reduced but tenantable. If the Unit taking reduces the size of the Unit, and the remaining portion of the Unit can be made tenantable, the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated:

- (1) The Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed as a Common Expense.
- (2) The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit included in the mortgagee roster, the remittance being payable jointly to the Owner and the mortgagees.

(b) Unit made untenable. If the taking destroys or so reduces the size of the Unit that it cannot be made tenantable, the awards for the taking of the Unit shall be used for the following purposes in the order stated:

- (1) The market value of such Unit immediately prior to the taking shall be paid jointly to the Owner of the Unit and to each mortgagee of the Unit included in the mortgagee roster.
- (2) The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of the Unit Owners in a manner approved by the Association; provided, if the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be paid for by assessment as a Common Expense among all remaining Units.

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- (3) If the amount of the award for the taking is not sufficient to pay the market value of the condemned Unit to the Owner, and to condition the remaining portion of the Unit for use as part of the Common Elements, the additional funds required for such purposes shall be raised by assessments against all of the Unit Owners who will continue as Co-Owners of Units after the changes in the Property affected by the taking. In the event that the market price cannot be determined by negotiations, it shall be determined by binding arbitration in accordance with Chapter 679A of the Code of Iowa. Thereafter the undivided fractional ownership interest of each remaining Unit Owner shall be adjusted upward equally to reflect the removal of such Unit(s) from the Regime.

ARTICLE XII TERMINATION

Section 1. In the event that two-thirds (2/3) of the Property is destroyed or substantially damaged, and if the Unit Owners and Eligible Mortgage Holders have not voted to reconstruct as herein provided, the Property shall be removed from the provisions of the Act without further action or agreement thirty-one (31) days after such destruction or damage.

Section 2. If at least ninety percent (90%) of the votes of the Unit Owners, and at least 67% of the Eligible Mortgage Holders voting one vote for each recorded, first mortgage held on a Unit, favor the removal of the Property from the provisions of the Act, the Property shall be removed from the provisions of the Act by an instrument duly recorded to that effect, in which event all liens affecting one or more of the Units shall be transferred automatically to the undivided fractional interest of the respective Unit Owners in the Property effective immediately upon filing of record a duly authorized statement regarding such removal.

Section 3. After removal of the Property from the Act, the Unit Owners shall own the Property and all assets of the Association as tenants in common and the respective mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the Unit Owners. Such undivided fractional interests of the Unit Owners shall be the same as the undivided fractional interest in the Common Elements prior to removal from the Act.

Section 4. Subject to the further limitation set out in the last sentence of this Section, this Article XII cannot be amended without the consent of the number of Unit Owners and record mortgagees of Units specified in Section 2 of this Article. In no event can any such amendment be used to defeat the lien of any mortgagee.

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ARTICLE XIII
USE AND OCCUPANCY RESTRICTIONS

Section 1. Subject to the provisions of this Declaration and Bylaws, no part of the Property may be used for purposes other than housing and related common purposes for which the Property was designed. Each Unit, or any two or more adjoining Units used together, shall be used as a residence, and for no other purpose, except that professional and quasi-professional people may use their residence as an ancillary or secondary facility to an office established elsewhere. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from: (a) maintaining a personal professional library; (b) keeping personal, business, or professional records or accounts; or (c) handling personal business or professional telephone calls or correspondence. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions. Each Unit Owner may lease or rent his Unit, but any such lease or rental agreement shall not operate to release the Unit Owner from primary responsibility for compliance with the terms and provisions of this Declaration, the Bylaws, and the Rules and Regulations.

Section 2. The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, and invitees for access, ingress to, and egress from, the respective Units and for other purposes incidental to use of the Units; provided, however, that the garages, patios, decks, porches, storage areas, any recreation area and other areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance, and operation of the Common Elements shall not be obstructed, damaged, or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession, or easement, presently in existence or hereafter entered into by the Board, affecting any part or all of said Common Elements.

Section 3. Without limiting the generality of the foregoing provision of this Article XIII, use of the Property by the Unit Owners shall be subject to the following provisions:

(a) Nothing shall be stored in the Common Elements without prior consent of the Board except in storage areas designated by the Board or as otherwise herein expressly provided;

(b) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in or on the Common Elements which will result in the cancellation of insurance on any Unit, or any part of the Common Elements, or which will be in violation of any law;

(c) No waste shall be committed in, on, or to the Common Elements;

(d) No sign, flag or display of any kind shall be displayed to the public view on or from any Unit or the Common Elements without the prior written

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consent of the Board or the written consent of the Managing Agent acting in accordance with the Board's direction;

(e) No noxious or offensive activity shall be carried on in any Unit or on or in the Common Elements, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Unit Owners;

(f) Except as expressly provided hereinabove, nothing shall be altered or constructed in or on, or removed from, the Common Elements, except upon the written consent of the Board;

