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002511

DECLARATION OF SUBMISSION OF PROPERTY
 TO HORIZONTAL PROPERTY REGIME
 FOR
 LOT 16, COLONIAL VILLAGE 5TH ADDITION
 A CONDOMINIUM

INST. NO. 002511
 POLK COUNTY, IOWA
 FILED FOR RECORD #23
 FEB 01 1985
 AT 9:11 A.M.
 KATIE SHINSTONE HOLSCHEIN, Recorder
 By [Signature] Deputy

FRANK R. DOWNING DEVELOPMENT, INC., (referred to hereafter as "Developer"), hereby executes this instrument of Declaration of Submission of Property to a Horizontal Property Regime to be known as JEFFERSON COURT CONDOMINIUMS, a "Condominium", pursuant to Chapter 499B, Code of Iowa 1983, entitled "Horizontal Property Act (Condominiums)" the same to take effect when filed for record in the office of the Recorder, Polk County, Iowa.

ARTICLE I

PURPOSES AND CERTAIN DEFINITIONS

499B.2

1. Purpose. The purpose of this Declaration is to submit and convey the lands hereinafter described and the apartment building and other improvements constructed or to be constructed thereon to the condominium form of ownership and use pursuant to the Iowa law.

2. Definitions. The terms employed shall have the meanings given them in Chapter 499 B, Code of Iowa ¹⁹⁸⁷ (1983), unless the context or the more particular provisions of any condominium document requires a different one. Certain terms are used as follows: (a) Plural and Gender: All words or phrases shall be taken to include the singular or plural according to context and to include the female, male or neuter gender as may be applicable. (b) Successors. Reference to Developer, owner, or to any entity or association shall include the respective successors, grantees and assigns thereof. (c) Tense. Upon the effective date of this Declaration, use of the present tense shall include the future tense and use of the future tense shall include the past or present tense as may be applicable, particularly where the subject matter relates to completion of an improvement that has not been or already has been completed as the case may be. (d) Apartment or Unit. The terms "apartment" and "unit" are used interchangeably unless a different construction is specifically spelled out or required by the context. An apartment or unit means generally an area defined by surfaces or planes which is capable of being owned as a separate parcel of real property under the Iowa Horizontal Property Act. (e) Garage or Garage Building. The terms "garage" or "garage building" as used herein include the structure identified as such in the plans submitted herewith. (f) Garage Stall. The term "garage stall" as used herein includes an area within the garage building approximately 11 feet in width and 22 feet in length and identified as shown on the plans submitted herewith. A garage stall means generally an area identified as such on such plans, which is capable of being owned as a separate parcel under the Iowa Horizontal Property Act. (g) Buildings. The term "building" as used herein shall include the apartment building which contains the apartments and the garage building which contains garage stalls. (h) Condominium Documents and Property. This

Declaration and all exhibits attached hereto constitute the condominium documents. The terms "condominium property" or the "property" include all property, real, personal or mixed, including such as are sometimes referred to as "facilities" submitted to the regime, or owned by the Association if context requires, other than the sole personal property of Developer or any owner. (i) Jefferson Court Condominium Owners Association, Inc. A nonprofit corporation organized under Chapter 504A, Code of Iowa, to serve as the council of the owners of the apartments, submitted to this regime, sometimes referred to as the Association. (j) By-Laws. The By-Laws of Jefferson Court Condominium Owners Association, Inc. 499B.14

ARTICLE II

DESCRIPTION OF LAND AND BUILDING;
PRINCIPAL MATERIALS

1 Land. There is attached hereto (as Exhibit "A" and hereby made a part hereof, pursuant to Section 499B:6 of the 1983 Code of Iowa, a certified plat of survey of land submitted to the horizontal property regime showing the legal description of the Lot, the dimensions of the Lot and references to the locations of easements. Exhibit A-1 shows the location and dimensions of the buildings hereby submitted to the horizontal property regime, the location of the units, garages, and parking areas and designated common elements. The land hereby conveyed and submitted to the horizontal property regime consists of a Lot situated in Polk County, Iowa, and is described in Exhibit A as: Lot 16, Colonial Village 5th Addition, all in and forming a part of the City of West Des Moines, Polk County, Iowa.

2. Private Road; Access. Exhibit A-1 shows the location of a street or private drive within the perimeter of the condominium property affording access to the apartments and common elements from 49th Street in West Des Moines, Iowa, which is a public street, and an easement over the private drive as is necessary for ingress and egress to such apartments, garage stalls and common elements shall be pertinent to each apartment and garage stall.

Street or private drive shown in Exhibit A-1 may be extended to future additional property which may be submitted to the Regime in accordance with Article VI hereof and shall upon submission to the regime become private roads and common elements affording access to the apartments and common elements from 49th Street in West Des Moines; upon such submission of additional land an easement over said roads as is necessary for ingress and egress to such apartments, garage stall and common elements shall be appurtenant to each apartment and garage stall; provided that prior to such submission or in the event additional land is not submitted to the Regime, no easement or other right to use such roads shall be appurtenant to any apartment or garage stall or be suffered by such land.

② 3. Particulars of the Apartment Building. The apartment buildings are rectangular in shape, facing generally to the four compass points and consist of two 4-plexes, each being two stories in height. The first floor or ground level of each building consists of two two-bedroom apartments and the second floor consists of two two-bedroom apartments. Each apartment has an entrance to a central hall, all as designated on Exhibits B-1, B-2, C and C-1; in addition, each apartment has a storage area off the central hall as designated on Exhibits C and C-1.

Each apartment building contains four common halls, two on the upper level and two on the lower. Each hall area provides ingress and egress to four apartments, two first floor and two second floor. Access to second floor apartments is provided by a stairway in each hall. Each hall may have a bank of mail boxes for the four apartments which that hall services.

4. Garage Building and Parking Stalls. The initial garage buildings are rectangular in shape, contain four garage stalls attached to each building and are on a single level. Access to garage building is afforded over and across a private drive.

5. Principal Materials - Apartment Building. The footings are of poured, reinforced concrete. The foundation walls are of concrete block. The first, or ground level floor, is a concrete slab 4" thick. The second floor consists of wood trusses with ½" fiberboard, 5/8" plywood, and 5/8" underlayments decking. The exterior walls are composed of 2" x 4" wood studs covered with 1" rigid insulation sheathing and brick exterior. All exterior stud walls are filled with insulation. Roof construction is of wood trusses covered with 1/2" plywood and asphalt shingles. All ceilings have 5/8" sheetrock. The second floor ceiling has R-38 blown-in insulation. The interior partitions are constructed of 2" x 4" wood studs with 1/2" sheetrock. The corridor walls are composed of 2" x 4" wood studs with 5/8" sheetrock on each side.

6. Principal Materials - Garage Building. The garage building is of 2" x 4" framing, with brick exterior, covered with asphalt shingle roof, and with a separate 9'-0" x 7'-0" overhead garage door for each garage stall. The flooring in the garage building is of 4" concrete slab.

ARTICLE III

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LEGAL DESCRIPTION OR IDENTIFICATION OF APARTMENTS AND GARAGES, AND COMMON ELEMENTS BY PLAN AND NUMBER, CERTIFICATES

1. Plans and Exhibits attached - Apartment Buildings. The location of each apartment within the apartment building, the number of rooms for each apartment and the dimensions thereof and the area

of the apartments, the common area to which each apartment has access, the particulars of the apartment building and the dimensions, area and location of all common elements affording access to each apartment or otherwise are all shown and depicted by survey, plans and/or graphically insofar as possible by the following exhibits attached hereto and made a part hereof:

- Exhibit B-1 Survey of floor plan of first story
(Sometimes referred to as ground level floor.)
- Exhibit B-2 Survey of floor plan of second story.
- Exhibit C Floor plan with detail of typical apartment
on first floor level.
- Exhibit C-1 Floor plan with detail of typical apartment
on second floor level.

