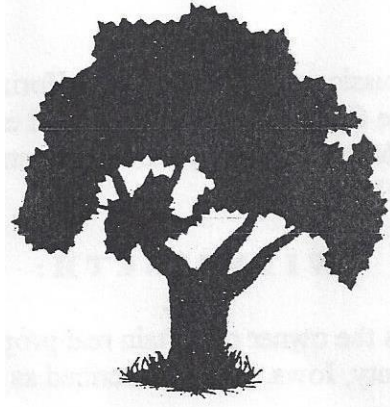


**FOREST GREENS CONDOMINIUMS**



**DECLARATION OF SUBMISSION TO HORIZONTAL PROPERTY REGIME  
PURSUANT TO CHAPTER 499B OF THE CODE OF IOWA  
FOR FOREST GREENS CONDOMINIUMS**

**A CONDOMINIUM COMPLEX LOCATED AT:**

250 CIMARRON DRIVE NE  
HIAWATHA, IOWA 52233

DOCUMENT NO. 57107  
RECORDING FEE 290.00  
AUD. FEE 5.00  
AUTOMATION FEE 1.00

**DEVELOPER:**

Hodge Construction Company  
Michael E. Hodge, President  
711 South Gilbert Street  
Iowa City, IA 52240

**DEVELOPER'S ATTORNEY:**

Kirsten H. Frey  
920 S. Dubuque St.  
P.O. Box 2000  
Iowa City, IA 52244

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

This Declaration of Submission of Property to the Horizontal Property Regime established by Chapter 499B, The Code of Iowa, is made and executed in Iowa City, Johnson County, Iowa this \_\_\_ day of March, 2000, by Hodge Construction Company, an Iowa Corporation, hereafter referred to as "Declarant."

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain real property located on 250 Cimarron Drive NE in Hiawatha, Linn County, Iowa, legally described as follows:

**A part of section 33-T84N-R7W of the 5th P.M., Hiawatha, Linn County, Iowa described as follows:**

**Beginning at the SE corner of Lot 2, Cimarron Estates Addition to Hiawatha;**

**thence S00°26' 45"E, 60.0 feet;**

**thence N89°49'19"E, 82.48 feet;**

**thence S00°08'38"E, 836.45 feet;**

**thence S89°51'22"W, 364.77 feet;**

**thence N64°25'19"W, 221.86 feet;**

**thence N57°12'24"W, 192.46 feet;**

**thence N09°55'51"W, 183.04 feet;**

**thence N04°33'31"E, 219.88 feet;**

**thence N39°36'07"E, 197.46 feet;**

**thence N51°44'01"E, 113.30 feet;**

**thence N00°06'11"W, 73.92 feet to the south line of Auditor's Plat No. 327 to Linn county;**

**thence N89°49'17"E along said south line, 441.02 feet to the point of beginning containing 13.46 acres.**

and;

**WHEREAS**, Declarant is the owner of several multi-family buildings and other improvements built, or to be built, upon the real property described above and it is the desire and the intention of the Declarant to divide the project into condominiums and to sell and convey the condominium units to various purchasers pursuant to the provisions of the Horizontal Property Act, and to impose upon said property mutually beneficial restrictions, covenants, and conditions, and;

**WHEREAS**, Declarant desires and intends to submit all of the above described property and buildings and improvements constructed or to be constructed thereon, together with all appurtenances, to the provisions of the Horizontal Property Act as a condominium project,

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

## ARTICLE I

### A. Definitions

- 1. Declarant.** The term "Declarant" shall mean Hodge Construction Company, an Iowa corporation, the maker of this Declaration, and its successor or assigns.
- 2. Declaration.** The term "Declaration" shall mean this instrument, by which Forest Greens Condominiums is established pursuant to the Horizontal Property Act.
- 3. Project.** The term "project" shall mean the entire parcel of real property, including all structures thereon, which is hereby divided into condominiums.
- 4. Unit.** The term "unit" shall mean one or more rooms, occupying all or part of a floor or floors, which are intended for use as a residence and which are not owned in common with other owners in the regime. The boundary lines of each unit are the interior surfaces of its perimeter walls, bearing walls, floors, ceilings, windows and window frames, doors and door frames, and trim, and includes the portions of the building so described and the air space so encompassed. There may be one hundred forty-four (144) units within this project.
- 5. General Common Elements.** The term "general common elements" shall have the meaning as defined in Article IV of this Declaration.
- 6. Limited Common Elements.** The term "limited common elements" shall have the meaning as defined in Article V of this Declaration.
- 7. Building.** The term "building" shall mean the structural improvements located on the land, forming part of the real estate and containing units as more particularly described on Exhibit "B" and in paragraph 2 of Article II of this Declaration.
- 8. Garage.** The term "garage" means a structure abutting a driveway and intended for, but not limited to, the storage of an automobile.
- 9. Condominium.** The term "condominium" means the entire estate in the real property owned by an Owner, consisting of an undivided interest in the Common Elements and ownership of a separate interest in a unit.
- 10. Owner.** The term "owner" means any person with an ownership interest in a unit in the project.
- 11. Council of Co-Owners.** The term "council of co-owners" means all the co-owners of the building and is otherwise known and synonymous with the term "association" and/or "homeowners association."

