

Pottawattamie - North Cherry Estates

INST # 25739
RECORDING FEE 65.00
AUDITOR FEE 1
RMA FEE 100

FILED FOR RECORD
POTTAWATTAMIE CO. IA.

COMPARED

03 MAY 15 AM 11:15

JOHN SCIORTINO
RECORDER

DECLARATION OF ESTABLISHMENT OF A HORIZONTAL PROPERTY
REGIME (CONDOMINIUM) PURSUANT TO CHAPTER 499B OF THE IOWA CODE
(HORIZONTAL PROPERTY ACT)

Pursuant to Iowa Code Chapter 499B, James N. Reischl Revocable Trust and Sandra K. Reischl Revocable Trust, hereinafter referred to as DEVELOPERS, being the owners in fee simple of the following described real estate, hereby submit such real estate to the condominium form of ownership pursuant to the Iowa Horizontal Property Act, and establish a plan for individual ownership of the space contained in each of the apartments described below and co-ownership of the remaining real property as may exist and be designated by the individual owners as Tenants in Common, subject to limitations and reservations made herein.

NOW, THEREFORE, the DEVELOPERS make the following DECLARATION hereby specifying that such DECLARATION shall constitute covenants, restrictions, limitations, conditions, and uses to run with the land, and shall be binding upon the DEVELOPERS herein, all subsequent owners of all or any part of said real property and improvements thereon, and their grantees, successors, heirs, executors, administrators, devisees, and assigns.

ARTICLE I.
NAME

The name of the HORIZONTAL PROPERTY REGIME shall be NORTH CHERRY ESTATES.

ARTICLE II.
DEVELOPERS

The DEVELOPERS OF NORTH CHERRY ESTATES is James N. Reischl Revocable Trust and Sandra K. Reischl Revocable Trust, 2509 Highway 30 East, P.O. Box 633, Denison, IA 51442-0633.

REJECTED BY AUDITOR
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ARTICLE III.
LEGAL DESCRIPTION

The description of the land to be subjected to this HORIZONTAL PROPERTY REGIME pursuant to the IOWA HORIZONTAL PROPERTY ACT, is as follows:

Lots Three (3), Four (4), and Five (5) with parcel "A" of Lot Six (6), R&L Subdivision, Avoca, Iowa.

ARTICLE IV.
GENERAL DESCRIPTION

On each of the three lots, Lots 3, 4, and 5, with parcel "A" of Lot 6 R&L Subdivision, there shall be constructed a one story, wood frame building with a brick front and each having a walkout basement, and each having a double car garage as required by Iowa Code Section 499B.6, a fully and exact copy of the floor plans of the building to be constructed on each of the lots, 3, 4 and 5 with parcel "A" of Lot 6, shall be attached to this DECLARATION as required by that Section of the Iowa Code, the same to show graphically all particulars of the building, including, but not limited to, the dimension, area and location of common elements affording access to each apartment. Other common elements, both limited and general, shall be shown graphically insofar as possible, and shall be certified to by an engineer, architect, or land surveyor. Such document or documents shall be attached to this DECLARATION as Exhibit "A".

ARTICLE V.
DEFINITIONS.

The terms incorporated herein and in any Bylaws attached hereto as Exhibit "B" which are made a part by this reference, shall have the same meanings as set out in Chapter 499B of the Iowa Code and in particular, Section 499B.2 of the Iowa Code.

ARTICLE VI.
NUMBER AND DESCRIPTION OF UNITS

This horizontal property development (condominium) shall include six apartments each consisting of approximately 1,280 square feet on the main floor, with these apartments being located on Lots 3, 4, and 5 with parcel "A" of Lot 6, of R&L Subdivision, City of Avoca, and being described and designated as follows:

Apartment 3A shall be located on the south half of Lot 3, Apartment 3B shall be located on the north half of Lot 3, Apartment 4A shall be located south half of Lot 4, Apartment 4B shall be located on the north

half of Lot 4, Apartment. 5A shall be located on the south half of Lot 5, and Apartment 5B shall be located on the north half of Lot 5 with parcel "A" of Lot 6.

ARTICLE VII.
OWNERSHIP.

