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*Hawthorn Park  
Advisory Commission for architectural  
Committee, parking, destruction, etc.,  
etc*

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**DECLARATION OF SUBMISSION TO HORIZONTAL PROPERTY  
REGIME ESTABLISHING A PLAN FOR CONDOMINIUM  
OWNERSHIP OF PREMISES**

This Declaration of Submission of Property to the Horizontal Property Regime established by Chapter 499B, Code of Iowa, is made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Ryan Jay Family, L.L.P., hereinafter referred to as the "Declarant".

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain real property located in Dickinson County, Iowa, legally described as follows:

Hawthorn Park, City of Spirit Lake, Dickinson County, Iowa,

and;

**WHEREAS**, Declarant is the owner of Hawthorn Park Patio Home Condominiums and other improvements built, or to be built, upon the real property described above and other real property to be declared in the future, and it is the desire and the intention of the Declarant to divide the project into condominiums and to sell and convey the condominium units to various purchasers pursuant to the provisions of the Horizontal Property Act, and to impose upon said property mutually beneficial restrictions, covenants, and conditions;

and

**WHEREAS**, Declarant desires and intends to submit all of the above described property and buildings and improvements constructed thereon, together with all appurtenances, as well as any additional phases of the project located on nearby lands of the Declarant, to the provisions of the Horizontal Property Act as a condominium project.

**NOW, THEREFORE,** Declarant hereby publishes and declares that all property described above is held and shall be held and conveyed subject to the following covenants, conditions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominiums and shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns and any person acquiring or owning an interest in the real property and improvements, its grantees, successors, heirs, executors, administrators, devisees and assigns.

## **ARTICLE I** **DEFINITIONS**

1. **Declarant.** The term "Declarant" shall mean Ryan Jay Family L.L.P., the maker of this Declaration.
2. **Declaration.** The term "Declaration" shall refer to Hawthorn Park Patio Home Condominiums as established and provided under the Horizontal Property Act.
3. **Project.** The term "project" shall include the entire parcel of real property referred to in this Declaration to be divided into condominiums, including all structures thereon. **As used** in Section 3 of Article II, the "project" is being developed in phases and the term "project" includes all phases.
4. **Unit.** The term "unit" shall mean one or more rooms occupying all or part of a floor or floors intended for use as a residence or storage and not owned in common with other owners in the regime. Each unit shall be bounded by the exterior surfaces of the building constituting the unit.
5. **General Common Elements.** The term "general common elements" shall have the meaning as defined in Article IV of this Declaration.
6. **Common Area.** The term "common area" shall have the meaning as defined in Article V of this Declaration.
7. **Limited Common Elements.** The term "limited common elements" shall have the meaning as defined in Article VI of this Declaration.
8. **Garage.** The term "garage" means a structure abutting a driveway and intended for, but not limited to, the storage of an automobile, a snowmobile, tools, and other items of tangible personal property.
9. **Condominium.** The term "condominium" means the entire estate in the real property owned by an Owner, consisting of an undivided interest in the common elements and ownership of a separate interest in a unit.

10. **Owner.** The term "owner" means any person with an ownership interest in a unit in the project. An "owner" shall include a contract purchaser in possession. In the event of multiple, corporate or fiduciary ownership, the owner or owners shall designate a person in writing filed with the Secretary of the Association, said person to act as owner in connection with the administration referred to in this Declaration, the Articles of Incorporation, and the By-Laws. Notices to be given by the Association are properly given to the owner or owners of the respective unit if given to the designated person.

11. **Council of Co-Owners.** The term "Council of Co-owners" means all the co-owners and is otherwise known and synonymous with the term "Association" and/or "Homeowners Association."

12. **Association.** The term "Association" means the same as the "Council of Co-owners" as defined in Paragraph 11 hereof and refers to Hawthorn Park Patio Home Condominiums Owners Association and its successors.

13. **Plat.** The term "plat" shall refer to the Plat of Hawthorn Park; the term "lot" shall refer to Lots 1, 2, 3, 4A, 5, 6A, 7, and 8, as set out in the plat; and the term "pond" shall refer to the pond(s) as set out in the plat.