**12. Association.** The term "association" means the same as the "council of co-owners" as defined in Paragraph II hereof and refers to Forest Greens Condominium Association and its successors.

**13. Condominium Documents.** The term "condominium documents" means this Declaration and all exhibits attached hereto, including the Bylaws of the Association,

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

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

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

## **B. Development Phases**

**1. General.** The project is being developed in several phases as follows: Building 200, a twenty-four Unit building is substantially completed at the time of this Declaration. The remaining 120 units may be constructed periodically hereafter. Nonetheless, this Declaration shall apply to and be binding upon all buildings and all one hundred forty four units subject to the special provisions in this Article.

As each building is constructed, the Declarant shall construct the garages for the units contained within the respective building and the additional required land improvements including, but not limited to, sidewalks, driveways, parking areas, signage, mail boxes, and landscaping as may be required by the City of Hiawatha, Iowa, for obtaining a certificate of occupancy for each building as it is constructed and completed.

The Declarant, or its successor or assigns, shall have the perpetual right to construct the additional buildings and improvements as described in this Declaration.

### **2. Special Provisions.**

(a) Until such time that any building has been fully constructed and a certificate of occupancy issued by the City of Hiawatha, Iowa, no assessments for maintenance or any association expenses shall be chargeable to the association for any said building or shall be made against any units in said building. Until such time as the certificate of occupancy is issued, the Declarant shall retain sole responsibility for all expenses associated with incomplete units and the limited common elements adjacent thereto. After the certificate of occupancy is issued for a building, the Board of Directors for the association shall assess and collect fees from the owners of the units in said building with all such owners in completed buildings sharing the common expenses on a pro rata basis. However, even if any units in this condominium regime are not complete or no certificate of occupancy has been issued, assessments shall be made against all said units effective June 1, 2010.

(b) Building shall be constructed substantially in the same manner as shown by the building plans marked Exhibit "C" and incorporated herein. However, Declarant reserves the right to file amended building plans for said building in the event that the actual construction deviates from the Declarant's intentions. Declarant also reserves the right to file an amended Exhibit "B" to show the correct location of said building and such amended exhibits need not be approved by the owners of any condominium units within the regime.

(c) Further, because none of the buildings have been completed and occupancy certificates issued at the time of the filing of this Declaration, the Declarant reserves the right to complete all buildings in the condominium regime according to the plans marked Exhibit "C" and may deviate from the plans as long as each condominium unit is substantially the quality as the units shown on Exhibit "C" herein. Declarant reserves the right to construct up to a total of one hundred forty-four (144) units within the Forest Greens Condominiums in any combination of twenty-four (24) unit and twelve (12) unit buildings and may file amended plans (Exhibit "C") after construction of each respective building has been completed, all without obtaining the approval of any owners of units in this condominium regime. In the same regard, Declarant reserves the right to file an amended Exhibit "B" to show correct locations of any new buildings and garages as they are constructed.

(d) Further, because at the time of the filing of this Declaration, the additional buildings and/or improvements have not yet been fully planned or constructed, the Declarant reserves the right to construct said building and/or improvements in a location and manner consistent with the overall appearance and integrity of the project. The Declarant shall have the right to construct such buildings and improvements without obtaining the approval of the owners of units in the condominium regime.

**ARTICLE II**  
**Description of Land, Buildings and Units**

**1. Description of Land.** The land submitted to this regime abuts 250 Cimarron Drive NE in Hiawatha, Iowa. The exact legal description is as follows:

**A part of section 33-T84N-R7W of the 5th P.M., Hiawatha, Linn County, Iowa described as follows:**  
**Beginning at the SE corner of Lot 2, Cimarron Estates Addition to Hiawatha;**  
**thence S00°26' 45"E, 60.0 feet;**  
**thence N89°49'19"E, 82.48 feet;**  
**thence S00°08'38"E, 836.45 feet;**  
**thence S89°51 '22"W, 364.77 feet;**  
**thence N64°25'19"W, 221.86 feet;**  
**thence N57°12'24"W, 192.46 feet;**  
**thence N09°55'51"W, 183.04 feet;**  
**thence N04°33'31"E, 219.88 feet;**  
**thence N39°36'07"E, 197.46 feet;**  
**thence N51°44'01"E, 113.30 feet;**  
**thence N00°06'11"W, 73.92 feet to the south line of Auditor's Plat No. 327 to Linn county;**  
**thence N89°49'17"E along said south line, 441.02 feet to the point of beginning containing 13.46 acres.**

**2. Description of Buildings.** The Condominium Regime consists of multiple buildings containing a total of one hundred forty-four (144) dwelling units. Each building has three floors above ground. The buildings have been or will be constructed to the following general specifications:

**Foundations:** Poured concrete.

**Wall Framing:** Shall be spruce, fir or whitewood and/or metal non-bearing studs, with 7/16" o.s.b. sheathing, and 1/4" thermo-ply or 5/8" exterior gypsum sheathing with "T" bracing.

