

DECLARATION OF ESTABLISHMENT OF
A HORIZONTAL PROPERTY REGIME (CONDOMINIUM)

TO BE KNOWN AS WATERBURY OAKS

The undersigned, Gary C. Smith and Mary Jo Smith, husband and wife, the owners of the real property hereinafter described, hereby submit said property to a Horizontal Property Regime pursuant to the provisions of Chapter 499B, Code of Iowa (1997). In compliance with Sections 499B.3 and 499B.4, Code of Iowa (1997), the following declarations are made:

1. The description of the land submitted to this Horizontal Property Regime is as follows:

Lots Eight (8) and Nine (9), Block Four (4), Mable's Addition, Spirit Lake, Dickinson County, Iowa, EXCEPT, Lot Eight (8) and part of Lot Nine (9), Block Four (4), Mable's Addition, Spirit Lake, Iowa, described as COMMENCING at the Southwest corner of said Lot Eight (8), said point being the POINT OF BEGINNING, thence North 0°04'52" West 301.06 feet along the West side of Lot Eight (8); thence south 89°56'31" East 174.53 feet along the North side of said Lots Eight (8) and Nine (9), thence South 13°13'25" East 309.83 feet, thence North 89°49'47" West 244.98 feet along the South side of Lots Eight (8) and Nine (9) to the POINT OF BEGINNING, said parcel contains approximately 63,183 square feet and is subject to easements of record. The West line of said Lot Eight (8) was assumed to bear North 0°04'52" West.

2. This Declaration consists of two buildings containing four apartment units each for a total of eight apartment units. All units are of ranch style construction with a main level and a lower level walkout basement. The principal materials of which the units are constructed are as follows. foundation: reinforced concrete; floors on lower level: reinforced concrete; floors on main level: wood; walls on lower level: poured concrete with wood frame construction on the walkout side of the lower level; walls on upper level: wood frame construction; and roofing: wood frame construction with asphalt shingles. For further particulars, see the drawings filed herewith.

3. The units included in the Declaration of Horizontal Property Regime are numbered 1 through 8, inclusive. Unit No. 8 is the southernmost unit in the south building; Unit No. 7 is adjacent to and north of Unit No. 8; Unit No. 6 is adjacent to and north of Unit No. 7; and Unit No. 5 is adjacent to and north of Unit No. 6, said Unit No. 5 being the northernmost unit in the south building. Unit No. 4 is the southernmost unit in the north building; Unit No. 3 is adjacent to and north of Unit No. 4; Unit No.

2 is adjacent to and north of Unit No. 3; and Unit No. 1 is adjacent to and north of Unit No. 2, said Unit No. 1 being the northernmost unit in the north building. Units 1, 4, 5 and 8 are three bedroom units. Units 2, 3, 6 and 7 are two bedroom units. All units have an attached two car garage. The approximate area of the units, the number of rooms contained in the units, and the common area to which each unit has immediate access is shown on the drawings attached hereto, which by this reference are incorporated herein.

4. Ownership of each unit includes ownership of an undivided one-eighth (1/8) interest in all general common elements and facilities described herein. The general common elements and facilities shall be owned by the individual unit owners as tenants in common and shall consist of the land on which the buildings are erected; the foundation of the buildings; floors, exterior walls, and roofs of each unit and of the buildings (except the interior surfaces and except the partition walls within each individual unit); the lawn, landscaping, shrubbery and general improvements to the grounds; outside electric lighting; wires, conduit and other public utility lines; electrical wiring; plumbing except fixtures; mechanical systems; natural gas, sanitary sewer, water and other service lines; and all other devices or installations existing for common use and defined as general common elements by Section 499B.2(5), Code of Iowa (1997).

The general common elements and facilities shall not include, and the owners of each unit shall be deemed to individually own, the cupboards; counters; plumbing fixtures; walls or partitions located within the individual unit; floor, wall and ceiling coverings including all material outside of the stud walls and below the ceiling joists; and light fixtures and other attachments or fixtures deemed to be a permanent part of each unit for the sole use of such unit. The owner of each unit shall be solely responsible for the maintenance, repair or replacement of the plumbing fixtures, lighting fixtures, heating and air conditioning equipment, appliances and other equipment contained within or connected to each individual unit for the unit's exclusive use.