2. Plans and Exhibits Attached - Garage Building. The location of each garage stall within the garage building, the dimensions and area thereof, the common area to which each garage stall has access, the particulars of the garage building, and the dimensions, area and location of all common elements affording access to the garage building are all shown and depicted by survey, plans and/or graphically insofar as possible by the following exhibits attached hereto and made a part hereof:

- Exhibit B-1 Typical floor plan of first story. 1987

3. Complete Plans and Certificates. There is also attached hereto, as Exhibit D-1, pursuant to Section 499B.6 of the ~~1983~~ Code of Iowa, full and exact copy of the complete plans of the building identified as Jefferson Court Condominiums of Polk County, Iowa, and as Exhibit D-2 hereto the certificates of Engineers as appropriate that Exhibits A, A-1, B-1, B-2, C, and C-1, together with the wording of this Declaration, constitute a correct representation and legal description of the land, building and other improvements of Jefferson Court Condominium, a Condominium, and that there can be determined therefrom the identification, locations, dimensions and size insofar as possible of each apartment and/or the common elements of the condominium regime.

4. Identification of Apartments and Storage Areas by Number. Each apartment is identified and described by a unit number assigned to it and such number and the location of each apartment are set forth in Exhibits B-1 and B-2. In addition, the apartment number of each apartment, a statement of its location, and its approximate area are set forth on Exhibit E attached hereto. Exhibit E also sets forth the fractional interest of undivided ownership in the land and other common elements of the regime, which is appurtenant to each apartment as explained in detail in Article V. Exhibits C and C-1 also provide data as to the approximate areas of storage area for each apartment off the hall area outside of each apartment. 500
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5. Identification of Garage Stalls. Each garage stall is identified and described by a number assigned to it, and such

number and the location of each garage stall are set forth in Exhibit B-1 and E. In addition, the number of each garage stall and a statement of its location and approximate area are set forth on Exhibit E, attached hereto. Exhibit E also sets forth a fractional interest of undivided ownership in the land and other common elements of the regime which is appurtenant to each garage stall as explained in detail in Article V.

ARTICLE IV

DESCRIPTION/DEFINITION OF COMMON ELEMENTS, APARTMENTS AND GARAGE STALLS

Lot 16, Colonial Village 5th Addition, a Condominium, consists of apartments and garage stalls which are separate parcels of real estate individually owned by the owners thereof and of the common property (sometimes referred to as "common elements") which is owned in common by all the owners of the respective apartments and garage stalls. The common elements are either "general common elements" or "limited common elements" and the same, together with the apartments and garages, are described and defined as follows:

1. General Common Elements. The general common elements are the land described in Article II and all improvements, including the apartment building, garage building and facilities thereof situated on the land, except the apartment units, garage stalls and such common elements are as limited common elements. The general common elements include, without being limited thereto, all property defined as such in Section 499B.2(4) Code of Iowa, the land, private roads, paths, landscaping and plantings, sidewalks, outside lighting system and fixtures, outside parking stalls, TV antenna and reception system, general water system and meter therefor. All ventilation and exhaust systems, foyers and hallways and the coverings thereof, stairways, walls, the lighting systems and fixtures of the common areas, fire extinguishers, gutters and down spouts, areaways, the chimneys and fresh air ducts, the general heating and air conditioning systems, equipment for the common areas and the doors to foyers.

All structural elements of the apartment and garage buildings, including the foundation, slabs, exterior walls, roof and attic, interior load bearing walls, walls separating apartments from a corridor or other common area, floors dividing apartment levels, other structural elements of the building not reserved to an apartment as required by Jefferson Court Condominium Owners Association for its functions as the council of co-owners are general common elements.

All sewer, water, electrical, gas, telephone and other utility or service lines, wiring, ducts, conduits, piping, facilities or systems for purposes of utility or other services such as ventilation, exhaust, heating, air and air conditioning, to or for an apartment (as distinguished from the actual machine or piece of equipment to

which they are connected) are general common elements notwithstanding the same are located in part within an apartment as hereinafter defined so long as the same is connected to any other such wiring, line and the like. The common elements shall include easements to apartments for all such lines, wiring, ducts and the like above referred to for the furnishing of utility and other services or systems to the other apartments and to the common property and easements of support in every portion of an apartment which contributes to the support of the improvements.

2. Limited Common Elements. The limited common elements include such common property which is classified as limited by Section 499B.2(5) Code of Iowa. The common property which is specified and determined to constitute a limited common element for the use of an apartment includes, but is not limited to, the following: The patio or balcony adjoining that apartment, the doors and windows, including any sliding glass door or window set in the wall of an apartment and any non-load bearing partitions or walls within an apartment (but excluding any lines, wires, ducts and the like situated within such partitions).

All fixtures and attachments, machines, and equipment in the nature of fixtures or attachments (excluding the lines, wiring, ducts and the like used in connection therewith and which are defined as general common property) installed during construction and contained within or servicing solely an apartment, such as furnace, air compressor, water heater, range, plumbing and air conditioning equipment are limited common elements for such apartment.

The numbered mailboxes are limited common elements and one of each is reserved as such for the use of the particular apartment whose number corresponds to the number of such mailbox.

3. Apartments. Each apartment shall consist of the area between the interior surfaces of its perimeter walls (including windows and sliding doors or windows, and including the interior surface of the exterior door(s), and between the lower surface of the ceiling and the upper surface of the floor. In all cases, an apartment shall include and be defined by the surfaces referred to and including any non-load bearing partitions within, except that all lines, wires, ducts and the like within any non-load bearing partition or wall shall be excluded and shall not constitute a part of the apartment for purposes of separate ownership of such apartment.

4. Garage Stalls. Each garage stall shall consist of the area between the interior surface of the perimeter walls of each stall and the interior surface of the garage door when closed and between the lower surface of the roof decking and the upper surface of the concrete slab of the floor.

ARTICLE V

IDENTIFICATION OF BUILDINGS BY NUMBER AND
PERCENTAGE INTEREST OF EACH UNIT OR GARAGE
STALL IN THE COMMON ELEMENT; VOTING RIGHTS;
APARTMENT AND GARAGE FEATURES

1. Percentage of Ownership Interest. The owner of each apartment and garage stall shall own as an appurtenance thereto an undivided interest in the lands and other common elements of the regime, both limited and general, and the amount of such undivided interest is expressed as a fraction. Such fraction of ownership interest shall be the same in both the limited common elements and the general common elements, notwithstanding any exclusive right of use of any limited common element which may be appurtenant to a particular apartment or garage stall.

The amount of such undivided interest appurtenant to each apartment shall be a fraction, the nominator of which is 1 and the denominator of which shall be the total number of apartments within the regime.

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The Developer reserves the right to submit additional lands and buildings to the regime hereby created in accordance with the terms of Article VI hereof. In such event, fractional ownership shall be determined by the application of the formula heretofore described in this Section which shall include the total number of apartments in the regime including any additional apartments submitted to the regime after this Declaration is duly recorded as hereinafter provided. (As an example, Lot 16 of Colonial Village 5th Addition has a total of 8 apartments submitted to the regime and each owner of the apartment shall have one-eighth (1/8) undivided interest in the lands and other common elements of the regime, whether they be limited and general located in or on a Lot; when additional land and buildings are added to the regime such as eight apartments on Lot 15, Colonial Village 5th Addition, then each owner of an apartment in the regime shall have one-sixteenth (1/16) undivided interest in the land and other common elements, limited or general located in or on Lots 16 and 15, Colonial Village 5th Addition.