14. **Phase I.** The term "Phase I" shall refer to the units 36, 37, 38, 39, 40, 41, and 42, inclusive, located on Lot 7 of the plat.

15. **Plural and Gender.** Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter, according to the context.

16. **Severability.** The invalidity of any covenant, restriction, agreement, undertaking, or other provisions of any condominium document shall not affect the validity of the remaining portions thereof.

17. **Incorporation.** Exhibits attached hereto and referred to herein are hereby made a part hereof with the same force and effect as other provisions of this document.

18. **Code of Iowa.** The term "Code of Iowa" and references to Chapters or Sections thereof shall be the statutes in effect at the time of execution of this Declaration, as from time to time amended or renumbered.

## **ARTICLE II** **DESCRIPTION OF LAND AND UNITS**

1. **Description of Land.** The exact legal description is as follows:

Lots 1, 2, 3, 4A, 5, 6A, 7, and 8, Plat of Hawthorn Park, City of Spirit Lake, Dickinson County, Iowa.

2. **Description of Units.** No unit is or will be located within a building; rather, each unit is free-standing with its own roof, land, and foundation. The units in Phase I are more particularly described and depicted on three Exhibits attached to this Declaration.

- A. Exhibit "A" lists all units, setting forth each unit designation and percentage interest in the common elements.
- B. Exhibit "B" is a site plan showing the location of each unit; the location of the fenced-in courtyard adjacent to each unit; the location of the yard adjacent to each unit; and the boundary line to the front and back of each unit.
- C. Exhibit "C" sets out the building plans for each unit showing its approximate area, number of rooms, and the principal materials of which each unit is or is to be constructed.

3. **Description of the Units.** This project is being developed in phases. The Declaration shall apply to and be binding upon all units. As additional phases are developed, the Declarant will file an Amended Exhibit "A", (e.g., "First Amended Exhibit A", "Second Amended Exhibit"), setting forth each additional unit designation and amended percentage interests in the common elements; an Amended Exhibit "B", setting forth the location of each additional unit(s); and an Amended Exhibit "C" showing the building plans for each additional unit. Each amended Exhibit shall be filed of record in the office of the Recorder of Dickinson County, Iowa.

### **ARTICLE III OWNERSHIP INTERESTS**

1. **Exclusive Ownership and Possession by Owner.** Each owner shall be entitled to exclusive ownership and possession of the unit. Each owner shall be entitled to an undivided interest in the common elements in a fractional interest.

The fractional interest assigned to each residential unit shall be determined by the total number of residential units as finally constructed and each residential unit's fractional interest shall then be multiplied by 80%.

The fractional interest assigned to each storage unit shall be determined by the total number of storage units as finally constructed and each storage unit's fractional interest shall then be multiplied by 20%.

As examples only:

Example #1: 60 residential units finally constructed in all phases; and  
20 storage units finally constructed in all phases.

$$\begin{array}{r} 1 \div 60 \text{ units} = .01667 \\ \times \quad \underline{.80} \\ = 0.13334 \text{ interest in common elements; and} \end{array}$$

$$\begin{array}{r} 1 \div 20 \text{ units} = .050000 \\ \times \quad \underline{.20} \\ = 0.01000 \text{ interest in common elements.} \end{array}$$

Proof: 60 units x 0.13334 interest = 80%; and  
20 units x 0.01000 interest = 20%.

\* \* \* \*

Example #2: 120 residential units finally constructed in all phrases; and  
32 storage units finally constructed in all phases.

$$\begin{array}{r} 1 \div 120 \text{ units} = .00833 \\ \times \quad \underline{.80} \\ = .006666 \text{ interest in common elements; and} \end{array}$$

$$\begin{array}{r} 1 \div 32 \text{ units} = .031250 \\ \times \quad \underline{.20} \\ = .006250 \text{ interest in common elements.} \end{array}$$

Proof: 120 units x .006666 interest = 79.99%; and  
32 units x .006250 interest = 20%.

After the project is completed, the fractional interest of each owner in the common elements as expressed in an Amended Exhibit "A" shall have a permanent character and shall not be altered. The fractional interest in the common elements shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each owner may use the common elements in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners.