(g) No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuildings shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent of the Board or pursuant to rules duly adopted by the Board; provided, however, that temporary structures may be erected for use in connection with the construction, repair or rebuilding of the Buildings, improvements, or any portion thereof;

(h) Outdoor drying of clothes shall not be permitted;

(i) Parking of vehicles in driveways and parking areas shall be subject to the rules and regulations of the Board applicable thereto and, without limiting the generality of the foregoing, no RV, no motor home, and no inoperable vehicle shall be allowed to remain parked outside for more than seventy-two (72) hours;

(j) Except within individual Units, Limited Common Elements, and designated patio, porch, and deck areas, no planting, transplanting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Property, except as approved by the Board;

(k) Motorcycles, motorbikes, motor scooters and other similar vehicles shall not be operated within the Property except for the purpose of transportation directly from a garage to a point outside the Property, or from a point outside the Property directly to a garage;

(l) No Unit Owner shall be permitted to raise or breed livestock or animals of any kind for commercial or any other purpose on the Parcel. This prohibition shall not apply to customary household pets of reasonable size. Where household pets are kept, they shall be maintained and controlled in accordance with Rules and Regulations of the Association. Without limiting the generality of the foregoing, no unattended dogs are permitted in the General Common Elements or outdoors.

(m) The Board shall have the authority to adopt Rules and Regulations not inconsistent with the Act, this Declaration, or the Bylaws, further governing

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the use of the Property, and all Unit Owners and Occupants shall be deemed to have constructive notice thereof and shall be governed thereby.

(n) Each Unit Owner shall give notice to the Association of every lien against the Unit(s) owned other than first mortgages of record, taxes, and condominium assessments, and of any suit or other proceeding which may affect the title to the Unit(s), within ten (10) days after the lien attaches or the Unit Owner receives notice of such suit.

(o) Satellite dishes not exceeding eighteen (18) inches in diameter may be affixed to the Common Elements in accordance with Rules and Regulations, specifications, and conditions established from time-to-time by the Board.

(p) The Board shall have the authority, by formal resolution adopted after seven (7) days notice to all Unit Owners given by ordinary mail, to exclude from the Property any person(s) other than a Unit Owner and minor dependents of a Unit Owner, either permanently, or for a stated period of time, and/or to impose such restrictions upon access as shall be set forth in the resolution. Any such resolution can be reversed or modified by a resolution of Unit Owners signed by at least fifty-one percent (51%) of Unit Owners. Notice of such intended action by the Board shall be deemed given upon mailing, postage prepaid, to the last known address of each Unit Owner. Notice to any one joint owner of a Unit shall be deemed notice to all joint owners of that Unit.

ARTICLE XIV REMEDIES

Section 1. In the event of any violation of the provisions of the Act, Declaration, Bylaws or rules and regulations of the Association by any Unit Owner (either by his own conduct or by the conduct of any other Occupant of his Unit) the Association, or its successors or assigns, or the Board, or its agent, shall have each and all of the rights and remedies which may be provided for in the Act, Declaration, Bylaws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceedings against such defaulting Unit Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. All expenses of the Board in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the lawful rate for money judgments until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of his respective share of the Common Expenses, and the Board shall have a lien for all of the same, as well as for non-payment of his respective share of the Common Expenses, upon the Unit and ownership interest in the Common Elements of such defaulting Unit Owner and upon all of his additions and improvements thereto

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and upon all of his personal property in his Unit or located elsewhere on the Property; provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Unit Owner, except for the amount of the proportionate share of said Common Expenses which becomes due and payable from and after the date on which the said mortgagee either takes possession of the Unit, accepts a conveyance of any interest therein (other than as a security) or files suit or commences other proceedings to foreclose its mortgage and causes a receiver to be appointed. This Paragraph shall not be amended, changed, modified or rescinded without the prior consent of at least fifty-one percent (51%) of all first mortgagees of record holding a lien against all or part of the Property casting one vote for each such mortgage. Nothing herein shall be deemed to derogate the right of the Association to recover unpaid assessments, and charges from a defaulting Unit Owner personally, without the foreclosure of lien rights, or resort to other remedies.

Section 2. In the event of any such default by any Unit Owner, then the Board, and the manager or Managing Agent if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose and all expenses in connection therewith, including reasonable attorney fees, shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time-to-time, cumulatively or otherwise, by, or under the direction of, the Board. Except as expressly limited by the provisions of the Act or this Declaration, the remedies available to the Association, acting by and through the Board, shall be without limitation. **By accepting title to a Unit each Unit Owner shall be deemed to have waived any homestead exemption from foreclosure of the lien rights extended to the Association by the Act or this Declaration.**

Section 3. The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board the right, in addition to any other rights provided for in this Declaration, (a) to enter upon the Unit, or any portion of the Property upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or (c) suspend the voting rights of a defaulting Unit Owner during the continuation of such default; or (d) to proceed with any combination of (a), (b), or (c) above.