Each apartment is entitled to one vote in the Jefferson Court Condominium Owners Association regardless of the number of owners of each apartment.

2. Identification of Apartments and Garages by Number. Exhibit E set forth the following with respect to each apartment and garage: Identification by number, location and approximate number of square feet as derived from Exhibits A, B-1, B-2 and C by consistent standards generally approved in the building industry.

3. Apartment Features.

(a) In General. All apartments adjoin either a patio (as to ground level apartments) or a balcony (as to apartments

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(a) In General. All apartments adjoin either a patio (as to ground level apartments) or a balcony (as to apartments

situated on the second level), which is a limited common element for that apartment and which is located opposite a portion of the exterior dining room wall and which can be reached by a glass sliding door in that wall. The other particulars of the apartments and floor plans are shown by Exhibits B-1, B-2, C and C-1 but are summarized as follows: Each two bedroom apartment contains generally two bedrooms, a living room, dining room, kitchen, two baths, utility and furnace room, storage area, four closets and a center hallway from living room to bedroom and bath area.

(b) Responsibility for Equipment and Furnishing. The Developer will provide for the apartment as constructed a range, range hood, refrigerator, dishwasher, furnace, air conditioning unit, air compressor for air conditioning (but not located within the apartment), kitchen cabinets and tops, vanities and tops, bathroom fixtures, interior doors and hot water heater, all light fixtures, carpeting or other floor covering, paint, door bell and entrance intercom. The Developer will provide separate meters for the consumption of electricity and water by the apartment occupants. Water consumption used by the Association will be separately metered and will be paid by the Association as a common expense. The items listed herein and in subparagraph (c) below are so referred to solely for the purpose of clarifying the extent of the Developer's undertaking and all such items shall constitute common elements or a part of an apartment or personal property of the owner as it otherwise provided in this Declaration.

(c) Optional Items: Permitted Variations Various optional items may be provided by Developer during the construction by arrangement with and at extra cost to an apartment purchaser. In addition, certain of the items to be provided by Developer set forth in (b) above may be deleted altogether or substituted items of different character provided by the Developer. The Developer and owner may by agreement delete, relocate, modify or add interior non-load bearing partitions. The addition of any optional item by Developer on its own initiative or any addition, substitution, deletion or variation above mentioned by agreement with a purchaser is agreed to by all other apartment owners and shall not be construed to constitute an amendment to or variation from the terms of this Declaration, and, in addition, shall not in any event vary or modify the percentage of ownership interest appurtenant to such apartment as herein provided.

4. Garage Features. ^{Rental} A garage stall has been assigned to each apartment and ownership of the apartment shall include ownership of the said assigned garage stall. If the owner of a garage stall desires to rent it, then approval for the rental shall be made through the Jefferson Court Condominium Owners Association. Any rental of a garage stall shall not alter or change the percentage of ownership interest and voting rights herein set forth in Article V.

ARTICLE VI

DEVELOPER'S RESERVED RIGHTS AND POWERS

1. Developer's Activities and Apartment Ownership. Developer is empowered to sell apartments and garage stalls on the regime to any person and to transact any business relating to the construction or sale of apartments or garage stalls including but not limited to the right to maintain one unit as a sale and display office, post signs, have employees, equipment and materials on the premises and to use common elements to show apartments. A sales and rental office, signs and all items and equipment pertaining to sales or rentals or other facilities furnished by the Developer shall not be considered common elements and shall remain the separate property of the Developer. Developer retains the right to be and remain the owner of completed but unsold apartments and garage stalls all under the same terms and conditions as other owners including membership in the Association. In addition, apartments and garage stalls owned by the Developer shall only be subject to the assessment and lien for "current expenses" of the Association as distinguished from assessments for "reserves" or "emergencies" as referred to in Article VII (4) and (5) of the By-Laws of the Association.

2. Future Development. The Developer contemplates developing and constructing a future condominium project or projects with common areas and facilities. The future construction phases of this development shall be on contiguous land to this project and shall not cover in excess of 4.4 Acres, including the land in Lot 16, Colonial Village 5th Addition, an Official Plat now being in and forming a part of the City of West Des Moines, Polk County, Iowa. Future common areas and facilities shall be included in the common areas and facilities of Lot 16 of said Colonial Village 5th Addition, and the common areas and facilities located in Lot 16 of said Colonial Village 5th Addition shall be included in the common areas and facilities of the future development phases. In this connection, the Developer reserves the irrevocable right and power and authority to amend this Declaration, from time to time, to implement the foregoing, and such right and power is hereby granted to declarant by the apartment owners.

Notwithstanding the provisions in this Article pertaining to future development, no change in the fractional ownership in the common elements by any future development shall be made seven (7) years after the date this Declaration becomes effective.

Nothing herein contained shall be construed to compel the Developer to submit additional lands to this regime nor to prevent the use of any land not hereby or hereafter incorporated into this regime for such purposes as desired and as may be otherwise lawful.

Any future land and buildings submitted to the regime shall be in accordance with an approved master plan or variation thereof which is approved by the City of West Des Moines, Iowa.

3. Construction of Buildings. The construction of apartments and garage buildings shall be in accordance with the terms of this Declaration and the plans and exhibits attached hereto, except Developer reserves the right on its own initiative or pursuant to agreement with the owner of a particular apartment, or at the instance of mortgagees, any insurance carrier, the architects, or the public authorities to make or authorize variations therefrom or adjustments of an insubstantial character which are not meaningfully prejudicial to the rights of owners and do not materially affect such rights or the value of an apartment, which variations or adjustments are permitted without necessity of consent by other owners and shall not constitute an amendment of this Declaration. Variations which do materially affect such rights or value and are considered substantial in character are a change in location of the condominium or a reduction in size or change in the location, physical layout or design of an apartment, except that the slight deviations required by construction or arising from the installation of the walls and/or partition, closet or other feature within an apartment, and slight variations in the location of the condominium which an accurate survey would show are permitted and the right to make the same reserved by Developer.

4. Easements. In addition to Lot 16, Colonial Village 5th Addition, the land submitted to this regime, the Developer owns the following described real estate: Lots 9, 10, 11, 14, and 15 not submitted to this regime, Colonial Village 5th Addition, and Official Plat now being in and forming a part of the City of West Des Moines, Polk County, Iowa, which Developer hereby expressly reserves for himself, his successors and assigns a perpetual easement over, across, and under the parcel of land described in Exhibit A as Lot 16 of said Colonial Village 5th Addition for the purposes of ingress to and egress from said lands, and for roads and utility purposes, and in particular in connection with any future development or construction upon the said additional lands and the enjoyment, use and occupation thereof. In addition, Developer expressly reserves as aforesaid perpetual easements for utility purposes over all the land submitted to this regime as described in Article II (1). The easements reserved shall remain in effect perpetually notwithstanding any termination, destruction or sale of all or any portion of the condominium property.

Developer expressly reserves perpetual easements for ingress, egress, and utility purposes as may be required across and under the land submitted hereby and by any supplements hereto for expansion of the regime and in connection with any other development of the land described.

