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Fee Amt: \$192.00 Page 1 of 38  
Dubuque County Iowa  
Kathy Flynn Thurlow Recorder  
File 2005-00017436

Instrument No. 2005-17436, filed October 24, 2005.

CONDOMINIUM DECLARATION  
Recorder's Cover Sheet

**Preparer Information:**

Dean J. Konrardy, 100 West 12<sup>th</sup> Street, Dubuque, IA 52001, 563-588-0547

**Taxpayer Information:**

Kivlahan Farms, L.C., 4922 Wildflower Drive, Dubuque, Iowa 52002

**Return Address:**

Kivlahan Farms, L.C., 4922 Wildflower Drive, Dubuque, Iowa 52002

**Grantors:**

Kivlahan Farms, L.C.

**Grantees:**

Arbor Village Condominium Association

**Legal Description:** See Page 2

Page 1 of 24

\$192.00  
Kivlahan Farms

Page 1 of 38.



**CONDOMINIUM DECLARATION  
FOR ARBOR VILLAGE CONDOMINIUMS**

THIS DECLARATION is made this 24<sup>th</sup> day of October, 2005, by Kivlahan Farms, L.C., an Iowa Limited Liability Company, (the "Developer"). The terms used in this Declaration shall have the meanings set forth in Article I.

**Purpose**

1. The Developer is the owner of the following land and improvements thereon located in the City of Dubuque, Iowa, and described as follows:

Lot 1 of Block 9 of Arbor Estates, in the City of Dubuque, Iowa, according to the recorded plat thereof, subject to easements, restrictions and covenants of record.

2. The Developer submits the afore-described real estate, with improvements thereon, and all rights and privileges in any way pertaining thereto, to a condominium regime pursuant to the Horizontal Property Act of the State of Iowa, Chapter 499B, as amended, Code of Iowa (the "Act").

3. The Developer desires to establish for its benefit and for the mutual benefit of all future owners or occupants of the Project, or any part thereof, and intends that all future owners, occupants, mortgagees, and any other persons acquiring any interest in the Project shall hold such interest subject to certain rights, easements, and privileges in, over and upon the Project and certain mutually beneficial restrictions, obligations, and liens with respect to the proper use, conduct and maintenance thereof. All such rights, easements, privileges, restrictions, obligations, and liens are in furtherance of a plan to promote and protect the cooperative aspects of residents of the Project and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Project.

**I. Definitions.**

1.1 Definitions. The terms used in this Declaration shall have the following meanings, unless the text clearly requires another meaning:

- a. "Act" means the Horizontal Property Act of the State of Iowa.
- b. "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association attached as Exhibit A, as amended from time to time.
- c. "Association" means Arbor Village Condominium Association, Inc., an

Iowa nonprofit corporation.

- d. "Board" means the Board of Directors of the Association
- e. "Building" means the structural improvements located on the Land, forming part of the Project and containing Units.
- f. "By-laws" means the By-laws of the Association, attached as Exhibit B, as amended from time to time.
- g. "Common Expenses" means and includes:
  - (1) All sums lawfully assessed against the Common Elements by the Board.
  - (2) All expenses of administration and management, maintenance, operation, repair or replacement of and additions to the Common Elements.
  - (3) Expenses agreed upon as Common Expenses by the Unit Owners.
  - (4) Expenses declared to be Common Expenses by this Declaration or by the By-laws.
- h. "Condominium Plat" means the plat showing the location of each building and units thereof.
- i. "Declaration" means this instrument by which the Project is submitted to the provisions of the Act, as amended from time to time.
- j. "Developer" means Kivlahan Farms, L.C., an Iowa Limited Liability Company, its successors and assigns, provided such successors or assigns are designated in writing by the Developer as successors or assigns of the rights of the Developer set forth in this Declaration.
- k. "Mortgage" means a security interest, mortgage or lien granted by a Unit Owner in, to, or against a Unit to secure payment of an indebtedness and duly recorded in the Dubuque County Recorder's Office.
- l. "Mortgagee" means a person who holds a Mortgage as security for payment of an indebtedness.
- m. "Occupant" means a person or persons in possession of a Unit, regardless of

To: All Unit Owners of Arbor Village Condo Association

From: AVCA Board 

Date: August 24, 2012

Subject: Amendments to our "Declarations", "By-Laws" and "Articles of Incorporation"

Amendments have been made to the following Arbor Village Official Documents. These amendments have been approved by more than two thirds of the Unit Owners, have been officially filed/recorded and must be inserted in each Unit Owners copies and be available for transfer to the new owner upon sale of your unit.

**"CONDOMINIUM DECLARATION FOR ARBOR VILLAGE CONDOMINIUMS"**

The amendment replaces your present definition of "O" on page 4

**"BY-LAWS OF ARBOR VILLAGE CONDOMINIUM ASSOCIATION, INC."**

The amendment replaces your present definition of "Assessments" on pages 5 and 6.

**"ARTICLES OF INCORPORATION OF ARBOR VILLAGE CONDOMINIUM ASSOCIATION, INC."**

This amendment replaces your present definition of "ARTICLE IV Definitions" on pages 2 and 3.

These changes were previously explained in letters to all Unit Owners but if anyone has additional questions, please let me know.

318574

ARTICLES OF AMENDMENT

OF

ARBOR VILLAGE CONDOMINIUM ASSOCIATION

TO THE SECRETARY OF STATE OF THE STATE OF IOWA:

Pursuant to the Revised Iowa Non-profit Corporation Act, the undersigned corporation adopts the following amendment to the Corporation's Articles of Incorporation.

1. The name of the corporation is Arbor Village Condominium Association.

2. Insert amendment:

Delete Article IV and substitute the following Article IV:

ARTICLE IV  
Definitions

"Association" shall mean and refer to Arbor Village Condominium Association, Inc., its successor and assigns.

"Common Area" or "Common Elements" shall mean and refer to the same property as defined in Section 3.1 of the Condominium Declaration of Arbor Village Condominiums.

"Declaration" shall mean the Condominium Declaration of Arbor Village Condominiums.

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IOWA

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"Developer" shall mean and refer to Kivalahan Farms, L.C., an Iowa limited liability company, its successor in interest, assigns and legal representatives, if any.

"Member" shall mean and refer to every person or entity that holds membership in the Association.

"Project" shall mean and refer to the same property as defined in Section 2.1 of the Declaration.

"Unit" means a substantially completed enclosed space consisting of one or more rooms occupying all or part of a floor or floors in a Building, which enclosed space is not owned in common with the Unit Owners of other Units. Each Unit is numbered as shown on the Condominium Plat, and the boundaries of each Unit shall be and are the interior surfaces of its perimeter and the bearing walls, floors, ceilings, windows and window frames, doors and door frames and trim. This Unit includes the interior surfaces of the three-seasons/four seasons room. Decks and screened porches, including railings, deck floors and supports (as originally built) are the responsibility of the Association. A Unit includes the portion of the building so described, the air space so encompassed, and the garage, except Common Elements. The Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of its finished surfaces and the exterior surfaces so described except those portions of the walls, floors or ceilings that materially contribute to the structural or shear capacity of a Building. All other portions of the exterior walls, floors or ceilings and interior load bearing partitions shall be part of the Common Elements. In addition, each Unit shall include the following:

- (1) All spaces, non-bearing interior partitions, fireplaces (except chimneys and flues) and all other fixtures and improvements within the boundaries of the Unit; and
- (2) All outlets of utility and communication service lines, including, but not limited to, power (including circuit breakers), light, gas, hot and cold water, heating, refrigeration, air conditioning, and waste disposal, security, cable television and telephone, within the boundaries of the Unit, but shall not include any part of the lines or ducts themselves.

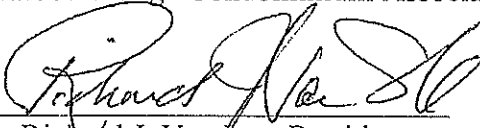
Any Unit may be jointly or commonly owned by more than one Person. The term "Unit" shall have the same meaning as the term "Apartment" as used in the Act.