The ownership of each apartment as described above includes the ownership of the following undivided equal proportionate interest in all general common elements and facilities:

Apartment 3A	1/6
Apartment 3B	1/6
Apartment 4A	1/6
Apartment 4B	1/6
Apartment 5A	1/6
Apartment 5B	1/6

ARTICLE VIII.
COMMON ELEMENTS.

The general common elements and facilities of the HORIZONTAL PROPERTY REGIME described above shall be owned by all of the apartment owners as Tenants in Common as described and as defined under Section 499B.2 (5) (a) (b) (c) (d). These general common elements shall include the surrounding lands embraced within the legal description set out above, the foundations, exterior (outside walls and siding) walls, eaves, gutters, roof, sanitary sewer and water lines to meter, sidewalks, lawn and shrubbery and in general, all devices or installations existing for the common use of all apartment owners.

Limited common elements are those as defined under Section 499B.2 (6) of the Iowa Code and are those reserved for the use of one or more apartments to the exclusion of other apartments and shall include basements, window glass, entrance doors, interior doors, sliding doors, garage doors and open doors, individual stairways, porches, patios, furnaces, air conditioning units and hot water heaters, as well as driveways extending from the street to the garage which is part of each apartment.

The owners of each respective apartment shall not be denied to be the individual owners of the exterior surface of perimeter walls of any said apartment unit, but the owner of each apartment unit shall be deemed to own the inner decorated and finished surfaces of the perimeter walls, floors and ceilings therein.

ARTICLE IX.
EASEMENTS.

The apartments described above and the common elements shall also have and be subject to each apartment having appurtenant thereto non-exclusive easements in the common elements designed for such purpose for ingress to, egress from, utility surfaces for, and support of each apartment, and in the other common elements for use according to their respective purposes. An owner shall grant the right entry to the management agent or to any other person authorized by the council of co-owners in case of any emergency originating in or threatening the owner's apartment, whether the owner is present at the time or not. An owner shall permit other owners, or their representatives, when so required, to enter the owner's apartment for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services provided that such requests for entry are made in advance and that such entry is at time convenient to the owner. In the case of an emergency, such right of entry shall be immediate. Each apartment shall also have a non-exclusive easement to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other apartments and serving that owner's apartment. Each apartment shall be subject to an Easement in favor of the owners of all other apartments to rise the pipes, ducts, cables, wires, conduits, public utility lines, and other common elements serving such other apartments and located in such apartment.

ARTICLE X.
ASSOCIATION.

The owner of each apartment unit described herein shall automatically upon becoming such an owner, be a member of the HORIZONTAL PROPERTY REGIME, hereinafter referred to as ASSOCIATION, and shall remain a member of said ASSOCIATION until such time as the ownership ceases for any reason, at which time, that owner's membership in said ASSOCIATION shall automatically cease.

The owners of each apartment unit herein agree that the administration of this HORIZONTAL PROPERTY REGIME (condominium) shall be in accordance with the provisions of the DECLARATION and the Bylaws of the ASSOCIATION.

Each owner, tenant, or occupant of an apartment unit subject to this DECLARATION shall comply with the provisions of this DECLARATION, the BYLAWS, and the decisions and resolutions of the ASSOCIATION, as hereinafter lawfully made or amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, or damages, for injunctive relief and any amounts due shall constitute a lien upon the premises herein as provided by Iowa law.

ARTICLE XI.
COMMON EXPENSES.

The owners of each apartment unit shall be responsible and pay for their proportionate share of charges, costs and expenses incurred, including but not necessarily limited to the following expenses relating and connected to the building and the lot upon which the building is located in which that owner's apartment unit is also located: administration expenses, risk and fire insurance for the building in which that owner's apartment is located, liability insurance for common elements, exterior painting and exterior repairs of said building, garbage pick-up, mowing, yard care, snow removal, utilities for common outside areas and general maintenance of the building in which the owners apartment is located. The same shall be paid in such a manner and at such time as may be fixed by the ASSOCIATION of apartment owners in accordance with the BYLAWS. The COUNCIL OF CO-OWNERS of the ASSOCIATION of apartment owners shall obtain and continue in effect fire insurance and extended coverage upon each building in which the above described apartments are located or shall designate a person or persons to obtain such coverage, with the coverage to be in an amount not less than 80% of the replacement cost of each building in which apartment units are located and the owners of each apartment units are located and the owners of each apartment unit shall pay their proportionate share of the premiums for such insurance as in a manner as may be specified by the BYLAWS of the ASSOCIATION. Proceeds of any such insurance policy shall be made payable to NORTH CHERRY ESTATES ASSOCIATION.