5. Additional Property, Supplemental Declaration.

(a) Developer reserves the right to submit additional parcels of land to the regime together with apartments and garage stalls thereon as follows:

- (i) Developer may, in his discretion by execution and recordation of the Supplemental Declaration, submit additional land and improvements to the regime; and
- (ii) Supplemental Declarations, when executed and filed pursuant to the submission of additional land and improvements to this regime, are and shall be automatically incorporated herein by reference and made a part hereof with like effect as though the buildings, land, units and other improvements had been submitted at the time of the execution of this Declaration. Supplemental Declarations shall be executed solely by the Developer, notwithstanding the ownership of units by others, and Developer shall have and exercise such right and power not only in its own capacity but also for all existing unit owners, and each unit owner does, therefore, agree to such Supplemental Declaration and documents as may be necessary to add such additional land, buildings, units, and other improvements to this regime, and such additional construction by Developer shall in no way be deemed an interference with the ownership, use or enjoyment of any unit submitted to the regime or appurtenances thereto.
- (iii) No Supplemental Declaration shall effect the ownership unit assigned to the unit previously submitted to the regime; but the ownership units appurtenant to each unit submitted by Supplemental Declaration shall have the same use and effect as the ownership units appurtenant to each unit submitted by this Declaration.
- (iiii) Nothing herein contained shall be construed to compel the Developer to submit additional lands to this regime nor to prevent the use of any land not hereby or hereafter incorporated into this regime for such purposes as they desire and as may be otherwise lawful.

6. No license or Easement Through Use of Contiguous Land. Developer from time to time may allow owners of apartments to use the real estate owned by Developer, and described in Article VI(3), for certain activities, including, but not limited to, recreation, access to common elements and parking areas, and for parking facilities. It is understood between Developer and owners that no license or easement of any kind, implied or otherwise, is intended to be given by Developer or to arise or exist because of use. Permitted use of Developer's land by owners is for convenience only and Developer expressly reserves the right to discontinue said use and withdraw permission with respect to said use at any time in the future, oral declarations to the contrary and conduct encouraging otherwise notwithstanding.

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7. Designation of Association Directors. Developer shall have the right to nominate or appoint all of the members of the Board of Directors of Jefferson Court Condominium Owners Association, who need not be owners of apartments or garage stalls, until the first annual meeting of the members of the Association in 1986 or until the annual meeting date in any prior year, if at such date in any prior year Developer elects to assign to the Owners Association the right to elect such Board of Directors.

ARTICLE VII

APPURTENANCES TO APARTMENT AND GARAGE STALL OWNERSHIP AND TRANSFER THEREOF; SUBDIVISION

1. Appurtenances. The ownership of each apartment and garage stall shall include all of the appurtenances thereto including, but not limited to, the following:

(a) Percentage Interest of Ownership of Common Elements and Funds; Liabilities for Expenses. There shall be appurtenant to each apartment and garage stall and the ownership thereof an undivided percentage interest of ownership in or liability for (1) the general common elements, (2) the limited common elements, (3) the funds and surplus, if any, of Jefferson Court Condominium Owners Association, and (4) the common expenses and liabilities of the Association. Such undivided percentage interest of ownership or liability shall be identical as to each of the four aspects thereof above named, and the amount of such percentage interest or liability shall be the percentage fixed for the apartment by Exhibit E pursuant to Article V according to the percentage interest of each apartment and garage stall in the entire regime.

(b) Encroachment Easements. If any portion of the common elements encroaches upon any apartment, garage stall or any other portion of the common elements, or if any apartment or garage stall encroaches upon any other apartment or garage stall or upon any portion of the common elements upon completion of construction, or if any of such encroachments shall occur thereafter as a result of shifting or settling of the buildings or from alteration, repair or improvement to the common elements and/or as a result of repair or restoration of the common elements or an apartment or garage stall after damage by fire or other casualty, or as a result of condemnation or eminent domain proceedings, then in each of such events a valid easement shall exist for such encroachment and for the maintenance thereof so long as the buildings, common elements and apartments and garage stalls exist.

(c) Cross Easements. The appurtenances shall include, so long as the buildings, common elements and apartments exist, easements from each apartment owner and garage stall owner to each other apartment owner and garage stall owner and to the Association and from the Association to the respective apartment owners and garage stall owners as required as follows:

- (i) Ingress, Egress and Maintenance. Easements are reserved for ingress and egress through the common areas for access to the apartments and garage stalls and through the common areas and the apartments and garage stalls for purposes of maintenance, repair, replacement or reconstruction of each as authorized;
- (ii) Support. Every portion of an apartment contributing to the support of the apartment building, and of a garage stall contributing to the support of the garage building is burdened with an easement of support for the benefit of all other apartments and garage stalls and common elements in or of the buildings;
- (iii) Utility and Other Services. Easements are reserved through the apartments and garage stalls, and common elements for conduits, ducts, plumbing, wiring, piping and other facilities for the furnishing of utility or other services and facilities to the other apartments, garage stalls and common areas, provided such easements through an apartment and garage stall shall be only according to the plans and specifications for the buildings as and if varied during construction as herein permitted unless otherwise agreed by the apartment owner and/or garage stall owner.

(d) Possession and Use of Apartment and Garage Stall, Including Air Space. In addition to the fee simple ownership of an apartment and/or garage stall, there shall be as an appurtenance thereto an exclusive easement for the possession and use of the air or room space within the apartment and garage stall and to the limited common elements of that apartment and garage stall as the same exists from time to time or as altered or reconstructed from time to time subject to necessary and authorized easements for maintenance, repair and the like; which appurtenance shall be terminated automatically in the event of termination of the regime.

2. Assignment or Transfer of Appurtenances; Severance. The ownership of each apartment and/or garage stall shall include and there shall pass and be transferred in the event of any transfer of ownership of such apartment and/or garage stall as a parcel of realty or of any owner's right, title or interest therein, whether by deed, mortgage, by other instrument, or otherwise than by an instrument, all of the appurtenances thereto whether enumerated and separately described or not; and no part of the appurtenance interest of any apartment or garage stall may be sold, transferred or otherwise disposed of except in connection with the sale, transfer or other distribution of the apartment and garage stall itself, or all apartments and garage stalls in the regime.

3. Subdivision. No apartment or garage stall shall be subdivided.

ARTICLE VIII

MANAGEMENT OF THE REGIME

1. Council of Co-Owners; Membership, Vote or Other Action of Owners. The business and affairs of the regime shall be governed and managed by Jefferson Court Condominium Owners Association (sometimes referred to herein as the "Association"), a non-profit membership corporation organized and existing under Chapter 504A, Code of Iowa, which corporation is and shall constitute the council of the co-owners of the buildings and common elements submitted to the regime, all as provided by Section 499B.2(3) Code of Iowa. Copies of its Articles of Incorporation and its By-Laws are attached hereto as Exhibits F and G. All owners of apartments and garage stalls shall automatically be members of the Association, and membership in the Association shall automatically cease upon termination of such ownership interest. Whenever a vote or other action of apartment 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 and the By-Laws.

2. Agreements and 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 and applicable provisions of the other condominium documents, and all rules and regulations and all agreements and determinations lawfully made by the Association and its directors, officers, or agents shall be binding on all such owners and/or other persons. A failure to comply with the By-Laws or the provisions of the other condominium documents or any agreements 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 for mandatory or other injunctive relief, and the employment of one such remedy shall not constitute the waiver of any other.

3. Included Powers; Foreclosure of Lien, Waiver of Partition. Each owner agrees that the Association has and shall exercise all powers, rights and authority granted unto it by Chapter 504A and 499B, Code of Iowa, and such as are more particularly set forth in the condominium documents, including the making of assessments chargeable to owners and a lien on apartments and/or garage stalls for any common expenses, and the right to foreclose the lien thereof and acquire an apartment and/or garage stall at foreclosure sale and to hold, lease, mortgage or convey the same, but such acquisition shall be on behalf of all apartment and/or garage stall owners, all of whom, however, shall be deemed to have waived all rights of partition with respect thereto.