"Unit Owner" means the Person or Persons who individually or collectively own or are purchasing by recorded contract the aggregate fee simple title to a Unit and the individual interest in the Common Elements appurtenant thereto but shall not include those having an interest in a Unit merely as security for the performance of an obligation. Unless specifically provided otherwise therein, the Developer shall be deemed a Unit Owner so long as it is the legal titleholder of any substantially completed Unit. The term "Unit Owner" shall have the same meaning as the term "Co-Owner" as used in the Act.

3. The date of adoption of the amendment was Aug 4, 2011.

4. The amendment was approved by over two-thirds of the Members and approved by the Board of Directors.

Arbor Village Condominium Association


  
Richard J. Van Asten, President

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IOWA  
SECRETARY OF STATE

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Kind: CONDOMINIUM  
Recorded: 08/03/2012 at 12:39:12 PM  
Fee Amt: \$17.00 Page 1 of 3  
Dubuque County Iowa  
Kathy Flynn Thurlow Recorder  
File **2012-00013053**

**AMENDMENT TO CONDOMINIUM DECLARATION**  
Recorder's Cover Sheet

**Preparer Information:**

James G. Schilling, Esq., 2625 JF Kennedy Rd., Dubuque, (563) 583-1756

**Taxpayer Information:**

**Return Address**

2625 JF Kennedy Rd., Dubuque, Iowa 52002

**Grantors:**

Arbor Village Condominium Association

**Grantees:**

**Legal Description:** See Page 2

**Document or instrument number if applicable:**

James Schilling 17<sup>th</sup>



## AMENDMENT TO CONDOMINIUM DECLARATION

**The Arbor Village Condominium Association**, (the "Association") does hereby amend the Condominium Declaration for Arbor Village Condominiums (the "Declaration") dated October 24, 2005 and filed with the Dubuque County Recorder that same date as Instrument No.2005-17436.

Pursuant to 10.3 b of the Declaration, said Declaration was amended by an affirmative vote of more than two-thirds of the Unit owners in the following particulars:

Section 1.1 subparagraph O is now amended to read as follows:

- o. "Unit" means a substantially completed enclosed space consisting of one or more rooms occupying all or part of a floor or floors in a Building, which enclosed space is not owned in common with the Unit Owners of other Units. Each Unit is numbered as shown on the Condominium Plat, and the boundaries of each Unit shall be and are the interior surfaces of its perimeter and the bearing walls, floors, ceilings, windows and window frames, doors and door frames and trim. This Unit includes the interior surfaces of the three-seasons/four seasons room. Decks and screened porches, including railings, deck floors and supports (as originally built) are the responsibility of the Association. A Unit includes the portion of the building so described, the air space so encompassed, and the garage, except Common Elements. The Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of its finished surfaces and the exterior surfaces so described except those portions of the walls, floors or ceilings that materially contribute to the structural or shear capacity of a Building. All other portions of the exterior walls, floors or ceilings and interior load bearing partitions shall be part of the Common Elements. In addition, each Unit shall include the following:
  - (1) All spaces, non-bearing interior partitions, fireplaces (except chimneys and flues) and all other fixtures and improvements within the boundaries of the Unit; and
  - (2) All outlets of utility and communication service lines, including, but not limited to, power (including circuit breakers), light, gas, hot and cold water, heating, refrigeration, air conditioning, and waste disposal, security, cable television and telephone, within the boundaries of the Unit, but shall not include any part of the lines or ducts themselves.

Any Unit may be jointly or commonly owned by more than one Person. The term "Unit" shall have the same meaning as the term "Apartment" as used in the Act.

Pursuant to Article VII of the BY-Laws of the Association, said by-laws were amended by the board of directors to read as follows:

ARTICLE VI  
Assessments

Section 1. Assessments. There shall be an initial assessment per unit of \$500.00 to be paid at closing by the Unit Owner when Units are originally purchased from the Developer. Monthly assessments per Unit shall be in the sum of \$ 100.00. All assessments are nonrefundable. The monthly assessment may be changed by the Board of Directors as the circumstances require. Such assessments shall include monthly payments to a general operating reserve fund, part of which may be allocated to a reserve fund for contingencies. Each Unit Owner will voluntarily pay said monthly assessments to the Treasurer or his designate not later than the 5<sup>th</sup> of each month and upon failure to do shall be subject to the provisions of Section 499B.17 of the Code of Iowa dealing with the collection of common expenses assessed by the Board of Directors.

An additional assessment of \$ 500.00 is to be paid by the new owner when a unit is resold. As with the monthly assessment, this amount may be changed by the Board of Directors as the circumstances require.

Section 2. Notice of Unpaid Assessments. The Board of Directors shall, at the request of a mortgagee or purchaser of a Unit, report any unpaid assessments due from the Unit Owner of such Unit.

In all other respects the declaration and the by-laws remain unchanged.

Dated this 2 day of August, 2012.

Arbor Village Condominium Association

By: Richard J. Van Iten

Richard J. Van Iten

President

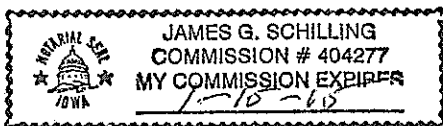
By: Judy Rensburg

Judy Rensburg

Secretary

STATE OF IOWA            SS:  
COUNTY OF DUBUQUE

This instrument was signed before me on August 2, 2012, by Richard J. Van Iten and Judy Rensburg as President and Secretary, respectively, of Arbor Village Condominium Association.



James G. Schilling  
James G. Schilling, Notary

# IOWA

No: W00794013  
Date: 08/07/2012

## SECRETARY OF STATE

504RDN-318574  
ARBOR VILLAGE CONDOMINIUM ASSOCIATION, INC.

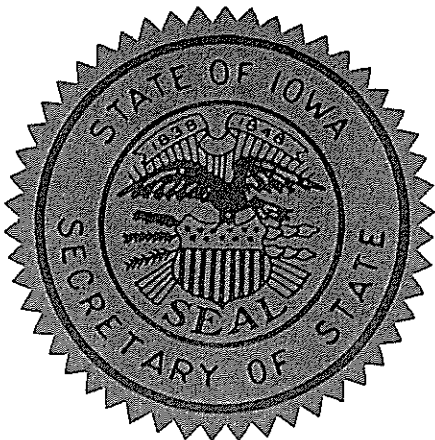
### ACKNOWLEDGEMENT OF DOCUMENT FILED

The Secretary of State acknowledges receipt of the following document:

Articles of Amendment

The document was filed on Aug 6 2012 10:35AM, to be effective as of Aug 6 2012 10:35AM.

The amount of \$10.00 was received in full payment of the filing fee.



  
MATT SCHULTZ SECRETARY OF STATE



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whether the person is a Unit Owner.

- n. "Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.
- o. "Unit" means a substantially completed enclosed space consisting of one or more rooms occupying all or part of a floor or floors in a Building, which enclosed space is not owned in common with the Unit Owners of other Units. Each Unit is numbered as shown on the Condominium Plat, and the boundaries of each Unit shall be and are the interior surfaces of its perimeter and bearing walls, floors, ceilings, windows and window frames, doors and door frames and trim; deck, three-seasons/four-seasons porch, or screened porch; and a Unit includes the portion of the building so described, the air space so encompassed, and the garage, except Common Elements. The Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of its finished surfaces and the exterior surfaces so described except those portions of the walls, floors or ceilings that materially contribute to the structural or shear capacity of a Building. All other portions of the exterior walls, floors or ceilings and interior load bearing partitions shall be part of the Common Elements. In addition, each Unit shall include the following:
  - (1) All spaces, non-bearing interior partitions, fireplaces (except chimneys and flues) and all other fixtures and improvements within the boundaries of the Unit; and
  - (2) All outlets of utility and communication service lines, including, but not limited to, power (including circuit breakers), light, gas, hot and cold water, heating, refrigeration, air conditioning, and waste disposal, security, cable television and telephone, within the boundaries of the Unit, but shall not include any part of the lines or ducts themselves.