An owner shall be deemed to own the exterior surface and roof of his unit and shall have the right to stain, paint, or otherwise finish the exterior of each unit, subject to the provisions set forth in this Declaration and other condominium documents. An owner shall have the exclusive right to paint, stain, tile, paper or otherwise finish and re-finish and decorate the interior surfaces of the walls, floors, ceilings, windows and doors bounding his unit.

2. **Appurtenances.** There shall pass with the ownership of each unit as a part thereof, whether or not separately described, all appurtenances to such unit and no part of the appurtenant interest of any unit may be sold, transferred or otherwise disposed of except in connection with the sale, transfer or other disposition of such unit itself or of all units in the regime.

3. **Association Membership.** Each owner of a unit shall be a member of the Association. Membership shall be appurtenant to, and may not be separate from, the ownership of any unit. No owner shall have more than one (1) membership. Ownership of the unit shall be the sole qualification for membership. The exercise of voting and membership rights shall be subject to the applicable provisions of the condominium documents.

4. **Voting Rights.** The Association shall have two (2) classes of voting membership:

A. Class A members shall be the owners of residential units, with the exception of the Declarant. Owners of a storage unit shall have no voting privileges. Class A members shall be entitled to one (1) vote for each unit in which they hold the interest required for membership. When more than one person holds such interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any unit.

B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each unit, as constructed or to be constructed in all phases, in which it holds the interest, provided that the Class B membership shall cease and be converted to Class A membership at such time that more than seventy-five percent (75%) of the units in all phases have been sold by the Declarant to individual purchasers.

#### **ARTICLE IV** **GENERAL COMMON ELEMENTS**

1. **Definitions.** General common elements shall include all portions of the project not included within any unit. The general common elements shall include, but are not limited to, the following:

A. All improvements and land other than the units and limited common elements, which generally consists of the street(s) and open space areas depicted on Exhibit "B".

B. The "common area" as set out in Article V.

- C. The following are not general common elements. Rather, as a matter of clarification, the owner of a unit shall be deemed to own the exterior walls, roof, and inner decorated and/or finished surfaces of the perimeter walls, floor and ceiling including paint, wallpaper, linoleum, carpeting, and similar floor coverings, the cupboards, counters, plumbing fixtures, and all similar items of equipment connected with each unit for the owner's exclusive use.

#### **ARTICLE V COMMON AREA**

1. **Common Area.** The area identified as the "Pool House" and the "Pool" shall be used as a common area by the owners. This common area will contain recreational facilities such as a pool, pool house, and other facilities that the Declarant deems appropriate. The Association may add recreational facilities to the common area after the Declarant has given title of the common area to the Association. All associated expenses (such as property taxes, utilities, and maintenance) shall be the responsibility of the Association.
2. **Delegation of Use.** Any owner may delegate his right to enjoyment of the common area and facilities to the members of his family and guests.
3. **Owners' Easement of Enjoyment.** Every owner shall have a right and easement of enjoyment in and to the common area and such easement shall be appurtenant to and shall pass with the title to every unit, subject to the following provisions:
  - A. The right of the Association to limit the number of guests of owners.
  - B. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area.
  - C. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the common area and facilities and in aid thereto to mortgage said property.
  - D. The right of the Association to suspend the voting rights and right to the use of the recreational facilities by an owner for any period during which any assessment against his unit remains unpaid.
  - E. The right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the owners.



**ARTICLE VI**  
**LIMITED COMMON ELEMENTS**

1. **Definition.** Limited common elements are those common elements reserved for the use of a specific unit to the exclusion of other units. Each limited common element will be for the exclusive use of the owner of the contiguous unit. The limited common elements are:

- A. The fenced-in courtyard adjacent to each unit as shown on the site plan attached as Exhibit "B".
- B. The yard (other than the fenced-in courtyard) adjacent to each unit as shown on the site plan attached as Exhibit "B". The yard adjacent to each unit is generally described as the tract of land that extends from the unit to the front boundary line of each unit and to the back boundary line of each unit. By contrast, the land extending from a front boundary line to the street and the land extending from a back boundary line to the "rear" survey line of the platted lot is a common element.