As to those expenses to each of the three buildings in each of which shall be located two apartment units, the payments shall be apportioned as 50% to each of the two apartments located in each building. As to all other expenses not common to only one building, but common to all buildings and all units, the payments for such expenses

shall be apportioned as follows:

Apartment 3A 1/6
Apartment 3B 1/6
Apartment 4A 1/6
Apartment 4B 1/6
Apartment 5A 1/6
Apartment 5B 1/6

No owner of an apartment unit may exempt himself or herself from liability for his or her contribution towards the common expenses by waiver of the use of enjoyment of the common areas and facilities or by the abandonment of that person's apartment.

All sums assessed by the ASSOCIATION, but unpaid for the share of the common expenses are chargeable to any apartment until shall constitute a lien upon such apartment unit prior to all other liens except only tax liens for the apartment unit in favor of any assessing unit, and all sums unpaid on any prior mortgage or record. Such a lien may be foreclosed by a suit by the ASSOCIATION, acting upon behalf of the owners of the apartment units, in a manner as in the foreclosure of the mortgage of real estate.

In an involuntary conveyance, the grantee of an apartment unit shall be jointly and severally liable with a grantor for all unpaid assessments against the grantor for that grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor, the amounts paid by the grantee for said amounts.

ARTICLE XII
USES.

All apartment units shall be used in compliance with Iowa law, particularly Chapter 499B of the Iowa Code, any applicable Zoning Ordinances, Covenants and Restrictions, and any rules as established by the Council of Co-Owners. Each owner shall maintain the interior of his or her unit at the owner's expense and shall do nothing, which will interfere with the peaceful enjoyment of other units by its legal occupants. No owner shall paint or otherwise change the appearance of any portion of the building not within the walls of that owner's apartment unit.

ARTICLE XIII.
CASUALTY.

In the event that a building in which apartment units referred to above are damaged by fire, wind storm or other casualty, only to the extent the repairs can be reasonably effected within 30 days thereafter, then such repair shall be immediately made by the Council of Co-Owners and the insurance proceeds used in payment thereof. In the event that any or all of the building or buildings referred to in this DECLARATION in which apartment units are located are damaged or destroyed to such extent that repairs cannot be reasonable effected within 30 days after the damage is sustained, a special meeting of the Council of Co-Owners shall be called, in the manner provided in the Bylaws, immediately following such damage, for the purpose of determining whether such repairs, rebuilding or restoration should be effected or the remaining property sold. To effectuate a plan of repair, rebuilding, restoration, or sale, a majority vote of the apartment owners in the building affected shall be required.

ARTICLE XIV.
TRANSFER.

No owner shall be entitled to sever the interest which comprises his or her condominium, nor the items appurtenant thereto, including the common elements or facilities. Any transfer or conveyance of the apartment unit shall be presumed to transfer and convey the entire ownership interest of said owner to said owner to the apartment unit and his or her share of the common elements and all of his or her rights therein. This does not prohibit the owners from transferring an undivided fractional interest to another, under those terms.

ARTICLE XV.
AMENDMENTS

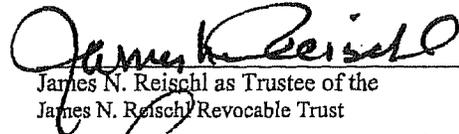
This DECLARATION may be amended only by the written consent of 75% or more of the owners of the six apartment units described above, each apartment being allocated one vote.

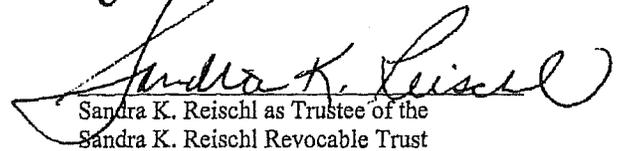
ARTICLE XVI.
PROVISIONS BINDING.