In the event wires, pipes, HVAC systems, or other services run through one unit for the service of another unit, an easement for maintenance, repair or replacement together with the right of ingress and egress thereto shall exist. In the

event it is necessary to access utilities or services in or through a unit other than the unit being served by such utilities or services, the interior surfaces as well as the general common elements and facilities shall be restored to their original condition at the expense of the unit owner for whom such service work was performed.

5. The sidewalks and driveways serving each individual unit shall be deemed limited common elements and facilities for the exclusive use of the respective units, but repair and maintenance shall be a common expense.

A. (5/28/05) Should a unit owner desire to change a respective sidewalk or driveway, any under-the-deck cement area, or outside deck, be it a floor covering or any alteration, full 3-0 approval of the Executive Board shall be required. By physically changing common elements and facilities, a unit owner will be required to sign a Common Element Waiver whereby exclusive future maintenance will be the full responsibility of the current owner and future buyer of the unit. If no alterations are in effect, the common elements and facilities remain a common expense for repair or maintenance to be borne by the Owners' Association.

6. The fractional interest which each unit bears to the entire Horizontal Property Regime is one-eighth (1/8). Voting rights regarding administration of the Horizontal Property regime and payment of expenses relating to the general common elements and facilities shall be shared equally by each unit.

7. (5/28/05) In the event of damage or destruction of all or a part of the property, a 5/8 majority vote by the unit owners shall determine whether to rebuild, repair, restore or sell the property. Each unit shall be entitled to one vote with the vote of any unsold unit to be cast by the original owners of the property whose names are subscribed hereto or their successors in interest.

The Waterbury Oaks Owners' Association shall by a 5/8 majority vote determine an appropriate amount of casualty and liability insurance coverage for the buildings, grounds, general common elements and facilities. Any policy purchased by the Owners' Association shall provide casualty coverage for the entire structure including utility lines, plumbing lines, all mechanical systems within the walls and permanent appliances. Roof and wall coverage shall include the sheetrock or other underlayment but shall not extend beyond the sheetrock or underlayment. Coverage shall be replacement value for like kind construction of existing structure. The cost of

such casualty and liability coverage for the general common elements and facilities shall be shared equally by each unit. Each unit shall be individually responsible for such casualty and liability insurance as they deem appropriate for the owner's individual unit. The personal property of the unit owners, including the inner decorated and/or finished surfaces of the walls, floors and ceilings and any appliances such as water heaters, air conditioners, stoves, refrigerators and the like as well as kitchen and bathroom fixtures, will not be covered by the Owners' Association policy.

8. A. The administration of the Horizontal Property Regime shall be governed by the Executive Board and by the Waterbury Oaks Owners' Association in accordance with the By-Laws, a copy of which is attached hereto in compliance with Section 499B.14, Code of Iowa (1997). Such administration includes the authority to make annual and special assessments for the care and maintenance of the Horizontal Property Regime and the failure by any unit owner to pay a properly levied annual or special assessment shall result in and constitute a lien on the respective unit to the extent of such unpaid assessment. A lien for unpaid assessments may be perfected by one officer of the Association filing a written notice thereof with the Dickinson County Recorder. A lien for unpaid assessments may be foreclosed by suit by the Association or its representatives in like manner as a real property mortgage, provided that thirty (30) days written notice of the intent to foreclose shall be mailed, postage prepaid, to the owner at the address shown by the records of the Waterbury Oaks Owners' Association, which shall be the address of the unit unless the owner notifies the Waterbury Oaks Owners' Association of a different preferred address. In the event a lien is foreclosed by the Waterbury Oaks Owners' Association or its representatives, the Owners' Association shall be entitled to an award of reasonable attorney fees. Nothing contained in this paragraph shall prohibit the Owners' Association from proceeding with an action for recovery of a money judgment for the amount of any unpaid assessments, which action shall be maintainable without foreclosing or waiving the lien for unpaid assessments.