2. **Maintenance.** The landscaping and maintenance of the fenced-in courtyard and the yard adjacent to each unit shall be the obligation of the owner of the contiguous unit. An owner may also landscape and maintain yard(s) which are common elements adjacent to each unit with the permission of the Association.

**ARTICLE VII**  
**DECLARANT'S RESERVED RIGHTS AND POWERS**

1. **Declarant's Activities.** Declarant is irrevocably and perpetually empowered, notwithstanding any use restriction or other provision hereof to the contrary, to sell, lease or rent units to any person and shall have the right to transact on the condominium property any business relating to construction, repair, remodeling, sale, lease or rental of units, including but not limited to, the right to maintain signs, employees, independent contractors and equipment and materials on the premises to use common elements (general and limited), and to show units. All signs and all items and equipment pertaining to sales or rentals or construction in any unit furnished by the Declarant for sales purposes shall not be considered common elements and shall remain Declarant's separate property. Declarant retains the right to be and remain the owner of completed but unsold units under the same terms and conditions as other owners including membership in the Association except for its rights to sell, rent or lease.

2. **Easements.** Declarant expressly reserves perpetual easements for ingress, egress and utility purposes as may be required across and under the land submitted hereby and shown upon the site plan.

3. **Designation of Association Directors.** Notwithstanding anything in this Declaration, the Articles of Incorporation, or the By-Laws, the Declarant retains the right to name all directors of the Association until such time as two-thirds (2/3) of the units have been sold to third-party purchasers. Such directors need not be unit owners. The Declarant shall also be required to pay assessments for all finally constructed units held by it.

## **ARTICLE VIII MANAGEMENT OF THE REGIME**

1. **Association; Council of Co-Owners.** The operation of the condominium shall be by a non-profit membership corporation organized and existing under Chapter 504A, Code of Iowa. The name of the Association shall be Hawthorn Patio Homes Condominiums Owners Association. Copies of its Articles of Incorporation and By-Laws are attached hereto as Exhibits "D" and "E", respectively. Whenever a vote or other action of unit owners as a group is required, the mechanics of conducting such a vote or taking such action shall be under the control and supervision of the Association. The action of the Association shall constitute the action of the owners of the Council of Co-owners whenever such action is permitted or required herein or by Chapter 499B, Code of Iowa.

2. **Compliance.** All owners, tenants, families, guests and other persons using or occupying the regime shall be bound by and strictly comply with the provisions of the By-Laws of the Association, its Rules of Conduct, and similar regulations and determinations lawfully made by the Association and its directors, officers or agents shall be binding on all such owners and other persons. A failure to comply with the By-Laws, the Rules of Conduct, or the provisions of the other condominium documents or any agreement or determination thus lawfully made shall be grounds for an action to recover sums due for damages on the part of the Association or any owner as applicable and any mandatory or other injunctive relief without waiving either remedy.

3. **Power of Association.** Each owner agrees that the Association has and shall exercise all powers, rights and authority granted unto it, the Council of Co-owners and the owners as a group by Chapters 499B and 504A of the Code of Iowa, and such as are more particularly set forth in the condominium documents, including but not limited to, the making of assessments chargeable to owners and the creation of a lien on units thereof, and acquiring a unit at foreclosure sale and holding, leasing, mortgaging or conveying the same. Each owner hereby waives any rights to delay or prevent such foreclosure by the Association which he may have by reason of a homestead exemption.

4. **Partition.** All unit owners shall be deemed to have waived all rights of partition, if any, in connection with such acquisition.

5. **Membership, Voting Rights.** The voting rights of the members are set out in Article III of this Declaration.

6. **Restraint Upon Assignment.** The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the unit.

7. **Board of Directors.** The affairs of the Association shall be conducted by a Board of Directors. The Board may employ a manager of managerial service company and delegate various responsibilities to such person as more particularly described in the By-Laws. The management fee shall be a common expense.

8. **Discharge of Liability.** All owners shall promptly discharge any lien which may hereafter be filed against their condominium unit.

9. **Limitation of Association's Liability.** The Association shall not be liable for any injury or damage to property whatsoever unless caused by the negligence of the Association.