Any Unit may be jointly or commonly owned by more than one Person. The term "Unit" shall have the same meaning as the term "Apartment" as used in the Act.

- p. "Unit Owner" means the Person or Persons who individually or collectively own or are purchasing by recorded contract the aggregate fee simple title to a Unit and the undivided interest in the Common Elements appurtenant thereto but shall not include those having an interest in a Unit merely as security for the performance of an obligation. Unless specifically provided

otherwise herein, the Developer shall be deemed a Unit Owner so long as it is the legal titleholder of any substantially completed Unit. The term "Unit Owner" shall have the same meaning as the term "Co-Owner" as used in the Act.

1.2 Other Definitions. The following terms shall have the meanings set out in the paragraphs of this Declaration following the terms:

- a. "Common Elements", paragraph 3.1.
- b. "Land", paragraph 2.2.
- c. "Project", paragraph 2.1

## **II. The Project**

2.1 In General. This Project shall consist of multi-residential buildings located on real estate described as follows:

Lot 1 and Block 9 of Arbor Estate, in the City of Dubuque, Iowa, according to the recorded plat thereof, subject to easements, restrictions and covenants of record.

2.2 Land. This Project shall contain the real estate described in Section 2.1 above, the plat of which was filed with the Dubuque County Recorder on July 1, 2004 as Instrument No. 11676-04. The locations of Building 1, Building 2 and Building 3 on the real estate are shown on the attached Exhibit C.

2.3 Building and Units. Each Building in this Project has characteristics as described as follows:

- One-story design;
- Direct access from the attached garage to the Unit,
- Ceiling heights are 9 feet or 10 feet and the basement walls are 8 feet or 9 feet.
- Deck, three-seasons/four-seasons porch, or screen porch.
- Driveway and walkways.
- Full basement with poured concrete walls or frame above grade.
- Exterior walls: Vinyl siding, brick and stone with aluminum soffit.
- Floor framing is of wood
- Roofing is asphalt shingles with 40 year warranty.
- Interior walls are drywall with drywall finish.
- Each Building shall have two (2) Units.
- The Project shall contain twelve (12) Buildings

- The Unit numbers shall be 3257, 3259, 3263, 3265, 3266, 3268, 3271 through 3274, 3278, 3280, 3283 through 3286, 3289, 3290 through 3292, and 3295 through 3298.
- Each Unit has an attached two-car or three-car garage

Exhibit D, attached hereto and by this reference made a part hereof, show the floor plans for the buildings and the approximate dimensions of the Units. The exact dimensions of each Unit, the location of each building on the real estate and the location of the Common Elements also shall be set out on the individual Condominium Plats to be filed for each Building constructed within the Project.

2.4 Percentage Interest of Each Unit. Each Unit shall represent 1/24 of the entire Project.

2.5 Water Meter. The Units are serviced by individual water meters and the cost for water service, sewer service and garbage pickup is the responsibility of the owners of the individual Units in the respective Buildings and such costs shall not be considered a general assessment for all owners in the Project.

2.6 Submission to Act. The Developer holds the fee simple title to the Land of the Project, and, by recording this Declaration, the Developer submits the Land described above to the provisions of the Act.

2.7 The Project and Units shall be used for residential purposes only.

### III. Common Elements

3.1 Definition. "Common Elements" means all of the Project, except the Units, and includes, without limitation, those items defined as "General Common Elements" and "Limited Common Elements" in the Act, including the following:

- a. The Land.
- b. The sidewalks, driveways, and green areas and any improvements located within the green areas.
- c. The water detention basin.
- d. The entrance sign, greenery and other improvements located on the Land.
- e. Other elements of the Project desirably or rationally of common use or necessary to the existence, upkeep, and safety of the condominium regime established by this Declaration.

- f. The Condominium Plat shows the location of common areas.

3.2 Ownership of Common Elements. Each Unit Owner shall own a 1/24th interest in the Common Elements. The Unit Owners shall own their interests in the Common Elements as tenants in common. The ownership of each Unit shall not be conveyed separately from the fraction of ownership in the Common Elements corresponding to the Unit. The undivided fraction of ownership in the Common Elements corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the title to that Unit or may refer to an incorrect fraction for that Unit.

3.3 Use of the Common Elements. Each Unit Owner shall have the right to use the Common Elements in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the respective Unit owned by such Unit Owner. The right to use the Common Elements shall extend not only to each Unit Owner, but also to his or her agents, servants, family members, invitees, and licensees.

- a. Restrictions. The right to use the Common Elements shall be subject to and governed by the provisions of the Act, Article VIII of this Declaration, and the By-laws and rules and regulations of the Arbor Village Condominium Association, Inc.
- b. Association's Authority. The Arbor Village Condominium Association, Inc. shall have the authority to rent, lease, and grant concessions or easements with respect to parts of the Common Elements, subject to the provisions of this Declaration and the By-laws. All income derived by the Association shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions, or regulations as the Board may adopt or prescribe.
- c. Lien. The Association may discharge any mechanic's lien or other encumbrance which, in the Board's opinion, constitutes or may constitute a lien against the Project, the Common Elements, or any portion thereof rather than a lien only against a particular Unit. If less than all the Unit Owners are responsible for any such lien, the responsible Unit Owners shall be jointly and severally liable for the amount necessary to discharge the lien and for all costs and expenses, including attorney's fees, incurred because of such lien.

3.4 No Partition. There shall be no partition of the Common Elements through judicial proceedings or otherwise until this Declaration is terminated and the Land and Project are withdrawn from its terms or from the terms of any statute applicable to condominium ownership.

3.5 Encroachment. If any portions of the Common Elements shall actually encroach

upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements, or if any Unit shall actually encroach upon another Unit, as the Common Elements and Units are shown by the plat, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and the respective Unit Owners involved, to the extent of such encroachments, so long as the same shall exist.

3.6 Easements of Utilities. Public utilities in the City of Dubuque, Iowa, serving the property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair or replace conduits, cables, pipes and wires and other equipment into, over, under, along, and on any portion of the Common Elements for the purpose of providing the property with utility services, together with the reasonable right of ingress to and egress from the property for said purpose. The Developer, prior to the creation of the Board of the Arbor Village Condominium Owners Association, Inc., and the Board thereafter, may grant other or additional temporary or permanent easements for utility or other purposes over, under, along, and on any portion of said Common Elements, and each Unit Owner hereby grants the Developer, prior to the creation of the Board and the Board thereafter, an irrevocable power of attorney to execute, acknowledge, and record or register for and in the name of such Unit Owner such instruments as may be necessary or appropriate to effectuate the foregoing. Easements are also hereby declared and granted to install, lay, operate, maintain, repair, and replace any pipes, wires, ducts, conduits, public utility lines or structural components running through the walls of a Unit, whether or not such walls lie in whole or in part within the Unit boundaries. All easements and rights described herein are easements appurtenant, running with the land, perpetually in full force and effect and at all times shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any Unit Owner, purchaser, mortgagee, and any other person buying any interest in the Project or any part or portion thereof.

3.7 Separate Mortgages of Units. Each Unit Owner shall have the right to mortgage or encumber his or her own respective Unit, together with his or her respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the property or any part of the Project except his own Unit and his own respective ownership interest in the Common Elements as aforesaid.

3.8 Real Estate Taxes. It is intended and understood that real estate taxes are to be separately taxed to each Unit Owner for his Unit and his corresponding percentage of ownership in the Common Elements as provided in the Act. In the event that, for any year, such taxes are not separately taxed to each Unit Owner, but are taxed on the Project as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements.

3.9 Utilities. Each Unit Owner shall pay for his own natural gas, cable television, telephone, electricity and other utilities which are separately metered or billed to each user by the respective utility company. Utilities that are not separately metered or billed shall be treated as part of the Common Expenses.