**Floor Framing:** Shall be 11 7/8" TJI floor trusses with 3/4" o.s.b. and 3/4" gypcrete sound proofing (2nd and 3rd floor only).

**Building Exterior:**

- A. Vinyl siding.
- B. Engineered trusses. Felt and shingles (220 LB).
- C. Roof ventilation-ventaridge
- D. Soffit and fascia-aluminum with ventilation grills.
- E. Gutters and downspouts-aluminum.
- F. Brick.

**Exterior Doors:** Commercial grade steel door, or equal, with passage knob.

**Exterior Window:** Quaker vinyl windows series with double insulated glass, Internal grills, and beige in color, or equal.

**Suite Entry Doors:** Solid core, metal jambs, prefinished legacy oak with passage knob, deadbolt lock, and peep sites.

**Interior Trim:** (All interior trim shall be oak, unless noted otherwise)

- A. Interior door-1 3/8" hollow core door.
- B. Casing-2 1/4" oak.
- C. Base-oak.
- D. Windows-Wrapped openings, 3 sides painted with enamel paint; oak sill.
- E. Closet doors-1 3/8" hollow core bi-fold doors with wrapped openings.
- F. Closet shelves-Wire mold, white.

**Interior Walls and Ceilings:**

- A. Sheetrock 5/8" gypsum board throughout.
- B. Texture-Medium drywall texture on all ceilings and orange peel texture on all walls and soffits.
- C. Paint-All walls and ceilings shall have two coats of Sherwin-Williams Latex Velvet Enamel or equal.

Color shall be picked by-owner.

**Appliances:** (All appliances to be white in color. Appliances to be Whirlpool, Hotpoint, GE, or equal).

- A. GSG500 GE Dishwasher.
- B. JBSO3 GE Electric Range.
- C. RVM1325BW Space Saver Microwave.

**Miscellaneous:**

- A. Prewire for cable television, 1 outlet per bedroom, plus 2 in living room.
- B. Prewire for telephone (same number as cable and kitchen).
- C. Security door system at front entry.

**Reasonable Deviations:** Declarant shall have the right, without approval of any other owners, to make reasonable deviations from the specifications provided herein as long as such deviations are equal in value to these specifications. Any deviations required by state, federal or local Codes shall be allowed.

**3. Description of the Units.** Annexed hereto and made a part hereof as Exhibit "A" is a list of all units in the buildings, showing their unit designation, percentage interest in the common elements, number of votes in the association, and pro rata share of common expenses.

Annexed hereto and made a part hereof as Exhibit "B" is a site plan showing the location of the buildings and the limited common elements to which each unit has immediate access. Annexed hereto and made a part hereof as Exhibit "C" are the building plans for the buildings which together with the definition of the term "unit" in Article I show the dimensions of each unit.

## **ARTICLE III**

### **Ownership Interests**

**1. Exclusive Ownership and Possession by Owner.** Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner shall be entitled to an undivided interest in the Common Elements, equal to the fractional interest expressed in Exhibit A of this Declaration. The fractional interest of each owner in the Common Elements as expressed in Exhibit A shall have a permanent character and shall not be altered without the consent of all owners expressed in an amended declaration duly recorded. The fractional interest in the Common Elements shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each owner may use the Common Elements in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners.

An owner shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, ceiling, windows and doors bounding his/her unit, nor shall the owner be deemed to own the utilities running through his/her unit which are utilized for, or serve more than one unit except as a fractional interest in the Common Elements. An owner, however, shall have the exclusive right to paint, re-paint, tile, wax, paper or otherwise refinish and decorate the interior surfaces of the walls, floors, ceilings, windows and doors bounding his/her unit.

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

**3. Undivided Fractional Interest.** An undivided interest in the land and other common elements of the regime, regardless of whether such elements are general or limited common elements, shall be appurtenant to each unit. The amount of such undivided interest appurtenant to each unit is that fraction as set forth in Exhibit "A."

**4. General Common Elements.** Appurtenant to each unit shall be a right to use and enjoy the general common elements.

**5. Limited Common Elements.** The exclusive use by owners of the limited common elements shall be deemed an appurtenance of the unit or units for which said elements are reserved, provided, such use and enjoyment shall be limited to the uses permitted by this Declaration and other condominium documents.

**6. Association Membership and Voting Rights.** Appurtenant to each unit shall be membership in Forest Greens Condominium Association, including one vote in the affairs of the association and of the regime. However, such voting and membership rights shall be subject to the applicable provisions of the Bylaws of the Association and of the other condominium documents. The action of such Association shall be deemed the



action of the owners; and such action, when taken in accordance with the Bylaws of the Association and this Declaration, shall be final and conclusive upon all unit owners.

**7. Cross Easements.** Appurtenant to each unit shall be easements from each unit owner to each other unit owner and to the Association and from the Association to the respective unit owners as follows:

(a) For ingress and egress through the common areas and for maintenance, repair, and replacement as authorized;

(b) Through the units and common facilities for maintenance, repair and replacement or reconstruction of common elements, but access to units shall be only during reasonable hours except in case of emergency;

(c) Every portion of a unit contributing to the support of a building is burdened with an easement of such support for the benefit of all such other units;

(d) Through the units and common areas for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility or other services to the other units in the common areas.