B. No owner may be exempted from liability for annual or special assessments by waiver of the use or enjoyment of the general common elements and facilities or by abandonment of the unit.

C. (5/28/05) No owner shall make any alteration or improvement to any of the general common elements and facilities or remove any portion thereof without the prior consent of the Owners' Association. Owners may do individual landscaping adjacent to their unit with the full 3-0 approval of the Executive Board. Petitions and plans must be kept on file with the Secretary-Treasurer. Landscape maintenance will be the responsibility of each unit owner.

D. (5/28/05) Each owner shall pay the separately metered utility expenses to maintain a minimum year-round temperature of fifty degrees Fahrenheit (50°F) within the owner's unit and each owner shall be liable to every other owner for any damage to the other owner's unit caused by the failure to maintain a sufficient minimum year-round temperature (deemed to be 50°F). In the event any unit is going to be left vacant for a period of more than seven (7) days, the owner thereof shall cause the water in that unit to be shut off. If an owner leaves for a separate Winter Address, they must sign a Winter Absence Sheet available from the Secretary-Treasurer that specifies their unit is set to a minimum of 50°F, and all water is shut off.

E. Each owner shall be liable to the Owners' Association and the other owners for the expense of any maintenance, repair or replacement rendered necessary by the negligence of an owner, the owner's family, guests, employees, agents, or lessees, which liability shall include any increase in insurance rates resulting therefrom.

F. The property shall be used for residential purposes only, and unless agreed upon by all unit owners, the leasing or renting to a non-owners shall be for a minimum period of not less than ninety (90) days. All leases shall be in writing with a copy thereof provided to the Owners' Association prior to the date of possession. No lease shall relieve the owner of the unit from liabilities and responsibilities to the Owners' Association and other owners as set forth in this Declaration or imposed under the laws of the State of Iowa.

G. No unit may be sold without also conveying the owner's undivided interest in the general common elements and facilities. Conversely, no conveyance of the interest in the general common elements and facilities shall be made without a conveyance to the same party of a corresponding unit.

H. No owner shall convey, mortgage or lease any unit unless all common charges assessed against the unit have been paid.

I. Notwithstanding any other provision in this Declaration or in the By-Laws, the undersigned developers are irrevocably empowered to transact on the property any business relating to construction, sale, lease or rental of units, including the right to maintain signs, employees, equipment and materials on the premises. These rights shall continue until all units have been sold.

J. Every director and officer of the Owners' Association shall be indemnified by the Association for all expenses and liabilities, including legal fees reasonably incurred by or imposed upon them, in connection with any proceeding to which they may be a party by reason of their being or having been a director or officer of the Owners' Association, except in such cases where the director or officer is adjudicated guilty of willful misfeasance or malfeasance in the performance of their duties. The foregoing rights of indemnification shall be in addition to and not limit any rights the officers or directors may have under Iowa law.

K. The term owner as used in this Declaration and in the By-Laws shall mean the record titleholder of the unit and shall include a contract purchaser in possession. In the event of multiple, corporate or fiduciary ownership of a unit, said 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 voting rights and administration referred to in this Declaration and By-Laws. Notices to be given by the Association are properly given to the owner or owners of the respective units if given to the designated person. Each unit shall be entitled to have one vote and that vote may not be split. The owner of a unit in Waterbury Oaks shall be a member of the Association and shall remain a member of said Association until such time as ownership of the unit ceases.

L. The invalidation of any provision of this Declaration shall not affect the enforceability of the remaining provisions.