10. **Indemnification of Directors and Officers.** Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including legal fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a director or officer of the Association, or any settlement thereof, whether or not he is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

11. **Assessments.** The Association shall have all powers and authority granted to it by Chapter 499B, Code of Iowa, including, but not limited to the responsibility for the care, maintenance, repair, replacement and restoration of the common elements and facilities, the common area, and the making of assessments chargeable to owners. All sums so assessed but unpaid shall constitute a lien on the respective unit prior to all other liens, except:

- A. Liens for taxes and assessments lawfully imposed by governmental authority against such property.
- B. All sums secured by mortgages of record.

Such liens may be foreclosed by suit by the Association or its representatives in a like manner as a mortgage of real property provided that thirty (30) days written notice of the intention to foreclose shall be mailed, postage prepaid, to the owner as shown by the Association's record of ownership. In the event a lien of the Association shall be foreclosed, the unit owner shall be

required to pay a reasonable rental for the unit and the Association shall be entitled to the appointment of a receiver to collect the same. The Association or its representatives shall have the power to bid on such unit at foreclosure sale and to acquire, hold, lease, mortgage and convey such unit. Suit to recover a money judgment for unpaid common expenses may be filed without foreclosing or waiving the lien securing the same.

- A. **Notice.** The Association may file a lien for unpaid assessments by filing a notice thereof with the Dickinson County Recorder. Such notice shall be signed by an officer of the Association.
- B. **Title.** When a mortgagee or purchaser of a unit obtains title as a result of a foreclosure of a first mortgage, such mortgagee or the purchaser shall not be liable for the assessments chargeable to such unit due prior to the acquisition of title. Such unpaid assessments shall thereafter be deemed to be common expenses collectable from all unit owners including the mortgagee or purchaser.
- C. **Voluntary Conveyance.** In a voluntary conveyance, the Grantee of a unit shall be jointly and severally liable with the Grantor for all unpaid assessments on that unit up to the time of the conveyance. The Grantee shall, however, retain the right to recover from the Grantor any amounts paid by the Grantee therefore. Any Grantee under a voluntary conveyance shall be entitled to a statement from the Council of Co-owners or its representatives stating the amount of the unpaid assessments against the Grantor and said Grantee shall not be liable for nor shall the unit conveyed be subject to a lien for any unpaid assessments in excess of the amount appearing in said statement.

#### **ARTICLE IX MAINTENANCE, ALTERATION AND IMPROVEMENT**

1. **Definitions.** Certain terms used in this Article shall have a meaning as follows, provided any dispute over the characterization of work within one of the following meanings shall be conclusively decided by the Board of Directors of the Association.

- A. "Maintenance" or "repair" shall mean the act of maintaining, restoration, renovation, reconstruction, replacement, rebuilding and similar work necessary to preserve a unit or the property in its original condition as completed.
- B. "Improvement" shall mean the addition of a new structure, element or facility, other than a structure, element or facility otherwise provided for by this Declaration of any Supplementary Declaration.

2. **Maintenance by Association.**

- A. The Association shall have all powers and authority granted to it by Chapter 499B, Code of Iowa, including, but not limited to, the responsibility for the care, maintenance, repair, replacement and restoration of the common elements and facilities and the making of assessments chargeable to owners except where maintenance has specifically been made the responsibility of a unit.
- B. The Association shall repair incidental damage caused to a unit through maintenance by the Association and shall assess the cost thereof as a common expense.
- C. If a unit owner defaults on his responsibilities of maintenance, the Association shall assume such responsibilities and shall assess the costs thereof against the unit of such owner and such assessment shall be collectible as if it were an assessment for common expenses.
- D. The Association may, in its discretion, assume responsibility for any maintenance project which requires re-construction, repair, re-building, conservation, restoration or similar work to more than one unit and the costs thereof may be, in the discretion of the Association, either assessed against each unit on which such costs were incurred or assessed against all units as a common expense according to the circumstances.