(e) Parking spaces in the outside parking areas that have not been designated or assigned to a particular unit.

## **ARTICLE IV**

### **General Common Elements**

**1. Definition.** General Common Elements shall include all portions of the project (land and improvements thereon) not included within any unit except such portions of the project which are defined as limited common elements in the following Article. The General Common Elements also include, but are not limited to, the following:

(a) The land on which the building is erected.

(b) The foundations, basements, floors, exterior walls of each unit and of the buildings, ceilings, and roofs, communication ways, and in general all devices or installations existing for common use, except as limited in the next Article.

(c) Installations for public utilities, including electric, gas and cold water for common use.

(d) Recreational greens, plantings, and walks.

## **ARTICLE V**

### **Limited Common Elements**

**1. Definition.** The term "limited common elements" shall mean and such elements shall consist of those common elements which are reserved for the use of one or more units by this Article and amendments hereto and such reservations shall be to the exclusion of all other units.

**2. Reservation.** The following common elements are reserved and shall constitute the limited common elements:

(a) The patio or deck (sometimes referred to as a balcony herein or on the Exhibits) if any, adjoining a unit. Such patio or deck shall be reserved for the use of the adjoining unit.

(b) Mailboxes and storage areas, if any, designated to a particular unit.

(c) The portion of all sewer, water, electrical, gas, telephone and other utility or service lines, wiring, ducts, conduits, piping, facilities, systems, fixtures and attachments serving just one unit and located entirely within the unit.

(d) The air conditioner pads, compressors and equipment appurtenant to each unit.

(e) The garage designated for and conveyed with each unit.

**3. Exception.** Notwithstanding the reservations made by this Article, the design of the buildings, grounds to be submitted and the integrity and appearance of the regime as a whole are the common interests of all owners and, as such, shall remain a part of the general common elements.

**4. Rights of Association.** The reservation of the limited common elements herein shall not limit any right the Association and its agents may otherwise have to alter such limited common elements or enter upon such limited common elements.

## ARTICLE VI

### Declarant's Reserved Rights and Powers

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

**2. Easements.** Declarant expressly reserves perpetual easements for ingress, egress and utility purposes as may be required across and under the land submitted hereby. Specifically, Declarant reserves to itself and its successors and assigns and access easement across the easterly border of the regime to allow ingress and egress to property also owned by Declarant lying south of the regime as shown on Exhibit "B" attached hereto.

**3. Designation of Association Directors.** Declarant shall have the right to name all members of the Board of Directors of Forest Greens Condominium Association until the first annual members' meeting of said Association which shall be held as provided for in the By-Laws. Thereafter, the Board of Directors shall be selected in the manner specified in the By-Laws of the Association.

## **ARTICLE VII**

### **Management of the Regime**

- 1. Association; Council of Co-owners.** The operation of the condominium shall be by a non-profit membership corporation organized and existing under Chapter 504A, Code of Iowa. The name of the Association shall be Forest Greens Condominium Association. Copies of its Articles of Incorporation and By-Laws are attached hereto as Exhibits "D" and "E" respectively. Whenever a vote or other action of unit owners as a group is required the mechanics of conducting such a vote or taking such action shall be under the control and supervision of the Association. The action of the Association shall constitute the action of the owners or the Council of Co-owners whenever such action is permitted or required herein or by Chapter 499B of the Code of Iowa.
- 2. Compliance.** All owners, tenants, families, guests and other persons using or occupying the regime shall be bound by and strictly comply with the provisions of the Bylaws of the Association and applicable provisions of other condominium documents, and all agreements, regulations and determinations lawfully made by the Association and its directors, officers or agents shall be binding on all such owners and other persons. A failure to comply with the By-Laws or the provisions of the other condominium documents or any agreement or determination thus lawfully made shall be grounds for an action to recover sums due for damages on the part of the Association or any owner as applicable and any mandatory or other injunctive relief without waiving either remedy.
- 3. Power of Association.** Each owner agrees that the Association has and shall exercise all powers, rights and authority granted unto it, the Council of Co-owners and the owners as a group by Chapters 499B and 504A of the Code of Iowa, and such as are more particularly set forth in the condominium documents, including but not limited to the making of assessments chargeable to owners and the creation of a lien on units thereof and acquiring a unit at foreclosure sale and holding, leasing, mortgaging or conveying the same. Each owner hereby waives any rights to delay or prevent such foreclosure by the Association which he/she may have by reason of a homestead exemption.
- 4. Partition.** All unit owners shall be deemed to have waived all rights of partition, if any, in connection with such acquisition.
- 5. Membership Voting Rights.** The members of the Association shall consist of all of the record owners of units. After receiving the approval of the Association elsewhere required, change of membership in the Association shall be established by recording in the public records of Linn County, Iowa, a deed or other instrument establishing a record title to a unit in the condominium. The membership of the prior owner shall be thereby terminated. The members of the Association shall be entitled to cast one vote for each unit owned by such member.
- 6. Restraint upon Assignment.** The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his unit.