All provisions of this DECLARATION shall be fully binding upon the grantors herein, their successors

and assigns, and upon all subsequent owners of all or any part of the real property and improvements described above, together with their grantees, successors, heirs, executors, administrators, devisees, or assigns.

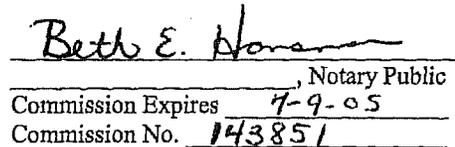
IN WITNESS WHEREOF, we have subscribed our names hereto on this 18TH day of APRIL, 2003 at Denison, Crawford County, Iowa.


James N. Reischl as Trustee of the
James N. Reischl Revocable Trust


Sandra K. Reischl as Trustee of the
Sandra K. Reischl Revocable Trust

STATE OF IOWA, COUNTY OF CRAWFORD: ss

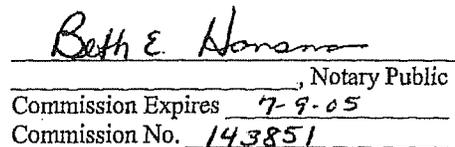
On this 18th day of April 2003, before me, a Notary Public in and for the State of Iowa, personally appeared James N. Reischl, as Trustee of the James N. Reischl Revocable Trust, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that he executed the instrument as his voluntary act and deed as the fiduciary.