3. **Maintenance of Owner.**

- A. Each unit owner, at his own expense, shall maintain the exterior walls and roof, and the interior boundary surfaces of such unit and its equipment; shall keep the interior in a clean and sanitary condition; shall do all redecorating, painting and other finishing which may at any time be necessary to maintain the unit; and shall be responsible for the maintenance and replacement of all personalty including carpets, other floor coverings, furnishings, and appliances within such unit.
- B. The owner of each unit shall be responsible for maintaining and replacing the plumbing fixtures within the unit and the furnace and air conditioning unit serving such unit together with heating ducts and all other utilities including electrical and electrical fixtures or portions thereof located within the boundaries of the unit. The owner shall also keep in a clean and sanitary condition the unit and any patio or courtyard which is for the exclusive use of the unit.

4. **Alterations or Improvements by Owner.** No unit owner shall make or permit to be made any structural alteration to the unit without first obtaining written consent of the Board of Directors of the Association. Alterations to the exterior of any unit shall not be made if, in the opinion of the Board of Directors of the Association, such alteration would be detrimental to the integrity or appearance of the regime as a whole. Unit owners shall do no act or work which will impair the structural soundness or integrity of his unit. The improvement or alteration of a unit shall cause no increase or decrease in the number of ownership interests appurtenant to such unit.

5. **Alterations or Improvements by the Association.** Whenever in the judgment of the Board of Directors of the Association, the common elements shall require additions, alterations, or improvements costing in excess of Three Thousand Dollars (\$3,000) and the making of such additions, alterations or improvements shall have been approved by a majority of the unit owners, the Board of Directors shall proceed with such additions, alterations or improvements and shall assess all unit owners for the costs thereof as a common charge. Any additions, alterations or improvements costing Three Thousand Dollars (\$3,000) or less may be made by the Board of Directors without approval of unit owners, and the costs thereof shall constitute part of the common expenses.

#### ARTICLE X

#### **CONDITIONS OF AND RESTRICTIONS ON OWNERSHIP, USE AND ENJOYMENT**

1. **Property Subject to Certain Provisions.** The ownership, use, occupation, and enjoyment of each unit and of the common elements of the regime shall be subject to the provisions of this Declaration, the By-Laws and Rules of Conduct, and related documents of the Association, all of which provisions irrespective of where set forth or classified shall have equal status and shall be enforceable and binding as a covenant, condition, restriction, or requirement running with the land and shall be binding on and enforceable against each and all lessees, tenants, occupants and successors in interest. The Association shall have the authority to adopt rules and regulations governing the use of the property, including individual units, and such rules will be observed and obeyed by the owners, their guests, and lessees. The Association shall provide its written Rules of Conduct to each owner and upon request to any prospective purchaser or mortgagee of any unit.

2. **Use of Property.** The use of the property shall be in accordance with and subject to the following provisions:

- A. A unit shall be used or occupied for single family dwelling purposes only, unless the unit is identified as a storage unit. A storage unit shall be used for storage purposes only (e.g. an automobile, snowmobile, tools, and other items of tangible property); a storage unit may not be used for any commercial or rental purposes.

- B. A unit may be rented or leased by the owner provided the entire unit is rented, the occupancy is only by the lessee and his family, and the period of rental is at least six months.
- C. No unit owner shall be permitted to erect a TV antenna or any other fixture, item or appurtenance on any unit exterior surface with this exception: satellite dishes with a maximum diameter of 24" are permitted on the roof.
- D. No unit owner shall be allowed to install additional parking slabs on any part of the property, nor shall parking of any vehicles be allowed except on designated driveways and garages. No parking on city sidewalks shall be allowed.
- E. No boat, snowmobile, recreational vehicle, trailer, or other vehicle other than an automobile shall be stored or parked outside a unit for more than twenty-four hours.
- F. No overnight parking of any vehicle shall be allowed in the street. No vehicle may be parked in any driveway without being driven for more than two (2) weeks at any one time.
- G. A unit owner shall give notice to the Association of every lien against the owner's unit other than permitted mortgages, taxes and association assessments, and of any suit or other proceeding which may affect the title to his unit within ten (10) days after the lien attaches or the owner receives notice of such suit.
- H. A unit owner shall be liable to the Association for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect, or carelessness, or by that of his family, guests, employees, agents or lessees.