#### IV. Management of Project

4.1 The Association. The Arbor Village Condominium Association, Inc. is an Iowa nonprofit corporation which shall be the governing body for all the Unit Owners for the maintenance, repair, replacement, administration and operation of the Project, as provided in the Act, this Declaration, the Articles of Incorporation, and the By-laws.

4.2 Board. The Board of Directors of the Association shall be elected and shall serve in accordance with the provisions of the By-laws.

4.3 Fiscal Year. The fiscal year of the Association shall be determined by the Board and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind.

4.4 Benefit. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of Unit Owners in accordance with the provisions of this Declaration, the Articles of Incorporation, and the By-laws.

4.5 Members. Each Unit Owner shall be a member of the Association so long as he or she is a Unit Owner subject to provisions of the By-laws. A Unit Owner's membership shall automatically terminate when he or she ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association.

4.6 Management of Project. The Board shall have the authority to engage the services of an agent to maintain, repair, replace, administer, and operate the Project or any part thereof, to the extent deemed advisable by the Board. The term of any management agreement shall not exceed one year, and the agreement may be terminated by the Association for cause upon 30 days' written notice. The Board shall also have the authority (but shall not be obligated) to engage, supervise, and control such employees or independent contractors as the Board deems advisable to clean and maintain all or any part of the Units to the extent the Board deems it advisable to provide such services for all or any portion of the Unit Owners. The cost of such services shall be a Common Expense unless otherwise designated by the Board.

4.7 Use by Developer or Agent. During the period of sale by the Developer of any Units, the Developer and its agents, employees, contractors, and subcontractors, and their respective agents and employees shall be entitled to access, ingress to, and egress from the Buildings and Project as may be required for purposes of sale of Units. While the Developer or its agent owns any of the Units, the Developer, its agents, and its employees may use and show one or more of such Units as a model Unit or Units, may use one or more of such Units as a sales office, and may maintain customary signs in connection therewith.

4.8 Non-Liability of Directors, Officers, and Developer. Neither the Directors,

officers of the Association nor the Developer shall be personally liable to the Unit Owners for any mistake of judgment or for any acts or omissions of any nature whatsoever as such Directors, officers, or Developer, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Unit Owners shall indemnify and hold harmless each of the Directors, officers, and the Developer and their respective heirs, executors, administrators, successors, and assigns in accordance with this provision.

4.9 Board's Determination Binding. In the event of any dispute or disagreement between any Unit Owners relating to the Project or any questions of interpretation or application of the provisions of the Declaration or By-laws, the dispute or agreement shall be submitted to the Board. The determination of the dispute or disagreement by the Board shall be binding on each and all Unit Owners, subject to the right of Unit Owners to seek other remedies provided by law after such determination by the Board.

## **V. Common Expenses**

5.1 Responsibilities. Each Unit Owner shall pay his or her proportionate share of the Common Expenses.

5.2 Payment. No Unit Owner shall be exempt from payment of his or her proportionate share of the Common Expenses by waiver, non-use, or enjoyment of the Common Elements or by abandonment of his or her Unit. If any Unit Owner shall fail or refuse to make any such payment of the Common Expenses when due, the amount thereof, together with interest thereon at the maximum lawful rate in the State of Iowa accruing from and after the date that the Common Expenses become due and payable, shall constitute a lien on the interest of such Unit Owner in the Project and his or her Unit.

5.3 Enforcement of Lien. The Board may bring an action at law against the Unit Owner personally obligated to pay the same for collection of his or her unpaid proportionate share of the Common Expenses or foreclose the Lien against the Unit or Units owned by such Unit Owner, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Unit Owner, by acceptance of a deed to or recording a contract for purchase of a Unit, expressly vests in the Board and its agents the right and power to bring all such claims against such Unit Owner personally for the collection of such charges as a debt and to enforce the lien by all methods available for the enforcement of such liens. The lien shall be in favor of the Association and shall be for the common benefit of all Unit Owners. The Board acting on behalf of the Unit Owners shall have the power to bid upon an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. The enforcement of the lien hereunder shall at all times be subject to the provisions of paragraph 6.3.

5.4 Separate Real Estate Taxes. Taxes, assessments, and other charges of any taxing or assessing authority shall be separately assessed to each Unit Owner for his or her Unit and the corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that such taxes or assessments for any year are not separately assessed to each Unit Owner

but are assessed on the Project as a whole, each Unit Owner shall pay his or her proportionate share thereof in accordance with his or her respective percentage of ownership interest in the Common Elements, and such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board, the Board shall have the authority to collect from the Unit Owners their proportionate share of taxes or assessments for any year in which taxes are assessed on the Project as a whole.

5.5 Insurance Policies. All insurance policies upon the Common Elements shall be purchased by the Association and all insurers and reinsurers must be licensed, or otherwise authorized by law, to conduct business in the State of Iowa. Any insurance contract must provide that any assessment made against Unit Owners may not become a lien on the mortgaged premises superior to the outstanding mortgages.

5.6 Insurance Coverage. The Association shall obtain and maintain blanket "all risk" coverage for the following:

- a. Casualty. The Common Elements shall be insured in an amount equal to the maximum insurable replacement value. All personal property of the Association included in the Common Elements shall be insured for its value, all as determined annually by the Board of Directors. Such coverage shall afford protection against:
  - (1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement.
  - (2) Such other risks as from time to time shall be customarily covered with respect to the Common Elements, including but not limited to vandalism and malicious mischief.
- b. Public Liability. Public liability insurance in amounts and with such coverage as shall be required by the Board of Directors and with cross liability endorsement to cover liabilities of the Unit Owners jointly and severally with the Association.
- c. Worker's Compensation. Worker's compensation insurance to meet the requirements of Iowa law.
- d. Directors' and Officers' Insurance. The Board shall also have authority to and may obtain such insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the Project, each member of the Board and officer of the Association, and each member of any committee appointed pursuant to the By-laws of the Association from liability arising from the fact that the person is or was a Director or officer of the Association or a member of such a committee. The premiums

for such insurance shall be a Common Expense.

- e. Other. Such other insurance as the Board of Directors shall determine from time to time.

5.7 Insurance Trustee: Shares of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Unit Owners, and their Mortgagees as their interests may appear and shall provide that all proceeds covering property losses shall be paid to the Association as trustee, or to such other entity as may be designated as the insurance trustee by the Board of Directors, which trustee is referred to in this Declaration as the insurance trustee. The insurance trustee shall not be liable for payment of premiums, the renewal or sufficiency of policies, or the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the proceeds in trust for the purposes elsewhere stated in this Declaration and for the benefit of the Unit Owners and their Mortgagees in the following shares:

- a. Common Elements. An undivided share of the proceeds on account of damage to Common Elements shall be paid to each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to the Unit.
- b. Units. CASUALTY AND LIABILITY INSURANCE FOR EACH UNIT SHALL BE THE RESPONSIBILITY OF THE OWNERS OF EACH UNIT.
- c. Mortgagees. If a Mortgage endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear; provided however, that no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a Mortgage debt any insurance proceeds except distribution of such proceeds made to the Unit Owner and the Mortgagee pursuant to the provisions of this Declaration.

5.8 Distribution of Proceeds. Proceeds of insurance policies received by the Association or insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

- a. Expenses of Trust. All expenses of the insurance trustee shall be paid first or provision shall be made for such payment.
- b. Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to

defray the cost of such as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to Unit Owners and their Mortgages being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

- c. Failure to Reconstruct or Repair. If it is determined that the damage for which proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.
- d. Certificate. In making distribution to Unit Owners and their Mortgagees, the insurance trustee may rely upon a certificate by officers of the Association as to the names of the Unit Owners and their respective shares of the distribution.