Section 4. Failure on the part of the Board or the manager or Managing Agent or any Unit Owner to enforce any covenant, condition, restriction, rule or regulation, or any other provision of the Act, this Declaration, or Bylaws, shall not constitute a waiver of the right to enforce the same due to a further violation.

Section 5. Unit Owners shall have and enjoy reciprocal rights against the Association and each other for violations of the Act, this Declaration, Bylaws or Rules and Regulations.

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ARTICLE XV
MISCELLANEOUS PROVISIONS

Section 1. Each Unit Owner shall strictly comply with the provisions of the Declaration, the Bylaws, the Association rules and regulations and decisions issued pursuant thereto. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association or its designee on behalf of the Unit Owners, or in an appropriate case, by an aggrieved Unit Owner.

Section 2. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

Section 3. The captions to this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or prescribe the scope of this Declaration or the intent of any provision hereof.

Section 4. This Declaration and the Bylaws shall be construed and controlled by and under the laws of the State of Iowa. Any violation of this Declaration, the Bylaws, or duly adopted rules and regulations shall each be deemed a violation also of the others. Anything herein to the contrary notwithstanding, during construction of common area improvements, or reconstruction following a casualty loss, the provisions hereof and the provisions of the Bylaws which might otherwise prohibit or restrict the construction or reconstruction activities shall not apply to the Declarant or contractors/subcontractors engaged in such construction or reconstruction.

Section 5. Notices provided for in the Act, Declaration, or Bylaws shall be in writing, and shall be addressed to the Association or Board, or to any Unit Owner, as the case may be. The Association or Board may designate a different address or addresses for notices to them, respectively, from time-to-time, by giving written notice of such change of address to all Unit Owners. Unless a Unit Owner has designated a different address for notices by giving written notice thereof to the Association, any notice to a Unit Owner may be addressed to such Unit Owner at his Unit. Notices addressed as above shall be deemed delivered when mailed by United States mail with postage prepaid, or when delivered in person.

Upon written request to the Board, the holder of any recorded mortgage encumbering any Unit shall be listed on the mortgagee roster and given a copy of all notices permitted or required by this Declaration to be given to the Owner(s) whose Unit(s) is (are) subject to such mortgage(s).

Section 6. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States, Bill Clinton, and the Governor of Iowa, Tom Vilsack.

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Section 7. This Declaration shall take effect when recorded in the Polk County Recorder's Office, Polk County, Iowa.

Section 8. References herein or in the Bylaws to a proportion or percentage of the Unit Owners shall mean and refer to the collective total of their votes or fractional interests in the Common Elements as more fully described in **Exhibit D** attached hereto, and not to such Unit Owners per capita.

Section 9. In order to permit the construction, operation, maintenance, repair and removal of utilities serving common areas and/or individual units within the condominium regime, the Association Board of Directors shall be authorized, empowered, and directed to execute one or more utility easements from time-to-time. The President of the Association, acting pursuant to a duly authorized resolution of the Board of Directors, shall be deemed the attorney-in-fact of each Unit Owner and the spouse, if any, of each Unit Owner, as well as their mortgagees and successors in interest, for the purposes of the execution of each such easement.

Section 10. The Association shall make no expenditure in furtherance of litigation against the Declarant or any successor-in-interest to the Declarant, nor shall it make any expenditure for lobbying or in support of any political party or candidate.

Section 11. The Association shall neither make nor authorize any expenditure for installation of a dividing or privacy wall or fence or similar structure between the Property or any portion thereof and the Rollins Mansion located on that part of Lot 16 of Casady's Druid Hill Park not subject to the condominium regime.

ARTICLE XVI AMENDMENTS

Section 1. Except as otherwise provided in this Declaration, this Declaration may be amended or modified by a resolution setting forth such amendment or modification and duly adopted by the affirmative vote of not less than sixty-seven percent (67%) of the Unit Owners or by an instrument in writing setting forth such amendment or modification and signed by the Unit Owners representing not less than sixty-seven percent (67%) of the Unit Owners, and duly acknowledged before a Notary Public; and by the affirmative vote of not less than fifty-one percent (51%) of the votes of Eligible Mortgage Holders casting one vote for each recorded, first mortgage held on a Unit.

Section 2. Each holder of a recorded mortgage encumbering any one or more Units shall be notified by certified mail of any such amendment or modification, and an affidavit by the Secretary of the Association certifying to such mailing shall be made a part of any instrument effectuating such amendment or modification.

Section 3. No such amendment or modification shall change the boundaries of any Unit unless done in conjunction with Article IX, X, or XI hereof; the means for determining the

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