4. No Avoidance by Waiver of Use; Right of Entry. The liability of an owner for all assessments made by the Association may not be avoided by waiver of the use or enjoyment of any common element, or by abandonment of an apartment or garage stall for which an assessment is made. Except in the event of an emergency,

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the Association shall have the right exercisable at reasonable hours to enter an apartment or garage stall as may be necessary or advisable to exercise its rights or responsibilities. In the event of an emergency the Association shall have the right to enter an apartment or garage stall at any time as may be necessary or advisable to exercise its rights or responsibilities.

5. Management Contract. Pursuant to the authority granted by its By-Laws, the Association has or will enter into a contract with the Developer, or its assigns for professional management of its affairs including the maintenance, repairs or reconstruction of common elements or limited common elements for a period of three (3) years from the date this Declaration becomes effective; provided however, the Association may terminate said contract in ninety (90) days by giving written notice of its intention to so terminate.

ARTICLE IX

MAINTENANCE, ALTERATION AND IMPROVEMENTS

1. Terms. Although the use of one shall not be deemed to exclude the applicability of another unless specifically so stated or required by the context, certain terms not susceptible to precise delineation are employed in this Article as follows: "Maintenance" is used generally to include repair, renovation, restoration, reconstruction, rebuilding or replacement as may be necessary to maintain the condominium property in the same condition as when constructed and completed by Developer; "alteration" relates to changes from such state other than maintenance; "improvement" as distinguished from alteration relates generally to the addition of new and different structures, elements or facilities other than those referred to in this Declaration. The provisions of this Article are applicable where the work done or required is not caused by a specific casualty or event and shall also apply in the event of maintenance, alteration or improvement necessitated by a specific casualty or event unless different provision is specifically made in the condominium documents dealing with such contingencies.

2. Maintenance by Association.

(a) All common elements and facilities, limited or general, shall be maintained by the Association as a common expense unless responsibility is otherwise imposed on the apartment owner by Paragraph 3 of this Article or otherwise.

(b) Incidental damage caused to an apartment or garage stall through maintenance by the Association shall be repaired by the Association as common expense.

(c) If an apartment owner or garage stall owner defaults in his responsibilities or maintenance, the Association shall assume the same as a common expense and levy a special assessment against the apartment or garage stall collectible as other assessments.

3. Maintenance by Owner.

(a) It shall be the responsibility of each apartment owner after the Developer has deeded the apartment to the owner, at his own expense, to provide all maintenance of and within his apartment as defined by Article IV(3) and including maintenance of non-load bearing partitions, of the interior surfaces of the walls, ceiling, doors, windows, sliding glass doors and floors which define the apartment, and of any finished or additional surfaces or materials installed by the Developer and/or the apartment owner, such as carpets, wall papering, counter tops, painting or staining, or other floor, wall or ceiling or other covering of any kind. The owners will also maintain all plug-in appliances and other personalty of any kind within the apartment.

(b) The apartment owner, at his expense, shall be responsible for maintenance of the patio or balcony adjacent to his apartment and the sliding glass door thereto, all other doors or windows and all limited or general common elements within the apartment, and for maintenance of the storage area for that apartment. The owner shall maintain and replace all equipment, machines and attachments and fixtures within the apartment, irrespective of whether the same are or might be regarded as personalty or real estate or as common elements for other purposes, such as air conditioning and heating equipment or units, ranges, refrigerators, fans, water heaters, dishwashers, disposals, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to the apartment. It is understood the apartment owner shall be responsible for the maintenance of wiring, plumbing, piping, conduits, ducts and other service elements within or connected with such apartment and for its exclusive use.

(c) The apartment owner shall likewise maintain at his expense any improvements or alterations subsequently added by him and it shall be his duty to perform said maintenance without disturbing the rights of other apartment owners and to report promptly to the Association any defects or need for repairs which are the initial responsibility of the Association or as to which the Association otherwise has authority to maintain.

(d) It shall be the responsibility of each garage stall owner after the Developer has deeded the garage stall to the owner, at his own expense, to provide all maintenance of and within his garage stall including the garage door.

4. Responsibility of Owner; Insurance Proceeds. The owner of an apartment shall be responsible and liable for the expense of any maintenance rendered necessary by his act, neglect or carelessness or that of his family, guests, employees, agents or lessees, which liability shall include any increase in insurance rates occasioned thereby, provided this requirement shall not preclude the proceeds of insurance maintained by the Association from being applied to discharge such expense, in whole or in part; provided further: Nothing herein stated shall be construed to modify subrogation rights of or any modification thereof by insurance companies.

5. Maintenance Involving More Than One Apartment. If maintenance is required involving more than one apartment, the Association, in order to provide centralized direction, may assume responsibility therefor and provide for the same, in whole or in part, as a common expense assessable to all owners.

6. Alteration or Improvements by Apartment Owner and Garage Stall Owner. No apartment owner or garage stall owner shall make any alteration of or improvement to an apartment or garage stall or to any of the common elements or remove any portion thereof without approval of the Board of Directors of the Association as to the proper insurance of such alterations or improvements under any master insurance policy purchased by the Association or by an insurance policy purchased by the owner and as to arrangements for bearing the expense of such insurance. In addition, no such alteration or improvement shall be made unless approved by the Board of Directors and no work by an owner is permitted which will jeopardize the soundness of the building or impair any easement. Any alteration or improvement of an apartment or garage stall shall neither increase nor decrease the percentage interest in the common elements appurtenant to that apartment or garage stall.

7. Alteration or Improvement by the Association or All Owners. There shall be no alteration of the apartment building and/or garage building or other common elements, nor further improvements added to the lands or other common elements, without the approval of all apartment owners, provided upon the question being put to a vote by referendum ballot or membership meeting as provided in the By-Laws. Any such alteration or improvement may be done if (75%) of the total number of votes outstanding and entitled to be cast are voted in favor thereof and if the dissenting owners are relieved from the cost and their share of the cost is borne by the assenting owners. Bids shall be taken and the cost accurately estimated before such vote is conducted. An alteration or improvement pursuant to this paragraphs shall not alter the percentage interest appurtenant to each apartment and garage stall in the common elements and such interest shall remain as before, irrespective of whether the owner voted in favor of or against the alteration or improvement.

ARTICLE X

CONDITIONS OF AND RESTRICTIONS ON OWNERSHIP, USE AND ENJOYMENT

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The ownership, use, occupation and enjoyment of each apartment and garage stall and of its appurtenances and of the common elements of the regime shall be subject to covenants, conditions, easements, or other encumbrances of record and to the provisions of the By-Laws and Articles of Incorporation of the Association and of this Declaration, all of which provisions, irrespective of where set forth or classified as such, shall with equal status constitute such a covenant, condition, restriction, and requirement as shall be enforceable and binding as a covenant, condition, restriction or requirement running with the land and shall be binding on and enforceable against all apartments and garage stalls and the owners

thereof and their respective assigns, lessees, tenants, occupants, and successors in interest. The following particular covenants, conditions, restrictions and requirements are hereby noted and set forth:

1. No owner of an apartment or garage stall shall convey, mortgage or lease such apartment unless and until all sums due the Association by way of assessment of any kind or other charge and whether evidenced by recorded liens or not are currently paid and not delinquent and in the event of delinquency the grantees, mortgagee or lessee, if notified thereof before paying or disbursing to the owner, shall apply the proceeds of such transaction first to payment of the delinquent amounts before payment of any of same to the owner. The Association shall in any event issue a written statement under signature of an officer or management contractor to such grantee, mortgagee or lessee verifying the status of all assessments or charges affecting the apartment, which statement, if to the effect that there are no delinquencies or payment of delinquencies as shown thereon, shall constitute conclusive evidence of compliance with this paragraph.