## **VI. Maintenance, Reconstruction, Condemnation.**

6.1 Maintenance of Units. The Unit Owners shall have sole responsibility for the maintenance of their respective Units. The Unit Owners shall:

- a. Maintain, repair, and replace at his or her expense all portions of the Unit, except the portions to be maintained, repaired and replaced by the Association, without disturbing the rights of other Unit Owners.
- b. Not paint or otherwise decorate, adorn or change the appearance of any portion of the exterior of the Building, including the deck, three-seasons/four-seasons porch, or screen porch, except in accordance with the rules and regulations established by the Board.
- c. Promptly report to the Association any defect or need for repairs, the responsibility for the remedying of which is that of the Association.
- d. Alteration and Improvements. Except as may otherwise be reserved to the Developer, neither a Unit Owner nor the Association shall make any alterations in the portions of a Unit or Building which are to be maintained by the Association, remove any portion thereof, make any additions thereto, or do anything which would jeopardize the safety or soundness of a Building, or impair any easement, without first obtaining approval in writing of owners of all Units in which such work is to be done and the approval of the Board. A copy of plans for all of such work prepared by an architect licensed to practice in this state shall be filed with the Association

prior to starting the work. Any Unit Owner may make alterations, additions, or improvements within his or her Unit (including minor alterations to the perimeter walls of the Unit caused by nails, screws, staples, and the like) without the prior written approval of the Board, but such Unit Owner shall be responsible for any damage to other Units, the Common Elements, the Project, or any part thereof, resulting from such alterations, additions, or improvements.

6.2 Maintenance of Common Elements.

- a. By Association. The maintenance and operation of the Common Elements shall be the responsibility and expense of the Association. Landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement of the Common Elements (but not including the interior surfaces of the Units, which the Owner shall paint, clean, decorate, maintain and repair, not including any portion of the Common Elements which are the responsibility of any Owner) and such furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper shall be the responsibility of the Association, and the Board shall have the exclusive right and duty to acquire or provide the same for the Common Elements. In maintaining the lawn areas of the Common Elements, the Association may use the water spigot of the Unit Owner whose Unit is located most closely to a particular lawn area for the purpose of watering the grass.
- b. Alteration and Improvement. After the completion of the improvements included in the Common Elements which are contemplated by this Declaration, there shall be no alteration or further improvement of the Common Elements without prior approval in writing of the record owners of the Units, provided, however, that any alteration or improvement of the Common Elements approved in writing by not less than 75 percent of the Unit Owners and which does not interfere with the rights of any Unit Owners without their consent, may be done if the Unit Owners who do not approve are relieved from the initial cost thereof. The share of any cost not so assessed shall be assessed to the other Unit Owners in the same ratio as their shares in the Common Elements bear to each other. There shall be no adjustment in the shares and rights of a Unit Owner in the Common Elements that are altered or further improved, whether or not the Unit Owner contributes to the cost thereof.

6.3 Association's Rights.

- a. Assessment. At the discretion of the Board, maintenance of, repairs to, and replacements within the Common Elements may be provided and assessed

in whole or in part to Unit Owners benefitted thereby, and, further, at its discretion, the Board may direct Unit Owners who stand to be benefitted by such maintenance of, repairs to, and replacement within the Common Elements to arrange for such maintenance, repairs, and replacements in the name and for the account of such benefitted Unit Owners, pay the cost thereof with their own funds, and procure and deliver to the Board such lien waivers and contractors' and subcontractors' sworn statements as may be required to protect the Project from all mechanics' or materialmen's lien claims that may arise therefrom.

- b. Necessary Maintenance. In addition to the discretionary authority provided herein for maintenance of all or any portion of the Units, the Board shall have the authority to maintain and repair any Unit, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Elements or preserve the appearance and value of the Project, and the Unit Owner of the Unit has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of the maintenance or repair delivered by the Board, and the Board shall levy a special assessment against the Unit of such Unit Owner for the cost of the necessary maintenance or repair.
- c. Damage. If, due to the act or neglect of a Unit Owner, or his or her agent, servant, family member, invitee, licensee, or household pet, damage is caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repair, or replacements are required which would otherwise be a Common Expense, such Unit Owner shall pay for such damage or such maintenance, repair, and replacements, as may be determined by the Association; however, the provisions of this paragraph are subject to the waiver of subrogation rights with respect to casualty damage insured against under the policies of insurance maintained by the Board.
- d. Access. The authorized representatives of the Association or Board shall be entitled to reasonable access to the individual Units as may be required in connection with the preservation of any individual Unit in the event of an emergency, or in connection with maintenance of repairs or replacements within the Common Elements, or any equipment, facilities, or fixtures affecting or serving other Units or Common Elements, or to make any alteration required by any governmental authority.

6.4 Decorating. Each Unit Owner, at his or her own expense, shall furnish and be responsible for all decorating within his or her own Unit, as may be required from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lighting, and other furnishings and decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors, and ceilings of his or her

Unit, and such Unit Owner shall maintain the interior surfaces in good condition at his or her sole expense, as may be required from time to time. The maintenance and use of interior surfaces shall be subject to the rules and regulations of the Association, but each such Unit Owner shall have the right to decorate such interior surfaces from time to time as he or she may see fit and at his or her sole expense.

6.5 Determination to Reconstruct or Repair. If any part of the Project shall be damaged by casualty, whether it shall be reconstructed or repaired, shall be determined in the following manner:

- a. Common Element. If the damaged improvement is a Common Element, it shall be reconstructed or repaired within 120 days after the casualty.
- b. Units. If the damaged improvement is a Unit, it shall be reconstructed or repaired within 120 days after the casualty.
- c. Certificate. An insurance trustee may rely upon a certificate by the officers of the Association to determine whether the damaged property is to be reconstructed or repaired.

6.6 Reconstruction or Repair.

- a. Plans and specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, or, if not, according to plans and specifications approved by the Board and by not less than 75 percent of the Unit Owners of all damaged Units, which approval shall not be unreasonably withheld.
- b. Responsibility. If the damage is only to those parts of one Unit for which the responsibility of maintenance and repair is that of the Unit Owner, the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.
- c. Estimates of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to build or repair.
- d. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair or upon completion of reconstruction and repair are insufficient, assessments shall be made against the Unit Owners in case of damage to Common Elements, in sufficient amounts to



provide funds for the payment of such costs, such assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units.

6.7 Condemnation: General. If all or part of the Project is taken or threatened to be taken by condemnation, the Board and each Unit Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The expense of participation in such proceedings by the Board shall be a Common Expense. The Board may obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses, and other persons as the Board deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Board, acting as trustee, and such damages or awards shall be applied or paid as provided herein.

6.8 Condemnation of Common Elements. If any action is brought to condemn a portion of the Common Elements, the Board shall have the sole authority to determine whether to defend or resist such action, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of condemnation. After the damages or awards for such taking are determined, such damages or awards shall be paid to each Unit Owner in proportion to his or her ownership interest. The Board may call a meeting of the Association, at which meeting the members by a majority vote may decide whether to replace or restore insofar as possible the Common Elements so taken or damaged.

6.9 Payment of Awards and Damages. Any damages or awards paid to or for the account of any Unit Owner by the Board, acting as trustee, shall be applied first to the payment of any taxes or assessments by governmental authorities past due and unpaid with respect to that Unit; secondly, to amounts due under any Mortgages; thirdly, to the payment of any unpaid common expenses or special assessments charged to or made against the Unit; and finally to the Unit Owner.

## **VII. Mortgagee Protections**

7.1 Right to Mortgage. Each Unit Owner shall have the right, subject to these provisions, to grant separate Mortgages for his or her Unit together with the respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to make or create or cause to be made or created from the date hereof any Mortgage or other lien on or affecting the Project or any part thereof, except only to the extent of his or her own Unit and the respective ownership interest in the Common Elements appurtenant thereto.

7.2 Written Approval. The prior written approval of all Mortgagees will be required for the following:

- a. The abandonment or termination of the condominium status of the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of taking by

condemnation or eminent domain.

- b. Any amendment to this Declaration or to the By-laws of the Association which would change the ownership interests of the Unit Owners in the Project, except for the right of the Developer to amend the Declaration as set forth in paragraph 10.3

7.3 Lien Subordination. The lien for Common Expenses payable by a Unit Owner shall be subordinate to the lien of a prior recorded first Mortgage on the interest of such Unit Owner. This paragraph shall not be amended, changed, modified, or rescinded without the prior written consent of all Mortgagees of record holding a lien against all or part of the Project.