Beth E. Honan, Notary Public
Commission Expires 7-9-05
Commission No. 143851

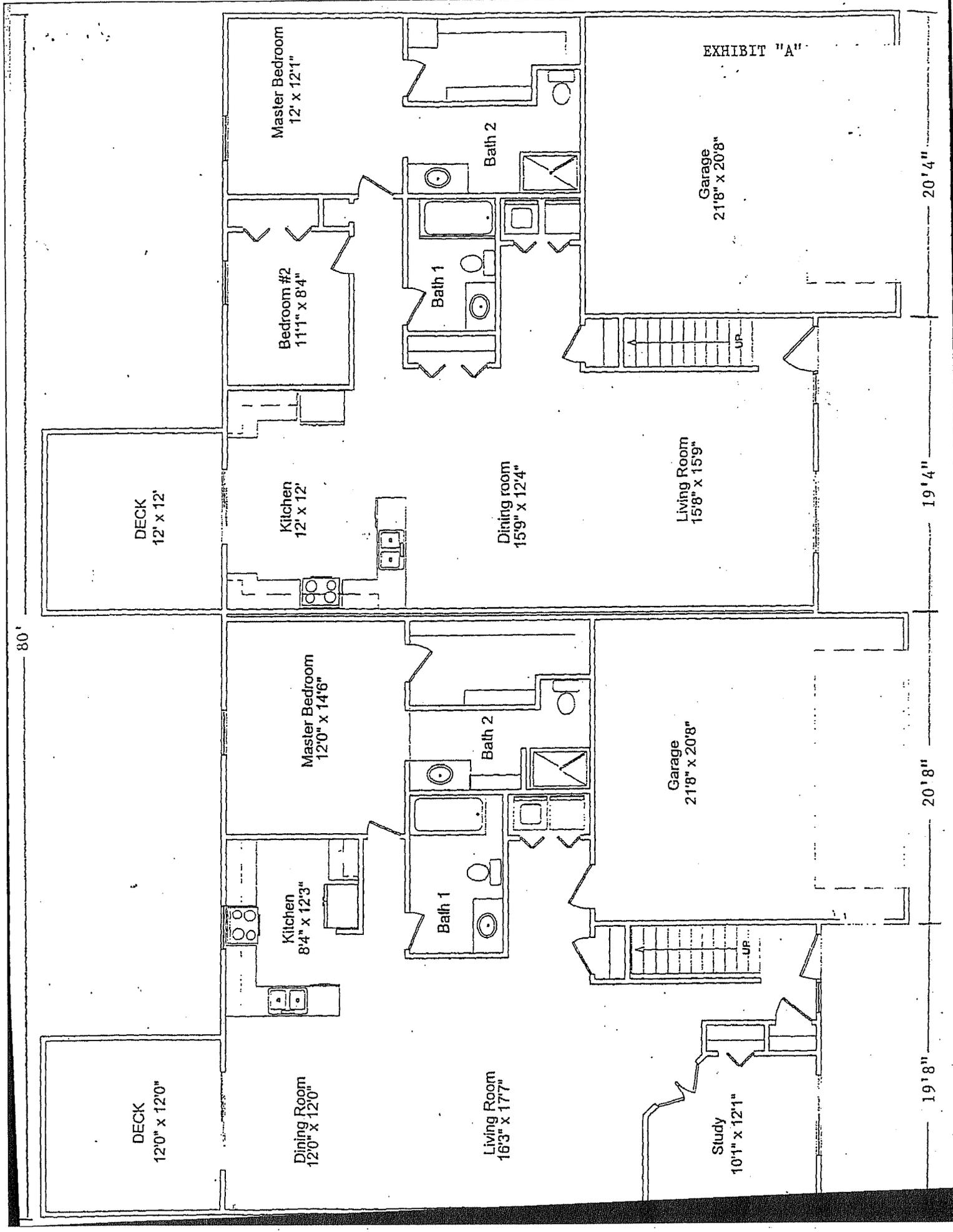
7-9-05

STATE OF IOWA, COUNTY OF CRAWFORD: ss

On this 18th day of April 2003, before me, a Notary Public in and for the State of Iowa, personally appeared Sandra K. Reischl, as Trustee of the Sandra K. Reischl Revocable Trust, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that she executed the instrument as her voluntary act and deed as the fiduciary.


Beth E. Honan, Notary Public
Commission Expires 7-9-05
Commission No. 143851

7-9-05



80'

DECK
12' x 12'

Kitchen
12' x 12'

Dining room
15'9" x 12'4"

Living Room
15'8" x 15'9"

Master Bedroom
12' x 12'1"

Bedroom #2
11'1" x 8'4"

Bath 1

Bath 2

Garage
21'8" x 20'8"

UP

EXHIBIT "A"

20'4"

19'4"

DECK
12'0" x 12'0"

Dining Room
12'0" x 12'0"

Living Room
16'3" x 17'7"

Study
10'1" x 12'1"

Master Bedroom
12'0" x 14'6"

Kitchen
8'4" x 12'3"

Bath 1

Bath 2

Garage
21'8" x 20'8"

UP

20'8"

19'8"

EXHIBIT "B"

BYLAWS OF THE ASSOCIATION OF THE HORIZONTAL PROPERTY REGIME
(CONDOMINIUM) KNOWN AS NORTH CHERRY ESTATES

ARTICLE I.
CONDOMINIUM PLAN OF APARTMENT OWNERSHIP.

1. The property described in the Declaration of Establishment of a horizontal property regime (condominium), known as North Cherry Estates is submitted to and subject to the provisions of Chapter 499B of the Iowa Code.
2. The provisions of these Bylaws are applicable to the property. The term "property" as used herein shall include both the land and the building or buildings located thereon.
3. All present or future owners, tenants, future tenants, or their employees, or any other person that use the facilities of the condominium units in any manner, are subject to the regulations set forth in the Bylaws.

ARTICLE II.
VOTING, QUORUM AND PROXIES.

1. The owner or owners of an apartment unit shall have one vote, meaning that each apartment unit shall have one vote. If there is more than one owner of an apartment, the owners shall determine which owner shall exercise the voting privilege and cast the one vote allocated to that apartment unit.
2. Except as otherwise provided in these Bylaws, the presence in person or by proxy of a majority of owners shall constitute a quorum.
3. Votes may be cast in person or by proxies. Such proxies must be filed with the Secretary before the appointed time of each meeting and are not effective for a period longer than six months.

ARTICLE III.
ADMINISTRATION.

1. All of the owners of the apartments will constitute the Council of Co-Owners of North Cherry Estates, hereinafter referred to as "Council" who will have the responsibility of administering the property, establishing and collecting monthly assessments and arranging for any management necessary of the property. Except as otherwise provided, decisions and resolutions of the Council shall require approval by a majority of those voting, provided however, that in the event the Council reaches an impasse, encounters continual inability to obtain a quorum, or is

deadlocked on any issue concerning the administration of the condominium, the President of North Cherry Estates will act as arbitrator thereof and that person's decision on the issue shall be final and binding on all of the members of the Council.