2. No apartment owner or garage stall owner may paint or in any manner decorate the exterior facade of the walls or add or connect equipment, structures or facilities thereto nor erect any "For Sale" or other sign or otherwise disturb or affect the same.

3. The Association, acting through its Board of Directors, shall have the right to designate and control the manner of use of any outside parking stalls and to reserve a space or spaces for service purposes and to otherwise permit or prohibit the use of any such space or spaces by a particular owner and family, including their guests or invitees.

4. The owner of each apartment and garage stall covenants and agrees not to engage in or permit any activity or condition as would cause a termination of or increase the premium for insurance carried by the Association.

5. In accordance with the right of entry reserved in Article VIII, paragraph 4, each apartment owner and/or garage stall owner shall deposit with the Association, if required by it, a key to the apartment and consents that, in the case of any emergency originating in or threatening the apartment and/or garage stall, the Board of Directors of the Association or any person authorized by it may enter the apartment or garage stall for the purpose of remedying or abating such emergency whether the owner is present or not.

6. No animal pens, sheds, fences or other outbuilding or structure of any kind shall be erected by an apartment owner or garage stall owner on any common area. No activity is allowed which unduly interferes with the peaceful possession and the proper use of the property by its owners, nor shall any fire hazard or unsightly accumulation of refuse be allowed. All laws, ordinances and the regulations of governmental bodies shall be observed by the owners and the Association.

7. Each apartment owner and/or garage stall owner covenants and agrees with all other apartment owners to repair and maintain, rebuild and reconstruct his own apartment and/or garage stall and keep the same in good repair for the benefit of all such other owners, as may be required and applicable, and to pay his separately metered utility expenses.

8. An apartment and garage stall owner shall give notice to the Association of every lien against his apartment other than permitted mortgages, taxes and Association assessments, and of any suit or other proceedings which may affect the title to his apartment, within ten (10) days after the lien attaches or the owner receives notice of such suit.

9. The Association, acting through its Board of Directors, shall have power to adopt and enforce all reasonable rules, restrictions and regulations relating to the use, occupancy and enjoyment of the condominium property, and without limiting the scope of the Board's authority, the following in particular shall govern: The Board (a) may approve temporary structures, the same being otherwise prohibited, (b) may regulate or prohibit the ownership and use of pets, motorcycles, or other power driven equipment, (c) may prohibit the use of flags, banners and grills on a patio or balcony and (d) may permit the enclosure of a balcony or patio area, the same being an alteration or improvement otherwise not permissible without approval by the Board of Directors.

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10. Apartments shall be used and occupied for single family dwelling purposes only. Such an apartment may be rented or leased by the owner, provided the entire apartment is rented, the occupancy is only by the lessee and his family, and the lease is in writing and copy thereof is filed with the Association prior to possession. No lease shall relieve the owner as against the Association and other owners from any responsibility or liability imposed by the condominium documents. The term "lease" as used herein shall include any form of occupancy, whether technically a lease or tenancy and whether for considerations or not. Ownership of an apartment by a corporation is permitted.

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ARTICLE XI

PROCEDURE IN THE EVENT OF DAMAGE OR DESTRUCTION

1. Damage to or destruction of all or any part of the buildings and/or condominium property shall be repaired or the same restored, rebuilt or reconstructed, as the case may be, if 51% of the total number of votes outstanding and entitled to be cast are voted in favor of such repair, restoration, rebuilding or reconstruction. If less than 51% of such votes are cast in favor of any such actions, the outcome of the vote taken shall automatically constitute a determination that the entire condominium property be deemed owned in common by the apartment owners and subject to partition and sale, it being understood that no separate part of

the property may be thus deemed owned in common and partitioned without an amendment to this Declaration expressly so providing, which amendment must comply with the provisions of Chapter 499B of the Iowa Code as now provided or hereafter amended and in effect at such time. That percentage of all the owners of the apartments and garage stalls submitted to the regime who together cast the necessary percentage of the total number of votes outstanding 51% entitled to be cast in favor of or against any of such action shall be the number of percentage of such owners whose votes shall be determinative of whether to rebuild, repair, restore or reconstruct all or any portion of the property or whether to deem the property to be owned in common.

2. A vote and determination to repair, rebuild, restore or reconstruct made pursuant to paragraph 1 of this Article (but not a presumed determination pursuant to paragraph 3 next following) may be recalled and superseded as follows: After the bids for the necessary work have been taken and the amount of insurance proceeds or other funds available for the work are known, and if the total amount of the resulting assessment as will be required to finance the work exceeds 10% of the pre-casualty value of the entire condominium property at the time of the casualty, then the Board of Directors shall call a special meeting of the members of the Association to consider under such circumstances whether or not the property in question shall be restored, rebuilt, repaired or reconstructed; the work shall in such event be done only if 75% rather than 51% of the total number of votes outstanding and entitled to be cast are cast in favor of the proposed action, and if the work is not thus authorized, the original determination shall stand rescinded and superseded, and the entire condominium property shall be deemed to be owned in common by the apartment owners with the same effect as in the case of a negative vote pursuant to paragraph 1 of this Article.

3. All damage or destruction of a minor character shall be repaired, rebuilt, reconstructed or restored by the Board of Directors of the Association or an apartment owner, as applicable, without necessity of formal vote or determination. Minor damage or destruction shall include, but not be limited to, such as can be reasonably repaired, restored, rebuilt or reconstructed within thirty days after the applicable occurrence (exclusive of delays or interruptions resulting from lack of available contractors, labor, materials, or funds). In the event of doubt whether damage or destruction is minor, or in any case, one-third of the Board of Directors or owners who are entitled collectively to cast at least 25% of the total number of votes outstanding and entitled to be cast may call for a special meeting or referendum for a vote and determination of whether to repair and the like pursuant to paragraph 1 of this Article and the determination thus made shall control irrespective of whether the damage or destruction might have otherwise been treated as minor, provided in all cases that if

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no formal vote and determination has been taken and made within thirty days of the date of the damage or destruction in question, it shall be conclusively presumed and in particular for purposes of Section 499B.16 of the Code of Iowa that the Association and apartment owners have in fact determined to rebuild, repair, restore or reconstruct, as the case may be.

4. Unless this Declaration is amended to provide otherwise, all repair, rebuilding, restoration, or reconstruction of the property shall contain the same number of apartments and garage stalls, and be substantially in accordance with the plans and specifications of original construction, as available from the exhibits hereto and plans on file with the City of West Des Moines, Iowa, and the percentage of interest and other appurtenances to each apartment and/or garage stall after such repair, rebuilding, restoration, or reconstruction shall be the same as before. An amendment of the plans and specifications as contemplated above, must be adopted by unanimous consent, pursuant to paragraph 3 of Article XIII.

5. The provisions of this Article are intended to govern in the event of damage or destruction resulting from an occurrence or casualty which although to be broadly construed may be distinguishable from maintenance in the sense of remedying ordinary wear and tear, as referred to in Article IX, and in any event paragraph 4 and the other provisions of this Article shall not govern in the event of reconstruction, rebuilding or restoration necessitated on account of long term obsolescence or condemnation of any apartment within the regime.

ARTICLE XII

INSURANCE PROVISIONS

1. Authority to Purchase. All insurance policies upon the condominium property shall be purchased by the Association for the benefit of the Association and the apartment owners and their mortgagees as their interests may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsement to the mortgagee of each apartment owner. Apartment owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense. For the purpose of this Article, whenever the term "apartment owner" is used it shall refer to the apartment and/or garage stall owner.