7.4 Mortgagee's Rights. Upon request, any Mortgagee will be entitled to: (a) inspect the books and records of the Association during normal-business hours; (b) receive an annual financial statement of the Association within 90 days following the end of any fiscal year of the Project; and (c) receive written notice of all meetings of the Association and designate a representative to attend all such meetings.

7.5 Insurance Proceeds Upon Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, the Mortgagee of a Unit will be entitled to timely written notice of such damage or destruction, and no provision of this Declaration or any other document establishing the Project will entitle the Unit Owner or other party to priority over such Mortgagee with respect to the distribution of any insurance proceeds.

7.6 Condemnation. If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of a Unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration or any other document establishing the Project shall entitle the Unit Owner or other party to priority over such Mortgagee with respect to the distribution of the proceeds of any award or settlement.

7.7 Rights of First Refusal. The right of a Unit Owner to sell, transfer, or otherwise convey the Owner's Unit will not be subject to any right of first refusal or any similar restriction in favor of the Association.

7.8 Rights of Mortgagees Under Foreclosure. Each Mortgagee who takes possession of a Unit by virtue of foreclosure of the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the time such holder takes possession of the Unit, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units including the mortgaged Unit.

7.9 Notice to Mortgagee. The holder of a first Mortgage shall be entitled to prompt

written notice from the Association of any default in the performance of any obligation under this Declaration, the Articles of Incorporation, the By-laws, or the rules and regulations of the Association, which default is not cured by the Unit Owner within 30 days.

### **VIII. Use and Occupancy Restrictions**

8.1 Use of Units. Subject to the provisions of this Declaration and the By-laws, no part of the Project may be used for purposes other than as a single-family dwelling and the related common purposes for which the Project was designed. Each Unit or any two or more adjoining Units used together shall be used as a single-family dwelling or such other use permitted by this Declaration and for no other purpose, except that a professional and quasi-professional person may use his or her Unit as an ancillary or secondary facility to an office established elsewhere. The foregoing restrictions as to residence shall not be construed to prohibit a Unit Owner from: (a) maintaining a personal professional library; (b) keeping personal business or professional records or accounts or (c) handling personal business or professional telephone calls or correspondence. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of these restrictions.

8.2 Use of Common Elements. The Common Elements shall be used only by the Unit Owners and their agents, servants, family members, invitees, and licensees for access, ingress to, and egress from the respective Units and for other purposes incidental to use of the Units; provided, however, areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance, and operations of the Common Elements shall not be obstructed, damaged, or unreasonably interfered with by any Unit Owner and shall be subject to any lease, concession, or easement presently in existence or entered into by the Board at some future time, affecting any part or all of the Common Elements.

8.3 Specific Restrictions. Without limiting the generality of paragraphs 8.1 and 8.2, use of the Project by the Unit Owners shall be subject to the following restrictions:

- a. Storage. Nothing shall be stored in the Common Elements without prior consent of the Board except in storage areas or as otherwise expressly provided in this Declaration. No boats, campers, trailers, recreational vehicles, or snowmobiles shall be kept or stored on the property except within a garage.
- b. Insurance. Nothing shall be done or kept in any Unit or in the Common Elements that will increase the rate of insurance for the Project without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his or her Unit or in or on the Common Elements which will result in the cancellation of insurance on any Unit or any part of the Common Elements or which will be in violation of any law. All insurers and reinsurers must be licensed, or otherwise authorized by law, to conduct business in the State of Iowa.

- c. Waste. No waste shall be committed in or on the Common Elements.
- d. Signs. No sign of any kind shall be displayed to the public view on or from any Unit or the Common Elements without the prior written consent of the Board, or in accordance with the rules and regulations established by the Board.
- e. Nuisance. No noxious or offensive activity shall be carried on in any Unit or on or in the Common Elements, and nothing shall be done therein which may be or become an annoyance or nuisance to the other Unit Owners.
- f. Common Elements. Except as otherwise expressly provided, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board.
- g. Structures. No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuildings shall be permitted on the Project at any time, temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the construction, repair, or rebuilding of a Building or any portion thereof.
- h. Clothes Drying. Outdoor drying of clothes shall not be permitted.
- i. Parking. Parking of vehicles in driveways shall be subject to the rules and regulations of the Board.
- j. Planting, Fences. Except for a vegetable or flower garden placed within twelve (12) feet of the rear door of a Unit, no planting, transplanting, or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon the Project, except as approved by the Board.
- k. Vehicles. Motorcycles, motorbikes, motor scooters, or other similar vehicles shall not be operated within the Project except for the purpose of transportation.
- l. Animals. No animals shall be raised, bred, or kept in any Unit for any commercial purposes. No domestic or household pets may be tied, boarded or kenneled outside. Unit Owners may keep one (1) dog and/or one (1) one cat as a pet but may not keep any exotic pets. Pets must be kept in strict accordance with rules and regulations adopted by the Board from time to time.
- m. Lease Prohibition. Unit Owners are prohibited from leasing their Units to

any tenant. This prohibition shall not restrict the rights of the Association.

## **IX. Remedies**

9.1 Rights of Association. In the event of any violation of the provisions of the Act, this Declaration, the By-laws, rules and regulations of the Association by any Unit Owner (either by his or her own conduct or by the conduct of any other Occupant of the Unit), the Association, or its successors or assigns, or the Board, or its agent, shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, the By-laws, or the rules and regulations, or which may be available by law or in equity, and may prosecute an action or other proceedings against such defaulting Unit Owner or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner; for damages, injunction, or specific performance; for judgment for payment of money and collection thereof; for any combination of remedies; or for any other relief.

9.2 Lien. All expenses of the Board in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages liquidated or otherwise, together with interest thereon at the maximum lawful rate per annum until paid, shall be charged to and assessed against such defaulting Unit Owner and shall be added to and deemed part of his or her respective share of the Common Expenses. The Board shall have a lien for all such expenses, as well as for non-payment of the respective share of the Common Expenses, upon the Unit and the ownership interest in the Common Elements of such defaulting Unit Owner, upon all his or her additions and improvements thereto, and upon all his or her personal property in his or her Unit or located elsewhere on the Project; provided, however, that such lien shall be subordinate to the lien of a prior recorded first Mortgage on the interest of such Unit Owner. This paragraph shall not be amended, changed, modified, or rescinded without the prior consent of all Mortgagees.

9.3 Correction of Default. In the event of any such default by any Unit Owner, the Board shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

9.4 Action by Board. The violation of any restriction, condition, rule or regulation adopted by the Board or the breach of any covenant or provision of this Declaration shall give the Board the right, in addition to any other rights provided in this Declaration: (a) to enter upon the Unit or any portion of the Project upon which or as to which such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing, or condition that may exist thereon contrary to the intent and meaning of the provisions hereof and the Board, its employees or agents, shall not be deemed guilty in any manner of trespass; (b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; (c) to take possession of such Unit Owner's interest in the property and to maintain an action for possession of such Unit in the manner provided by law, or (d) to

suspend a Unit Owner's voting rights and to restrict the use of the Common Elements by a Unit Owner in such manner as the Board deems appropriate.

9.5 Notice, Action at Law or in Equity. If any Unit Owner (either by his or her own conduct, or by the conduct of any occupant of his or her Unit) shall violate any provision of the Act, this Declaration, or the rules and regulations of the Association, and if such default or violation shall continue for 10 days after written notice to the Unit Owner from the Board, or shall occur repeatedly during any 10-day period after such written notice or request to cure such violation from the Board, the Board or an aggrieved Unit Owner may file against the defaulting Unit Owner an action at law for damages or an action in equity for a decree of mandatory injunction against the defaulting Unit Owner or occupant.