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

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

**9. Limitation of Association's Liability.** The Association shall not be liable for any injury or damage to property whatsoever unless caused by the gross negligence of the Association. No diminution or abatement of common expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements of the common elements or from any action taken to comply with any law, ordinance or orders of a government authority.

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

**11. Agent to Receive Service of Process.** The following person, who is a resident of the State of Iowa, is designated as agent to receive service of process upon the Association:

**Name**

Michael E. Hodge

**Address**

711 South Gilbert Street  
Iowa City, IA 52240

**ARTICLE VIII**  
**Maintenance, Alteration and Improvement**

**1. Definitions.** Certain terms used in this Article shall have a meaning as follows:

(a) "Maintenance" or "repair" shall mean the act of maintaining, restoration, renovation, reconstruction, replacement, rebuilding and any similar work necessary to preserve a unit or property in its original completed condition,

(b) "Improvement" shall mean the addition of a new structure, element, or facility, other than a structure, element or facility otherwise provided for by this Declaration.

(c) Any dispute over the characterization of work within Section (a) or (b) above shall be conclusively decided by the Board of Directors of the Association.

**2. Maintenance by Association.**

(a) The Association shall maintain all common elements, whether limited or general, and shall make assessments therefore as a common expense except where maintenance has been specifically made the responsibility of each unit.

(b) The Association shall repair incidental damage caused to a unit during or as a result of maintenance by the Association and shall assess the cost thereof as a common expense.

(c) If a unit owner defaults on his/her responsibilities of maintenance, the Association shall assume such responsibilities and shall assess the costs thereof against the unit of such owner and such assessment shall be collectible as if it were an assessment for common expenses.

(d) The Association may, in its discretion, assume responsibility for any maintenance project which requires reconstruction, repair, re-building, conservation, restoration or similar work to more than one unit and the costs thereof may be, in the discretion of the Association, either assessed against each unit on which such costs were incurred or assessed against all units as a common expense according to the circumstances.

**3. Maintenance by Owner.**

(a) Each unit owner at his/her own expense shall maintain the interior, including the boundary surfaces, of such unit and its equipment; shall keep the interior in a clean and sanitary condition; shall do all redecorating, painting and other finishing which may at any time be necessary to maintain his/her unit; and shall be responsible for the maintenance and replacement of all fixtures and personalty including carpets, other floor coverings, furnishings, equipment, electrical and plumbing fixtures and the like, and appliances within such unit.

(b) The owner of each unit shall be responsible for maintaining and replacing the plumbing fixtures; the furnace and air conditioning unit, including the heating ducts; the electrical fixtures or portions thereof; and any and all utilities located within the boundaries of his/her unit. In addition, the owner of each unit shall be responsible for maintaining that portion of the HVAC unit serving that unit that may be located outside of his/her unit.

(c) The owner shall also, at his/her own expense, keep in a clean and sanitary condition his/her unit, and any patio or deck which is for the exclusive use of his/her unit. Neither the Association nor the regime shall be liable or responsible for any loss or damage caused by theft or otherwise of articles stored by the owner on such patio or deck. Any required maintenance or repair of any patio or deck shall be done by the Association but the cost thereof assessed to the unit owner to which the patio or deck is adjacent.

(d) The unit owner shall maintain, at his/her expense, any improvement or alteration made by him/her.

(e) The owner of each unit shall promptly report to the Association any defects or other maintenance needs which are the responsibility of the Association.

**4. Alterations or Improvements by Owner.** No unit owner shall make or permit to be made any structural alteration to the building without first obtaining written consent of the Board of Directors of the Association (which consent may be given by general rule or regulation). Prior to giving such consent, the Board shall determine the proper insurance of such improvement or other alteration, consider the effect of such improvement or alteration on insurance of other property of the regime, and shall arrange for the payment of the cost of any additional insurance thereby required with such unit owner. Alterations to the exterior of any building or common element shall not be made if, in the opinion of the Board of Directors of the Association, such alteration would be detrimental to the integrity or appearance of the regime as a whole. Unit owners shall do no act or work which will impair the structural soundness or integrity of the building, endanger the safety of the property, or impair any easement. The improvement or alteration of a unit shall cause no increase or decrease in the number of ownership interests appurtenant to such unit.

**5. Alterations or Improvements by the Association.** In the judgment of the Board of Directors of the Association, whenever the common elements shall require additions, alterations, or improvements costing in excess of Ten Thousand Dollars (\$10,000.00) and the making of such additions, alterations or improvements shall have been approved by a majority of the unit owners, the Board of Directors shall proceed with such additions, alterations or improvements and shall assess all unit owners for the costs thereof as a common charge. Any additions, alterations or improvements costing Ten Thousand Dollars (\$10,000.00) or less may be made by the Board of Directors without approval of unit owners, and the costs thereof shall constitute part of the common expenses.