2. Coverage to be Afforded.

(a) All condominium property, including buildings, structures, equipment, fixtures, and facilities, and all common elements whether limited or general, and whether within or without an apartment shall be insured by the Association in an amount equal to the maximum insurable replacement value thereof, excluding foundation and

excavation costs, as determined annually by the Board of Directors of the Association against (i) loss or damage by fire and other hazards covered by a standard extended coverage hazard endorsement and (ii) such other risks as shall be customarily covered with respect to buildings and other improvements similar in construction, location, and use as the buildings and other improvements on the land subjected to the regime, including but not limited to vandalism and malicious mischief.

(b) Public liability insurance in such amounts and with such coverage as shall be required by the Board of Directors of the Association shall be procured with cross liability endorsements to cover the liability of the apartment owners as a group to an apartment owner and protecting in standard form the members, Board of Directors, officers, agents and contractors of or with the Association. Such liability insurance shall include, but shall not be limited to, coverage with respect to motor vehicles owned, non-owned or hired.

(c) Worker's compensation shall be procured as required to meet applicable law.

(d) Such other insurance may be procured as the Board of Directors shall determine from time to time is desirable.

3. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association and the costs thereof shall be assessed as a common expense.

4. Insurance Trustee. All insurance policies purchased by the Association shall be held for the benefit of the Association and the apartment owners and their mortgagees as their interest may appear, and shall be paid to the Association, as trustee and which is herein referred to as insurance trustee. The insurance trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Association, the apartment owners and their mortgagees in the following shares, but which share need not be set forth on the records of the insurance trustee:

(a) Proceeds on account of damage to common elements, limited or general, other than those limited common elements of a building which contains an apartment -- an undivided share for each apartment owner, such share being the same as the undivided share in the common elements which are appurtenant to this apartment.

(b) Proceeds on account of damage to apartments and the limited common elements of the buildings which contain such apartments shall be held in the following undivided shares:

(i) When the building is to be reconstructed-- for the benefit of each owner of a damaged apartment in proportion to the cost (which cost shall be determined by the Association) of repairing the damage suffered by such apartment and the limited common elements which contain such apartment.

(ii) When the building is not to be reconstructed-- an undivided share for the benefit of each apartment owner, such share being the same as the undivided share in the common elements appurtenant to this apartment.

(c) In the event a mortgagee endorsement has been issued as to an apartment, the share of the apartment owner shall be held in trust for the benefit of the mortgagee and such apartment owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed, nor, in the event a determination to reconstruct is made, a right to the proceeds except a right to have such proceeds applied to reconstruction.

5. Distribution of Proceeds. Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of those for whom it is held in the following manner:

(a) If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided and such proceeds may be distributed by the trustee to the Association for purposes of paying such cost. Any proceeds remaining after defraying such costs shall be distributed to those for whom it is held, remittances to apartment owners and their mortgagees being payable jointly to them.

(b) If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to those from whom it is held, remittance to an apartment owner and his mortgagee being payable jointly to them. This is a covenant for the benefit of any mortgagee of an apartment and provided such mortgagee has requested a certificate of mortgage endorsement, may be enforced by such mortgagee.

(c) In making distribution to apartment owners and their mortgagees, the insurance trustee may rely upon a certificate of the Association as to the names of such apartment owners and mortgagees and their respective shares of the distribution.

6. Association to Adjust Claims. The Association shall adjust all claims arising under insurance policies purchased by the Association and execute and deliver releases upon the payment of claims for each apartment owner and for each owner of a mortgage or other lien upon an apartment and for each owner of any other interest in

the property. Each apartment owner, mortgagee, lienholder or owner of such other interest hereby agrees to be bound by the adjudgment so made and the releases so executed and delivered.

ARTICLE XIII

GENERAL PROVISIONS

1. Enforcement. The Developer, the Jefferson Court Condominium Owners Association, its successors or assigns or any owner, shall have the right to enforce, by any proceedings at law or equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. The Developer and each apartment owner does hereby and by acceptance of a deed therefor, whether or not expressed in such deed, agree to require the Jefferson Court Condominium Owners Association, or its successors and assigns and apartment owners and Developer to take and to cause any and all actions requested by the City of West Des Moines, to fulfill and enforce any covenant or restriction herein contained inuring to the benefit of the City of West Des Moines, Iowa.

Failure by the Developer, the Jefferson Court Condominium Owners Association or by any apartment owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

No provision contained in this Declaration shall be deemed to have been waived by the City of West Des Moines, Iowa, by reason of any failure to enforce it by said City, irrespective of the number of violations which may occur.

2. Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs, sections or Articles hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs, sections or articles contained therein should be invalid or should operate to render this agreement invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, section or sections, Articles or Article have not been inserted, and shall in no way affect any of the other provisions which shall remain in full force and effect.

3. Amendment. Amendment of this Declaration and the necessity therefor shall be governed by the following:

(a) Percentage Interest. The percentage interest in the common elements appurtenant to an ownership in an apartment and garage stall may be amended only by unanimous consent of all apartment and garage stall owners and their mortgagees, provided,

in the event of condemnation of any apartment or garage stall or of a long-term obsolescence, the same may be adjusted and may be amended as provided in paragraph (d) of this Amendment.

(b) Contract Excepted. No lawful agreement entered into by the Association shall require an amendment of this Declaration, provided the same is not in conflict herewith.

(c) Developer's Rights. Neither Article VI nor any other provisions of this Declaration affecting the rights of the Developer shall be subject to amendment without the written consent of the Developer and any attempt to so amend this Declaration without such prior written consent shall be null and void.

(d) General Procedure. Except as otherwise provided in this Article, this Declaration may be amended other than pursuant to an amendment to the By-Laws:

(i) By the unanimous written agreement of all apartment and garage stall owners and their mortgagees.

(ii) By the owners acting through the Association and in accordance with the procedures of its By-Laws at a regular or special membership meeting as to which notice of the proposed amendment has been given and upon the favorable vote of 75% of the total number of votes outstanding and entitled to be cast. No amendment shall be adopted at variance with that proposed in the notice, but the notice may contain more than one proposed amendment. Approval of the Board of Directors is not required of an amendment thus adopted.

(e) Exceptions to Right to Amend. No amendment shall be made to Article X, XIII, without the express consent of the City of West Des Moines, Iowa. Any amendment must be recorded and made of record. An amendment pursuant to paragraph (a) or paragraph (d) (i) of this Article shall be effective when executed and acknowledged by all owners and mortgagees with the formalities of a deed and recorded in the Recorder's Office, Polk County, Iowa. An amendment adopted pursuant to paragraph (d) (ii) shall be effective when a certificate of its due and proper adoption containing the provisions of the amendment is executed in the name of the Corporation by its President or a Vice-President and Secretary or an Assistant Secretary with the formalities of a deed and acknowledged as having been thus executed by authorization of the owners as herein provided, and is recorded in the Recorder's Office, Polk County, Iowa.