2. Meetings of the Council or shall be held at the apartment of the President of the Council or at such other suitable place as agreed upon the Council.

3. Within 30 days after such time as two or more apartments in North Cherry Estates are owned by different parties, an organizational meeting of the Council shall be held for the purpose of electing officers to act until the first Annual Meeting. Notice of said meeting, if not waived, shall be given to the owners by the developers as provided in Article III of the Bylaws. At the organizational meeting, officers shall be elected and such other business as may be necessary shall be transacted.

4. The first annual meeting of the Council shall be held on the first Monday in June following the organizational meeting. Thereafter, the annual meeting of the Council shall be held on the first Monday of June of each succeeding year. At such meetings, there shall be elected by ballot or other means of election, officers of the Council of Co-Owners as designated in these Bylaws, and the owners may at the annual meeting also transact such other business of the Council as may properly come before them. Notice of the annual meeting (other than the organizational meeting) shall be given by the President of the Council providing written notice to the apartment owners at least seven days prior to the meeting.

5. The President may call a special meeting of the Council and shall do so upon a petition signed by 50% or more of those apartment owners entitled to a vote as provided for above. The President shall provide notice of at least seven days prior to each such special meeting, to each apartment owner entitled to a vote, as provided for above. Before or at any annual meeting or special meeting of the Council, an owner entitled to a vote and thereby entitled to notice of the meeting may waive notice of such a meeting and attendance by any such owner entitled to a vote by attendance at any meeting shall constitute waiver of notice to that owner.

6. The Council shall have the powers and duties necessary for the administration of all of the affairs of North Cherry Estates and may do such acts and things as are not by law or by the Declaration or by the Bylaw prohibited. In addition to any duties imposed by the Bylaws, the Council shall be responsible for the upkeep and surveillance of

the property, and the general common elements; the collection of monthly assessments from the owners and the hiring and the dismissal as may be necessary of any personnel that the Council hires or otherwise retains for the maintenance and operation of the property.

ARTICLE IV.
OFFICERS.

The officers of the Council shall be elected annually by the Council of Co-Owners at the annual meeting and each shall hold office until a successor is elected. The principal officers of the Council shall be a President and a Secretary-Treasurer, both of whom shall be elected by and be themselves members of the Council and shall serve as such officers with out compensation. Any member of the Council may at the same time hold the positions of President and Secretary-Treasurer.

ARTICLE V.
OBLIGATIONS OF THE OWNERS.

All owners are obligated to pay monthly assessments imposed by the Council to meet common expenses which will include a liability insurance policy premium if one is deemed necessary and an insurance premium for a policy to cover repair and construction work in the case of fire or other hazard, unless other arrangements for the providing of such insurance are made with the approval of the Council. The Council shall designate the amount of the monthly assessment to be paid by the owner(s) of each apartment unit.

The Council shall designate when each monthly assessment is due and when it becomes delinquent. Failure to make the monthly assessments shall be subject to the provisions of Section 499B.17 of the Iowa Code which deals with the collection of common expenses assessed by the Council. All owners shall pay before they become delinquent, the real estate taxes and any special assessments which will be levied on their respective apartment units under Section 499B.11 of the Iowa Code. All electricity used in each apartment unit shall be metered separately and the expense shall be paid by the owner of the apartment directly as shall any other separately metered or otherwise determined utility expense or other expense.

Every owner must perform promptly, all maintenance and repair work to facilities or installations serving that owner's apartment, which if omitted would affect the property in its entirety or in part belonging to other

owners. All the repairs of internal installations of each apartment such as water, electricity, sewerage, telephones, air conditioners, sanitary installations, doors, windows, and all other accessories serving or belonging to the apartment shall be at the owner's expense.

ARTICLE VI.
AMENDMENTS.

The Bylaws may be amended only at an annual meeting or properly called special meeting of the Council and only upon an affirmative vote of a majority of the Council members who are entitled to vote at such a meeting.