**ARTICLE XI**  
**INSURANCE AND CASUALTY**

1. **General Liability and Property Damage.** Comprehensive general liability and property damage insurance shall be purchased by the Board as promptly as possible following its election, and shall be maintained in force at all times, the premiums thereto to be paid by assessments of monthly condominium association fees. Prior to the organizational meeting, such insurance shall be procured by Declarant. The insurance shall be carried with reputable companies authorized to do business in the State in such amounts as the Board may determine. The policy or policies shall name as insured the owners and the Association. Declarant shall be named as

an additional insured on such policy or policies until such time as Declarant shall have conveyed all of the condominiums in the project. The policy or policies shall insure against loss arising from perils in both the common areas and the units and shall include contractual liability coverage to protect against such liabilities as may arise under the contractual exposures of the Association and/or the Board.

2. **Fire and Casualty.** Fire and other hazard insurance shall be purchased by the Board as promptly as possible following its election and shall thereafter be maintained in force at all times, the premiums thereon to be paid out of the monthly condominium Association fees. Policies shall provide for the issuance of certificates or such endorsement evidencing the insurance as may be required by the respective mortgagees. The policy, and certificates so issued, will bear a mortgage clause naming the mortgagees interested in said property. The policy or policies shall insure against loss from perils therein covered to all of the improvements in the project, except as may be separately insured. Such policy or policies shall contain extended coverage, vandalism, and malicious mischief endorsements. The improvements to be insured under this clause shall be continually insured to value, and the policy or policies shall contain replacement cost insurance. If reasonably available, the policy or policies shall contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild. The policy or policies shall name as insured all of the owners, the Association and Declarant, so long as Declarant is the owner of any of the units in the project. The Declarant shall notify the insurance carrier of any change in ownership of a unit until such time as the Declarant shall no longer own ten percent (10%) or more of the units, at which time it shall be the responsibility of the Association to notify the insurance carrier of a change in the ownership of any unit. The policy or policies shall also cover personal property owned in common, and shall further contain waiver of subrogation rights by the carrier as to negligent owners.

3. **Fire and Casualty on Individual Units.** Fire and other hazard insurance shall be purchased by the unit owner contemporaneously with the transfer of title to the unit owner and shall thereafter be maintained in force at all times, the premiums to be paid by the unit owner. All real property interests of the owner in the unit including, but not limited to, exterior walls and roof, and mechanical equipment located within a unit such as plumbing fixtures, electrical lighting fixtures, kitchen and bathroom cabinets and counter tops, furnace, air conditioning and water heater, together with additions thereto and replacements thereof, as well as the personal property of the unit owner, shall be separately insured by such owner, such insurance to be limited to the type and nature of coverage often referred to as "Condominium Unit Owners Insurance".

4. **Additional Coverage.** The Board may purchase and maintain in force at the expense of the common maintenance fund, debris removal insurance, fidelity bonds, and other insurance and/or bonds that it deems necessary. The Board shall purchase and maintain workers' compensation insurance to the extent that the same shall be required by law respecting employees of the Association. The Board shall also maintain "all risk" insurance coverage on the project to insure against water damage and like kind of casualties, if such insurance would be reasonably available.



5. **Loss Adjustment.** The Board is hereby appointed the attorney-in-fact for all owners to negotiate loss adjustments on the policy or policies carried by the Association.

6. **Damage to a Unit.** It shall be the decision of the unit owner whether to rebuild, repair, restore, or sell the unit in the event of the damage or destruction of all or part of an individual unit. The unit owner shall promptly commence the rebuilding, repair or restoration of the unit in the event the owner determines not to sell and in all events, shall take all appropriate actions to remove all debris.

7. **Damage to a Common Element.** In the event of sixty percent (60%) or more damage to a common element, including the common area, by fire or other casualty, the owners of the individual units, by vote of not less than a majority of those present and entitled to vote, in person or by proxy, at a duly constituted owners' meeting held within thirty (30) days of such damage or destruction, shall determine whether to rebuild, repair, restore, or sell the damaged property.