4. Developer for each apartment owned within the regime, and each owner of any apartment by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and the Jefferson Court Condominium Owners Association, and its successors and assigns covenants and agrees for the benefit of the City of West Des Moines, Iowa, that the Developer

and/or apartment owner and/or the Association, its successors and assigns, will keep and maintain in good repair and condition all the interior streets, common areas and limited areas of Lot 16, Colonial Village, 5th Addition including any land which may be added to the regime, all parking areas, drainage ways, sidewalks, streets, parks, plantings and other pertinent features within the development plan made and provided to the City of West Des Moines, Iowa, and in accordance with the ordinances, rules and regulations adopted and in force by the City of West Des Moines, Iowa or hereinafter adopted and in force by the City of West Des Moines, Iowa, and the final development plan as approved by the City Council

The Developer and each apartment owner does hereby and by acceptance of a deed therefor, whether or not expressed in such deed, agree to cause the Jefferson Court Condominium Owners Association or its successors and assigns to take any and all action requested by the City of West Des Moines, Iowa to bind the Jefferson Court Condominium Owners Association or its successors and assigns to the obligations set forth in this Article, and this Declaration to fulfill and enforce the covenants, conditions and restrictions contained within this Declaration and to cause the Jefferson Court Condominium Owners Association or its successors and assigns to fulfill the duties imposed in this Article including any other articles inuring to the benefit of the City of West Des Moines, Iowa.

5. Use of Property. The Developer and each apartment owner within the regime, hereby covenants and each owner of any apartment by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and the Jefferson Court Condominium Owners Association and its successors and assigns covenants and agrees as follows:

- (a) To keep the common area free from weeds and debris.
- (b) No trash receptacles or garbage cans shall be permitted to be placed outside of a building or structure on any lot or building plat unless constructed of durable material such as stone or brick, or unless hidden by an attractive screen of suitable height, or unless sunken to the ground level in a hole lined with permanent cribbing.
- (c) No common area shall be used or maintained as a dumping ground for rubbish, trash or waste. Trash, garbage or other waste shall not be kept, or stored, unless in compliance with City and County laws effective at the time.
- (d) No noxious activity or offensive activities shall be conducted on any lot or living unit nor shall anything be done thereon which may be or become an annoyance or nuisance to other owners of living units or other apartments or to the Jefferson Court Condominium Owners Association.
- (e) No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the apartment owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

(f) Nothing shall be done or kept in any apartment or in the common area which will increase the rate of insurance on the common area, without the prior written consent of the Association. No owner shall permit anything to be done or kept in his apartment or in the common areas which will result in the cancellation of insurance on any unit or any part of the common area, or which would be in violation of any law.

(g) The Association shall have the authority to adopt rules and regulations governing the use of the property and such rules shall be observed and obeyed by the owners, their guest and licensees.

(h) Agents of contractors hired by the Association may enter any unit when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the owners as practicable.

6. Indemnification of Management Committee Members. Each member of the Association shall be indemnified by the owners against all expenses and liabilities including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceedings to which he may be a party or in which he may become involved, by reason of his being or having been an officer or director of the Association or any settlement thereof, whether or not he is an officer or director at the time such expenses are incurred, except in such cases wherein such person is adjudged guilty of or liable for willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board of Directors of the Association approves such settlement and reimbursement as being for the best interest of the Association.

7. Indemnification of City. The owners of the apartments and garage stalls and/or the Association, its successors or assigns agrees to defend, indemnify, protect and save harmless the City of West Des Moines, Iowa, and its political subdivisions, including any of its employees or agents, from and against any and all liability, losses, damages, injury, cost, settlements, judgments, awards, claims or expense or other things whatsoever, including attorney fees, cost or disbursements, arising out of or in connection with any act or act of negligence, causes, omissions, fault, misconduct, claims, damages, suits or other actions developed, brought or asserted by any person, firm, corporation, entity or estate, or to any property of any person, firm, corporation, entity or estate, against the said City by reason of, in connection with, related to or growing out of directly or indirectly with the duties and responsibilities which are imposed upon the owners or the Association, its successors and assigns with respect to these Declarations or with respect to their acts and duties imposed under these Declarations or the final development plan as approved by the City Council or related to or growing out of directly or indirectly with the maintaining, cleaning out, grading, repairing, construction or reconstruction of any drainageway, swale, draw, ravine, ditch, watercourse, levy or dike located over, on or across the land which is the subject matter of this Declaration.

ARTICLE XIV

EFFECTIVE DATE; POSSESSION OF COMMON ELEMENTS;
CONDEMNATION AND OBSOLESCENCE; PARTITION;
SEVERABILITY; ARTICLES OF INCORPORATION AND BY-
LAWS OF JEFFERSON COURT CONDOMINIUM OWNERS ASSOCIATION;
CHAPTER 499B, CHAPTER 504A, 1983, CODE OF IOWA

1. Effective Date of Percentage Interest. The fraction of ownership interest in the common elements referred to in this Declaration shall come into being and take effect at such time as this Declaration has been recorded and thereafter exist for all purposes irrespective of any actual occupancy or use and whether the apartments are sold or not.
2. Possession of Common Elements. Each apartment owner, the Developer, and the Association may use the common elements other than the limited common elements for the purposes for which they are maintained, but without hindering or encroaching upon the lawful rights of other users.
3. Condemnation and Obsolescence. The contingencies of condemnation and long-term obsolescence have not been provided for in this Declaration and many be governed by appropriate amendments to this Declaration and/or by By-Laws as the case may be.
4. Partition. The common elements shall remain undivided and neither an apartment or garage stall owner, nor any other person or organization may bring an action for the partition or division of the whole or any part thereof with or without sale, except in connection with removal of all of the property from the regime pursuant to Section 499B.8, Code of Iowa, as the same now exists, or may hereafter be amended, or a specific determination not to repair, reconstruct, or rebuild with the consequences set forth in Section 499B.16 thereof.
5. Priority. This Declaration shall supersede and take precedence over any other provision in the Articles of Incorporation or By-Laws, of the Jefferson Court Condominium Owners Association now or hereafter appearing. In the event of any conflict or apparent conflict with this Declaration and any Article or By-Law provisions, the conflicting provision in the Article or By-Law shall be disregarded.

The approval of the City of West Des Moines of the Plat entitled "Colonial Village 5th Addition" is conditioned upon all persons or entities who claim any interest by, through or under these Developers to any apartment within the regime, being bound by the Articles of this Declaration. Therefore, any person or entity who claims any interest by, through or under these Developers or their successors or assigns in and to any apartment within this regime prior to the filing of this Declaration and/or Plat of Colonial Village 5th Addition, agrees to be bound by these Articles in this Declaration.

6. Articles of Incorporation and By-Laws of Jefferson Court Condominium Owners Association. The provisions of the Articles of Incorporation of Jefferson Court Condominium Owners Association and the By-Laws of said Association attached hereto are by reference incorporated herein and made a part of this Declaration the same as if they were fully set forth herein and the owners of apartments or garage stalls are bound thereby.

7. Chapters 499B and 504A, 1983 Code of Iowa. Wherever herein reference is made to Chapter 499B or any section thereof, or Chapter 504A or any section thereof, 1983, Code of Iowa, it is intended that such reference shall include the provisions of such Code sections as they now exist or may hereafter be amended, and if a question arises thereunder at some time in the future, the specific section of the Code in its then form shall be applied.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed this 22nd day of January, 1985.

FRANK R. DOWNING DEVELOPMENT, INC.

By M. Mannon Douglas
M. MANNON DOUGLAS, President

By Jeffrey N. Downing
JEFFREY N. DOWNING, Secretary

STATE OF IOWA)
) ss.
COUNTY OF POLK)

On this 22nd day of January, A.D., 1985, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared M. MANNON DOUGLAS and JEFFREY N. DOWNING, to me personally known, who, being by me duly sworn, did say that they are the President and Secretary, respectively, of said corporation executing the within and foregoing instrument, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said M. MANNON DOUGLAS and JEFFREY N. DOWNING, as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



Janet Chapman
Notary Public in and for the State of
Iowa