## **X. General Provisions.**

10.1 Rights and Obligations. Each grantee of the Developer, by the acceptance of the deed of conveyance or contract of purchase from the Developer, accepts the same subject to all restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration and the By-laws. All rights, benefits, and privileges of every character imposed by this Declaration shall be covenants running with the Land, shall bind any person having at any time any interest or estate in the Land, and shall inure to the benefit of such grantee or contract purchaser in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract of purchase.

10.2 Inspection, Waiver. Each purchaser of a Unit shall have full opportunity and shall be under a duty to inspect and examine the Unit to be purchased prior to closing of the transaction and agrees that the Unit is purchased as it actually and physically exists. By recording a deed or purchase contract, each purchaser of a Unit agrees that the square footage, size, and dimensions of each Unit and each area constituting any part of the Common Elements as set out in this Declaration or the plat are based upon relative percentages and square footages which have been arbitrarily assigned and agreed upon solely for this purpose and do not necessarily reflect or represent the precise percentage of square footage of any specific portion of the Project. The Developer does not warrant, guarantee, or represent that any Unit or any area constituting any part of the Common Elements contains precisely the area, square footage, or dimensions shown by the plat. Each purchaser of a Unit expressly waives any claims or demands of any kind or nature against the Developer or any person whomsoever on account of square footage, and dimensions shown on the plat. In interpreting deeds, mortgages, deeds of trust, and other instruments for any purpose whatsoever, the existing physical boundaries of any Unit shall be conclusively presumed to be the boundaries regardless of settling, rising, or lateral movements of the building and regardless of variances between boundaries shown on the plat and the actual boundaries of the Building.

10.3 Amendments.

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a. By Developer. The Developer reserves the right to amend this Declaration as follows:

- (1) To extend the Declaration to additional Land, such amendment to be limited to matters relating to such extension and merger of additional parcels to this Regime.
- (2) To make minor amendments and adjustments to this Declaration or any Supplemental Declaration. Any such minor amendment or adjustment shall be for the purpose of clarification or the correction of errors in this Declaration or any supplemental Declaration and shall not affect the substantive rights of a Unit Owner.

b. In General. Subject to subparagraph (a) above, the provisions of this Declaration may be amended, modified, or rescinded by a resolution setting forth such amendment, modification, or rescission and duly adopted by the affirmative vote of not less than two-thirds of the Unit Owners or by an instrument in writing setting forth such amendment, modification, or rescission and signed by not less than two-thirds of all the Unit Owners and duly acknowledged before a notary public. All Mortgagees shall be notified by certified mail of any such amendment, modification, or rescission, and an affidavit by the secretary of the Association certifying to such mailing shall be made a part of any instrument affecting such amendment, modification or rescission.

c. Recording. Any amendment, modification, or rescission of this Declaration pursuant to this paragraph or any other provision of this Declaration or of the Act shall be valid and effective only upon the recording thereof, together with an amended plat, if required, in the Dubuque County Recorder's Office. This Declaration may not be amended, modified, or rescinded so as to conflict with the provisions of the Act.

10.4 Notices. Any written notice given pursuant to this Declaration shall be by Regular U.S. mail, addressed to the person entitled thereto at such person's last known address. Notice by mail shall be deemed to be delivered when deposited in the United States Mail properly addressed with postage prepaid.

10.5 Severability. If a court of competent jurisdiction shall adjudge to be invalid any provision of this Declaration, such judgment shall not affect, impair, invalidate, or nullify any other provisions of this Declaration, but the effect thereof shall be confined in the provision adjudged invalid and shall be confined to the person, place, and situation with respect to which such judgment is rendered.

10.6 Non-waiver. Failure by any person to enforce at any time or for any period of time

any of the provisions of this Declaration or to exercise any right or remedy shall not constitute a waiver of such provision, right, or remedy, and shall not prevent such person thereafter from enforcing all or any provisions of this Declaration and exercising any or all rights or remedies.

10.7 Interpretation. This Declaration shall be governed by and construed in accordance with the laws of the State of Iowa. The captions of this Declaration are for convenience only and shall have no effect on its interpretation. Wherever used in this Declaration unless the context clearly indicates otherwise, the use of the singular shall include the plural and vice versa; and the use of any gender shall be applicable to any other gender.

10.8 Exhibits. All exhibits to which reference is made are attached to this Declaration and incorporated herein by reference.

Executed on the date indicated on page 2 of this Declaration.

Kivlahan Farms, L.C., Developer

by: John Kivlahan  
John Kivlahan, Member and Manager

by: Doris Kivlahan  
Doris Kivlahan, Member and Manager

STATE OF IOWA           )  
                                  )ss  
COUNTY OF DUBUQUE)

On this 24<sup>th</sup> day of October, 2005, before me, a Notary Public in and for the State of Iowa, personally appeared John Kivlahan and Doris Kivlahan, to me personally known, who being by me duly sworn did say that they are members and managers of said limited liability company and that said instrument was signed on behalf of said limited liability company by authority of its members and managers and that said members acknowledged the execution of this instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.



[Signature]  
Notary Public in and for the State of Iowa.

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ARTICLES OF INCORPORATION  
OF  
ARBOR VILLAGE CONDOMINIUM ASSOCIATION, INC.

TO: THE SECRETARY OF STATE, STATE OF IOWA

The undersigned, acting as Incorporator of a corporation under the Revised Iowa Non-Profit Corporation Act, Chapter 504, Code of Iowa ("Act"), as amended, adopts the following Articles of Incorporation for such corporation.

ARTICLE I  
Name

The name of the corporation is Arbor Village Condominium Association, Inc.

ARTICLE II  
Corporate Existence

The corporate existence of this corporation shall begin upon the date these Articles are filed with the Secretary of State and the period of its duration is perpetual.

ARTICLE III  
Purposes and Powers

The corporation does not contemplate pecuniary gain or profit, direct or indirect, to its members. The purpose or purposes for which it is formed and organized are to provide and promote an entity to conduct the business and affairs of, and to act as or for, the co-owners of that certain Horizontal Property Regime known as Arbor Village Condominiums (hereinafter sometimes referred to as "Regime" or "Project"), created and submitted pursuant to the provisions of Chapter 499B, Code of Iowa.

The corporation shall have all powers and purposes granted or implied to a council of co-owners under the provisions of Chapter 499B, Code of Iowa, establishing such condominium regime, and all powers shall likewise constitute lawful purposes of the corporation.

The purposes of the corporation are exclusively not for private profit or gain and no part of this activity shall consist of carrying on political propaganda or otherwise attempting to influence legislation. The purposes for which the corporation is formed as hereinbefore referred to are and shall be as follows:

- A. Own, acquire, build, operate and maintain common areas, incidental to and hereafter referred to as the "Common Area";
- B. Provide, within the discretion of the Board of Directors, certain exterior maintenance for the Units within the Project;

- C. Maintain unkempt land or trees;
- D. Supplement municipal or quasi-municipal services if not available to the Unit Owners;
- E. Fix assessments (or charges), if any, to be levied against the Units;
- F. Enforce any and all covenants, restrictions and agreements applicable to the Project and/or Units;
- G. Pay real and personal property taxes, if any, on the Common Areas, and facilities, if any; and
- H. Insofar as permitted by law, to do any other thing that in the opinion of the Board of Directors will promote the common benefit and enjoyment of the residents of the Project.

#### ARTICLE IV Definitions

"Association" shall mean and refer to Arbor Village Condominium Association, Inc., its successor and assigns.

"Common Area" or "Common Elements" shall mean and refer to the same property as defined in Section 3.1 of the Condominium Declaration of Arbor Village Condominiums.

"Declaration" shall mean the Condominium Declaration of Arbor Village Condominiums.

"Developer" shall mean and refer to Kivlahan Farms, L.C., an Iowa limited liability company, its successor in interest, assigns and legal representatives, if any.

"Member" shall mean and refer to every person or entity that holds membership in the Association.

"Project" shall mean and refer to the same property as defined in Section 2.1 of the Declaration.