## ARTICLE IX

### Conditions of and Restrictions on Ownership, Use and Enjoyment

**1. Property Subject to Certain Provisions.** The ownership, use, occupation, and enjoyment of each unit and of the common elements of the regime shall be subject to the provisions of the By-laws of the Association, and this Declaration, all of which provisions irrespective of where set forth or classified shall have equal status and shall be enforceable and binding as a covenant, condition, restriction, or requirement running with the land and shall be binding on and enforceable against each and all units and the owners thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

In addition thereto, the Board of Directors of the Association shall have the right to implement rules and regulations regarding the use of the common property within the condominium regime and may change those rules and regulations upon thirty (30) days' notice to each respective unit owner. Initial rules and regulations are marked Exhibit "F" and attached hereto.

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

(a) A unit shall be used or occupied for residential dwelling purposes only.

(b) A condominium may be rented or leased by the owner or his lessee provided the entire unit is rented, the occupancy is only by the lessee and his family or sub lessee and his family, and the period of rental is at least one month unless some other period is established in the regulations or Bylaws of the Association. No lease shall relieve the owner of any responsibility or liability imposed by the condominium documents as against the Association and other owners.

(c) No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the unit owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

(d) Nothing shall be done or kept in any unit 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 unit, garage or in the common area 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.

(e) No unit owner shall be permitted to erect a TV antenna, satellite dish, or any other fixture, item or appurtenance on any building roof, balcony, exterior wall or the like.

(f) 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 guests and licensees. Initial rules and regulations are marked Exhibit "F" and attached to this Declaration.

(g) No parking of any vehicles shall be allowed except on designated driveways, parking areas and garages.

(h) Agents of or 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, providing such entry shall be made with as little inconvenience to the owners as practicable.

(i) A unit owner shall give notice to the Association of every lien against his/her unit other than permitted mortgages, taxes and association assessments, and of any suit or other proceeding which may affect the title to his/her unit within ten (10) days after the lien attaches or the owner receives notice of such suit.

(j) A unit owner shall be liable to the Association for the expense of any maintenance, repair or replacement rendered necessary by his/her act, neglect, or carelessness, or by that of his/her family, guests, employees, agents or lessees which liability shall include any increase in insurance rates resulting therefrom.

(k) No animals shall be allowed or kept within any unit or on any of the general or limited common elements of the project unless approved by the Board of Directors for the Association under the following terms and conditions:

(i) Dogs shall only be allowed in owner-occupied units within the condominium regime and not within any units which are being rented.

(ii) No dog shall be allowed within owner-occupied units until written approval has been provided by the Board of Directors for the Association. The Board of Directors may delegate the authority to grant approval to a manager hired by the Board.

(iii) No dog shall be allowed that weighs more than thirty-five (35) pounds when mature or that displays any traits or behavior that would, within the sole discretion of the Board of Directors, cause any disruption to the harmonious, peaceful environment within the condominium regime.

(iv) No more than one (1) dog per owner-occupied unit shall be allowed.

(v) If any dog, after being approved, is found to be a nuisance or to violate any of the terms and conditions provided herein, within the sole discretion of the Board of Directors, the Board of Directors shall have authority to immediately remove said dog from the condominium regime.

(vi) Approved dogs may be walked on a leash within the general common elements of the condominium premises but may not be tethered or kept untended on the general or limited common elements of the project. Except when being walked on the general common elements, approved dogs shall be kept within the owner's condominium unit.

(vii) Owner-occupied units may have two (2) cats, but not both a dog and one or more cats, as long as the cat is confined to the unit and is not a nuisance or does not detract from the peaceful enjoyment of the

condominium premises by all other occupants. The Board of Directors shall have the sole discretion to determine whether a cat should be allowed to remain within the condominium premises.

(viii) The owner of any approved dog shall be responsible for cleaning and removing any and all messes made by the dog immediately and failure to do so shall result in the removal of the dog from the condominium premises.

(ix) The Board of Directors shall have authority to make additional rules and regulations governing animals within the condominium regime except that any changes to the above provisions relative to dogs and cats can only be made with majority approval of all members in the homeowner's association.

(l) A unit owner leasing a unit to a tenant shall in each instance:

(i) have the lease form agreement approved by the Board of Directors in advance of execution which approval will be promptly provided and not unreasonably withheld.

(ii) the unit owner as landlord shall provide the tenant with a complete copy of the declarations, covenants and by-laws of the Forest Greens Condominium Association. Both tenant and unit owner/landlord shall sign and submit an acknowledgement provided by the Board of Directors that the declarations, covenants and by-laws were conveyed to the tenant and accepted and subsequently provided to the Board of Directors of the Condominium Association within 30 days of entering into the lease agreement. If owner/landlord is subsequently notified of changes in the declarations, covenants and by-laws of the Association, the owner/landlord will provide tenant timely notice of same.

(iii) each lease shall clearly provide:

(1) that the tenant is bound by all of Forest Greens Condominium Declarations, Covenants and By-laws in the same manner and to the same extent as a unit owner.

(2) that a tenant may have no dog, cat or exotic animal in a leased unit without advance approval of the Board of Directors, and then only as otherwise allowed by these by-laws.

(3) it is for a minimum term of no less than 30 days.

(4) it may be voided by unit owner/landlord or Board of Directors for tenant's continued failure to comply with the declarations, covenants, by-laws and Hiawatha ordinances.