9. The following restrictions and limitations shall apply to all units in Waterbury Oaks:

A. **(5/28/05)** No noise or other activity shall be allowed which unduly interferes with the peaceful possession and proper use of the property by its owners, nor shall any fire hazard or unsightly accumulation of refuse or other material be allowed. No towels, clothing or other objects shall be permitted to be hung outside of the units. No fences, wires, lines, sheds, outbuildings or other

structures of any kind may be erected by any owner in any common area or facility without a prior 5/8 majority approval of the Owners' Association

B. No recreational vehicles, motorcycles, snowmobiles, all-terrain vehicles, travel trailers, campers, boats, boat trailers, flatbed trailers, inoperable vehicles, or the like shall be parked in driveways or common elements and facilities of Waterbury Oaks other than on a strictly temporary basis not to exceed 48 hours. For purposes of computing the 48 hours, the relocation of the items at issue within Waterbury Oaks or the temporary removal and return of said item shall not restart the 48-hour time limit unless said item is removed entirely for not less than ten days.

C. All garage doors shall be kept closed at all times except when being opened for purposes of ingress and egress, or when a unit owner, family member or guest is personally present in the garage area. No garage shall be used to store discarded items, junk or other unsightly materials.

D. Trash containers shall be kept within garages at all times.

E. (5/28/05) Each unit shall be limited to one household pet, being either a dog or cat. Pets must not be left outside unattended by their owners, must not be tied outside of the units, and shall be leashed whenever outside. At all times possible, please use the waste area directly across each owner's unit on the West side just inside the fence. Pet waste shall be immediately cleaned up. Guest privileges shall be limited to a maximum of two animals staying no longer than two consecutive weeks. All owner rules strictly apply to the guest animal. In the event a pet is deemed to be a problem or nuisance, a meeting of the Owners' Association may be duly called to address the troublesome animal, and by a 5/8 majority vote the Owners' Association may require the owner's pet or owner's guest pets to be removed permanently from the premises.

F. (5/28/05) With 3-0 Executive Board approval, no signs other than name signs, or legally-mandated ones by the City of Spirit Lake or State of Iowa, shall be placed on the premises, including, but not limited to, signs placed on the exterior of any unit. This subparagraph shall not prohibit real estate for-sale signs. However, for-sale signs shall be limited to no more than two signs per unit with said signs to be no larger than a maximum of four (4) square feet each. Any for-sale signs placed on the premises shall be removed as soon as practical after the unit advertised is sold.

G. (5/28/05) Any dock to be placed on the premises shall be the responsibility of the Owners' Association, which shall design, construct and maintain such dock. Any such dock shall conform with applicable state and local law and the use thereof shall be subject to such rules as may be promulgated by the Owners' Association. No private docks shall be allowed on the premises. The Association shall be responsible for providing two (2) docks on the premises to be placed adjacent to existing steps. The Owners' Association shall have responsibility for assigning placement of boat hoists at the docks, and all covered boat hoists located at the Association docks shall have white boat covers. Outside of extenuating circumstances, all boat hoists shall be off the shore bank and in the water by Memorial Day.

H. Each unit shall be permitted to install one communication satellite dish which shall not be larger than 18 inches in diameter. The location shall be approved by the Board.

I. (5/28/05) The Owners' Association by a 5/8 majority vote at a duly called meeting shall have the authority to amend or rescind any part or all of the foregoing items. Additionally, the Owners' Association by a 5/8 majority vote at a duly called meeting shall have authority to adopt and enforce other reasonable restrictions, rules and regulations relating to the use and enjoyment of the premises, including, but not limited to, assigning and authorizing placement and use of boat lifts; regulating the placement of items such as ladders, benches, diving boards, storage bins and the like on the dock managed by the Association; and regulating the use of common elements and facilities.

10. (5/28/05) No amendment to this Declaration of Establishment shall be valid unless set forth in writing, signed by at least a 5/8 majority, and duly recorded with the Dickinson County Recorder. No amendment shall take effect unless approved by a 5/8 majority vote of the owners present at a meeting called for the purpose of discussing such amendment. Notice of such meeting shall designate the time and place for the meeting together with a general description of the proposed amendment with the notice to be given not less than thirty (30) not more than sixty (60) days from the date of the meeting. At such meeting the written proxy of an owner duly signed and acknowledged either setting forth the owner's vote on the proposed amendment or authorizing another owner to vote on behalf of such absent owner shall be allowed and recognized by the presiding officer as a valid vote on the amendment.