8. **Deficiency.** In the event that the common area is repaired or reconstructed and there is any deficiency between the insurance proceeds paid for the damage to the common area and the contract price for repairing or re-building the common area, the Board shall levy a special assessment against each owner in proportion to his fractional interest of ownership in the common area to make up such deficiency. If any owner shall fail to pay said special assessment or assessments within thirty (30) days after the mailing by the Association to an owner of the levy and a due date for payment, the remaining owners shall be entitled to the same remedies as those provided in Article VIII of this Declaration, covering a default of any owner in the payment of maintenance charges.

9. **Abatement of Common Expenses.** The Board is authorized to provide coverage for payment of maintenance charges which are abated hereunder in behalf of an owner whose unit is rendered uninhabitable for a peril insured against.

10. **Review of Insurance Needs.** Insurance coverages will be analyzed by the Board, or its representative, at least every year from the date hereof and the insurance program revised accordingly.

## **ARTICLE XII** **TERMINATION**

1. **Procedure.** The condominium may be terminated in the manner provided in the Horizontal Property Act.

2. **Agreement.** The condominium may be terminated at any time by the approval in writing of all of the owners of the condominium and by holders of all liens affecting any of the units by filing an instrument to that effect, duly recorded, as provided in Chapter 499B, Code of Iowa.

It shall be the duty of every unit owner and his respective lien holder to execute and deliver such instruments and to perform all acts as in the manner and form that may be necessary to effect the sale of the project when at a meeting duly convened of the Association, the owners of 100% of the voting power, and all record owners of mortgages upon units in the regime, elect to terminate and/or sell the project.

2. **Form of Ownership After Termination.** After termination of the condominium, the project will be held as follows:

- A. The common elements shall be deemed to be owned as a tenancy in common by the owners.
- B. The undivided interest in the property owned in common which shall appertain to each unit owner shall be the fractional interest previously owned by such owner in the common area and facilities.
- C. Any liens affecting any of the condominiums shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the owner in the property.
- D. After termination, the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the owners in a percentage equal to the fractional interest owned by each owner in the common elements; after first paying out of the respective shares of the owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each owner.

### **ARTICLE XIII AMENDMENTS AND MISCELLANEOUS**

1. **Procedure.** Except as otherwise provided in this Declaration, this Declaration may be amended and such amendment shall be made in the following manner:

- A. **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered. Holders of a first mortgage of record shall receive notice of such proposed amendment as provided in the By-Laws of the Association.
- B. **Resolution.** A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by any member of the Association. Except as provided elsewhere, the resolution must be adopted by a vote of not less than 66 2/3% of all owners entitled to vote, in person or by proxy.

- C. **By-Laws.** In the case of an amendment to this Declaration by reason of an amendment to the By-Laws of the Association, then in the manner specified in such By-Laws.
- D. **Execution and Recording.** An amendment adopted pursuant to Subparagraphs B or C above shall be executed by an officer specifically delegated to do so with the formalities required by Chapter 499B, Code of Iowa. Upon the recording of such instrument in the office of the Dickinson County Recorder, the same shall be effective against any persons owning an interest in a unit or the regime.

2. **Amendment of Ownership Interest.** No amendment shall change the fractional interest of ownership in the common elements appurtenant to a unit, nor increase the owner's share of the common expenses unless the record owner of the unit concerned and all record owners of mortgages thereon shall affirmatively join in the adoption of such amendment.

**IN WITNESS WHEREOF,** Declarant has executed this Declaration the day and year first above written.

RYAN JAY FAMILY, L.L.L.P.

By: \_\_\_\_\_  
Kenneth J. Ferguson, A General Partner

STATE OF IOWA, COUNTY OF \_\_\_\_\_, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared KENNETH J. FERGUSON, to me personally known, who being by me duly sworn, did say that he is a General Partner of the partnership executing the within and foregoing instrument; that no seal has been procured by the said partnership that said instrument was signed on behalf of said partnership by authority of Partners; and that the said KENNETH J. FERGUSON, as a General Partner, acknowledged the execution of said instrument to be the voluntary act and deed of said partnership, by it and by him voluntarily executed.

\_\_\_\_\_  
Notary Public