(5) A unit owner and/or tenant shall be responsible for any damage to the common areas of Forest Greens Condominiums caused by a tenant.

(iv) These amendments shall become effective upon approval by the Association on all leases executed subsequent to adoption. The effective date for these amendments as to leased units shall be the

first anniversary of any existing lease between unit owner/landlord and tenant following adoption of these amendments by the Association.

**3. No Waiver.** Failure of the Association or any owner to enforce any covenant, condition, restriction or other provision of Chapter 499B of the Code of Iowa, this Declaration, the Articles of Incorporation, or By-Laws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

## ARTICLE X

### Insurance

**1. Insurance Policies.** The Board shall purchase comprehensive general liability, property damage, fire, and other hazard insurance as promptly as possible following its election. The Board shall thereafter maintain such policies in force at all times and shall pay the premiums thereon from monthly association fees. Prior to the organizational meeting of the Board, such insurance shall be procured and maintained by the Declarant.

The insurance shall be carried with reputable companies authorized to do business in Iowa in such amounts as the Board may determine. The policies shall name as insured the Association, individually, and as agent for the unit owners, without naming them, and as agent for their mortgagees. Declarant shall be named as an additional insured on such policies until such time as Declarant shall have conveyed all of the condominiums in the project. The policies shall also provide for the issuance of certificates or such endorsement evidencing the insurance as may be required by the respective mortgagees.

**2. Coverage.** The policy or policies shall insure against loss arising from perils in both the common areas and the units and shall include contractual liability coverage to protect against such liabilities as may arise under the contractual exposures of the Association and/or the Board. The policy or policies shall also insure against loss from perils therein covered to all of the improvements in the project. Such policy or policies shall contain extended coverage, vandalism, and malicious mischief endorsements. The improvements shall be continually insured to value, and the policy or policies shall contain replacement cost insurance. If reasonably available, the policy or policies shall contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild. The policy or policies shall also cover personal property owned in common and shall further contain waiver-of subrogation rights by the carrier as to negligent owners.

**3. Individual Owner Insurance Coverage.** An owner may obtain coverage at his or her own expense for his or her personal property and other risks, as he/she may desire. However, no owner shall separately insure his or her condominium or any part thereof against loss by fire or other casualty covered by the insurance carrier under clause 1. Should any owner violate this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the owner who acquired such other insurance, who shall be liable to the association to the extent of any such diminution and/or loss of proceeds.

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

**5. Loss Adjustment.** The Board is hereby appointed as the attorney-in-fact for all owners and mortgagees to adjust all claims arising under the insurance policies purchased by the Association and to execute and deliver all releases upon payment of claims.

**6. Association as Trustee for Proceeds.** In the event of damage or destruction by fire or other casualty affecting a unit or units, and/or if any portion of the common area is damaged or destroyed by fire or other casualty, all insurance proceeds paid in satisfaction of claims for said loss or losses, including any proceeds payable under any loss of rents coverage, shall be segregated according to losses suffered by each unit or units and/or the common area, and shall be paid to the Association as trustee for the owner or owners and for the encumbrancer or encumbrancers, as their respective interest may appear. Said insurance proceeds, and the proceeds of any special assessment as hereinafter provided, whether or not subject to liens of mortgages or deeds of trust, shall be collected and disbursed by said trustee through a separate trust account on the following terms and conditions:

**(a) Partial Destruction of Common Elements.** If the damaged improvement is a common element, the Board of Directors of the Association may, without further authorization, contract to repair or re-build the damaged portion of the common elements substantially in accordance with the original plans and specifications thereof

**(b) Partial Destruction of Units and Common Elements.** In the event of damage to, or destruction of any unit or units with accompanying damage to the common elements but the total destruction or damage does not represent sixty percent (60%) or more of the buildings in the regime and the costs of repairing or rebuilding said damaged area does not exceed the amount of available insurance proceeds for said loss by more than \$20,000.00, the Board of Directors of the Association shall immediately contract to repair or re-build the damaged portion of the unit or units and the common elements substantially in accordance with the original plans and specifications. If the cost to repair or re-build exceeds available insurance by \$20,000.00, then owners of the individual units, by vote of not less than a majority of those present and entitled to vote, in person or by proxy, at a duly constituted owners' meeting held within thirty (30) days from the date of such damage or destruction, shall determine whether the Board of Directors shall be authorized to proceed with repair or reconstruction.

**(c) Total Destruction.** In the event of sixty percent (60%) or more damage to, or destruction of, the buildings in the regime by fire or other casualty, the owners of the individual units, by vote of not less than a majority of those present and entitled to vote, in person or by proxy, at a duly constituted owners' meeting held within thirty (30) days from the date of such damage or destruction, shall determine whether the Board of Directors shall be authorized to proceed with repair or reconstruction, or whether said project shall be sold; provided, however, that such determination shall be subject to the express written approval of all record owners of mortgages upon any part of the regime. In the event of a determination by re-build or repair, the Board shall have prepared the necessary plans, specifications and maps and shall execute the necessary documents to effect such reconstruction or repair as promptly as practicable and in a lawful and workmanlike manner.

In the event of a determination not to re-build, the Board shall offer the project for sale forthwith, at the highest and best price obtainable, either in its damaged condition or after damaged structures has been razed. The net proceeds of such sale, and the proceeds, if any, of insurance carried by the Association, shall be distributed proportionately to the unit owners in the same proportion that the unit in which they have an interest shares in the common elements, except that where there is a mortgage of record or other valid encumbrance on anyone unit then, and in that event, with respect to said unit, the Association will distribute said proceeds as follows: First to the record owner of the mortgages upon units and common elements in the regime in satisfaction of the balance currently due on said encumbrances and then the remaining proceeds, if any, to the unit owner of record.

(d) In the event that the common area is repaired or reconstructed pursuant to the provisions of paragraphs (a), (b) or (c) of this clause and there is any deficiency between the insurance proceeds paid for the damage to the common area and the contract price for repairing or re-building the common area, the Board shall levy a special assessment against each owner in proportion to his/her fractional interest of ownership in the common area to make up such deficiency. If any owner shall fail to pay said special assessment or assessments within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the maintenance fund, and the remaining owners shall be entitled to the same remedies as those provided in Article VII of this Declaration, covering a default of any owner in the payment of maintenance charges.

(e) In the event of a dispute among the owners and/or mortgagees respecting the provisions of this clause, any such party may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association.

In the event of arbitration, the party requesting the arbitration will give immediate notice thereof to the Board, which shall notify all other owners and mortgagees as promptly as possible after the reference to arbitration is made, giving all such parties an opportunity to appear at such arbitration proceedings. The decision of the arbitrator in this matter shall be final and conclusive upon all of the parties. The arbitrator may include in his/her determination an award for costs and/or attorney fees against anyone or more parties to the arbitration.

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

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

## **ARTICLE XI**

### **Termination**

**1. Procedure.** The condominium may be terminated in the following manner in addition to the manner provided by the Horizontal Property Act:

(a) Destruction. In the event it is determined in the manner elsewhere provided that the buildings shall not be reconstructed because of major damage, the condominium plan of ownership will be thereby terminated in compliance to the provisions of Section 499B.8 of the Code of Iowa (1999).

(b) Agreement. The condominium may be terminated at any time by the approval in writing of all of the owners of the condominium and by holders of all liens affecting any of the units by filing an instrument to that effect, duly recorded, as provided in Section 499B.8 of the Code of Iowa (1999). It shall be the duty of every unit owner and his respective lien holder to execute and deliver such instrument and to perform all acts as in manner and form may be necessary to effect the sale of the project when at a meeting duly convened of the Association, the owners of 100% of the voting power, and all record owners of mortgages upon units in the Regime, elect to terminate and/or sell the project.

(c) Certificate. The termination of the condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by all members of the Association and their respective holders of all liens affecting their interest in the condominium, certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the office of the Linn County Recorder in Cedar Rapids, Iowa.

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

(a) The property (land and improvements) shall be deemed to be owned in common by the owners;

(b) The undivided interest in the property owned in common which shall appertain to each unit owner shall be the fractional interest previously owned by such owner in the common area and facilities;

(c) Any liens affecting any of the condominiums shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the owner in the property.

(d) After termination, the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the owners in a percentage equal to the fractional interest owned by each owner in the common elements after first paying out of the respective shares of the owners, to the extent sufficient, all liens on the undivided interest in the property owned by each owner.



**ARTICLE XII**  
**Amendments and Miscellaneous Provisions**

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

**(a) Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. Holders of a first mortgage of record shall receive notice of such proposed amendment as provided in the Bylaws of the Association.

**(b) Resolution.** A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by any member of the Association. Except as provided elsewhere, the resolution must be adopted by a vote of not less than 66 2/3% of all owners present and entitled to-vote, in person or by proxy, provided, however, no amendment effecting a substantial change in this Declaration or the Bylaws of the Association shall affect the rights of the holder of any such mortgage recorded prior to the recording of such amendment who does not join in the execution thereof and who does not approve said amendment in writing.

**(c) Bylaws.** In an amendment to this Declaration is made by amending the Bylaws of the Association, then the amendment shall be made in the manner specified in such Bylaws.

**(d) Execution and Recording.** An amendment adopted pursuant to (b) or (c) above shall be executed by an officer specifically delegated to do so with the formalities required by Chapter 499B of the Code of Iowa. Upon the recording of such instrument in the office of the Linn County Recorder, the same shall be effective against any persons owning an interest in a unit or the regime.

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

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

HODGE CONSTRUCTION COMPANY

BY: Michael E. Hodge  
Michael E. Hodge, President  
and Secretary

STATE OF IOWA )  
  ) SS:  
JOHNSON COUNTY )

On this 24<sup>th</sup> day of March, 2000, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Michael E. Hodge, to me personally known, who being by me duly sworn, did say that he is the President and Secretary of said corporation; that no seal has been procured by the said corporation; that said instrument

was signed on behalf of said corporation by authority of its Board of Directors; and that the said Michael E. Hodge as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by him voluntarily executed.

Judith K. Hansen  
Notary Public in and for the  
State of Iowa.

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