"Unit" means a substantially completed enclosed space consisting of one or more rooms occupying all or part of a floor or floors in a Building, which enclosed space is not owned in common with the Unit Owners of other Units. Each Unit is numbered as shown on the Condominium Plat, and the boundaries of each Unit shall be and are the interior surfaces of its perimeter and bearing walls, floors, ceilings, windows and window frames, doors and door frames and trim; deck, three-seasons/four-seasons porch, or screened porch; and a Unit includes the portion of the building so described, the air space so encompassed, and the garage, except Common Elements. The Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles,

wallpaper, paint, finished flooring, and any other materials constituting any part of its finished surfaces and the exterior surfaces so described except those portions of the walls, floors or ceilings that materially contribute to the structural or shear capacity of a Building. All other portions of the exterior walls, floors or ceilings and interior load bearing partitions shall be part of the Common Elements. In addition, each Unit shall include the following:

- (1) All spaces, non-bearing interior partitions, fireplaces (except chimneys and flues) and all other fixtures and improvements within the boundaries of the Unit; and
- (2) All outlets of utility and communication service lines, including, but not limited to, power (including circuit breakers), light, gas, hot and cold water, heating, refrigeration, air conditioning, and waste disposal, security, cable television and telephone, within the boundaries of the Unit, but shall not include any part of the lines or ducts themselves.

Any Unit may be jointly or commonly owned by more than one Person. The term "Unit" shall have the same meaning as the term "Apartment" as used in the Act.

"Unit Owner" means the Person or Persons who individually or collectively own or are purchasing by recorded contract the aggregate fee simple title to a Unit and the individual interest in the Common Elements appurtenant thereto but shall not include those having an interest in a Unit merely as security for the performance of an obligation. Unless specifically provided otherwise therein, the Developer shall be deemed a Unit Owner so long as it is the legal titleholder of any substantially completed Unit. The term "Unit Owner" shall have the same meaning as the term "Co-Owner" as used in the Act.

#### ARTICLE V Membership

Every person or entity who is a record owner of a fee or undivided fee interest, in any Unit which is subject by the covenants of record to assessment by the Association, shall be a Member of the Association, provided, that the above shall apply to any person or entity who holds such interest as well as all mortgagees and/or contract purchasers, if any, as their interests appear.

#### ARTICLE VI Voting Rights

Except as hereinafter provided for the Developer, the Unit Owners shall have one vote per Unit. In the event a Unit is owned two or more Persons, those Persons shall determine amongst themselves how their vote shall be cast. Voting rights of Unit Owners may be suspended as provided in Article IX of the Declaration. Notwithstanding the foregoing, until such time as the Developer has sold seventeen (17) Units, the Developer may cast two (2) votes for each Unit owned by Developer.

ARTICLE VII  
Registered Office and Agent

The address of the initial registered office of the corporation shall be 4922 Wildflower Drive, Dubuque, Iowa, 52002, and the name of its initial registered agent at such address is Doris Kivlahan.

ARTICLE VIII  
Board of Directors

The number of Directors shall be fixed by the Bylaws of the corporation. The initial Board of Directors of the corporation is two (2) and the names and addresses of the persons who are to serve as initial Directors are:

John Kivlahan  
4922 Wildflower Drive  
Dubuque, IA 52002

Doris Kivlahan  
4922 Wildflower Drive  
Dubuque, IA 52002

ARTICLE IX  
Additions to Properties and Membership

Additions to the properties described herein may be made only in accordance with the provisions of the recorded Declaration, as applicable, and referred to as said "Project".

Such additions, amendments and other Project to be added to the existing Project, if any, when properly made under the applicable covenants (whether they be in the form of a Declaration under Chapter 499B, Code of Iowa, or otherwise) shall extend the jurisdiction, functions, duties and membership of this corporation to such additional Project.

The additions to the existing Project may be legally described and added to the property described herein, all in the same manner provided herein and pursuant to this Article.

ARTICLE X  
Mergers and Consolidations

Subject to the provisions of the Declaration applicable to the Project described herein, and to the extent permitted by law, the corporation may participate in mergers and consolidations with other non-profit corporations organized for the same purposes.

ARTICLE XI  
Mortgages and Other Indebtedness

The corporation shall have the power to mortgage its property only to extent authorized under the recorded Declaration.

The total debts of the corporation, including the principal amount of such mortgages

outstanding at any time, shall be determined within the sole discretion of the Board of Directors of the corporation.

ARTICLE XII  
Limitation on Disposal of Real Property

The corporation shall have power to dispose of its real property only as authorized under the Declaration.

ARTICLE XIII  
Distribution of Assets Upon Liquidation

In the event of liquidation, assets, if any, that remain shall be distributed to the Unit Owners in accordance to their proportionate share of ownership units existing in the Condominium Regime, as determined by the Declaration and the By-laws.

ARTICLE XIV  
Transfer of Property

All transfers, conveyances, leases, mortgages, or assignments of real estate or of any interest therein shall be executed by any one of the following officers: President, Vice-President, Secretary or Treasurer.

All transfers, conveyances, leases or encumbrances of personal property, or any interest therein, shall be executed by any officer of the corporation, or any agent authorized by the Board of Directors. All judgments or other liens may be satisfied, discharged, released or assigned by any officer of the corporation.

ARTICLE XV  
Prohibition on Leasing

Notwithstanding any other provision contained in the Articles, By-laws, Declaration or Act, Unit Owners are prohibited from leasing their Units to any tenant. This prohibition shall not restrict the rights of this Corporation.

ARTICLE XVI  
Amendments

These Articles may be amended in accordance with the laws of the State of Iowa, provided that the voting and quorum requirements, if any, are met.

Any purported amendment to these Articles of Incorporation in conflict with or contrary to the provisions of the Declaration, including the supplements and amendments thereto, shall be void and of no force or effect.

ARTICLE XVII  
Incorporator

The name and address of the Incorporator is: Doris Kivlahan, 4922 Wildflower Drive, Dubuque,

Iowa 52002.

ARTICLE XVIII  
Effective Date

These Articles shall become effective at the date and time of filing with the Secretary of State.

Dated this 24<sup>th</sup> day of October, 2005.

Doris Kivlahan

Doris Kivlahan, Incorporator

STATE OF IOWA           )  
                                  )  
COUNTY OF DUBUQUE    )

ss.

On this 24<sup>th</sup> day of October, 2005 before me, a Notary Public in and for the State of Iowa, personally appeared Doris Kivlahan, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that she executed the same as her voluntary act and deed.



[Signature]  
Notary Public in and for the State of Iowa

BY-LAWS OF ARBOR VILLAGE CONDOMINIUM ASSOCIATION, INC.

ARTICLE I

Condominium Plan of Condominium Ownership

Section 1. Condominium Ownership. The property which is described as:

Lot 1 of Block 9 of Arbor Estates, in the City of Dubuque, Iowa, according to the recorded Plat thereof, subject to easements and restrictions of record.

is submitted to the provisions of Chapter 499B of the Code of Iowa.

Section 2. Applicability of By-Laws. The provisions of these By-Laws are applicable to the Project. The term "Project" as used herein shall mean and refer to the same property as defined in Section 2.1 of the Condominium Declaration of Arbor Village Condominium.

Section 3. Personal Application. All present or future owners, or their employees, or any other person that might use the facilities of the Project in any manner are subject to the regulations set forth in these By-laws. The mere acquisition of any of the Units of the Project or the mere act of occupancy of any Condominium within the Project will signify that these By-laws are accepted, ratified and will be complied with.

ARTICLE II

Definitions

All terms defined in either the Articles of Incorporation of this Corporation, or the Condominium Declaration of Arbor Village Condominiums, shall be similarly defined for purposes of these By-laws.

ARTICLE III

Voting, Majority of Owners, Quorum, Proxies

Section 1. Voting. The voting rights of the Unit Owners of the Project are as described in the Articles of Incorporation of this Corporation.

Section 2. Quorum. Except as otherwise provided in these By-laws, the presence in person or by proxy of a majority of those eligible to vote shall constitute a quorum.

Section 3. Proxies. Votes may be cast in person or by proxy by the person entitled to cast each vote. Proxies must be in writing and must be filed with the Secretary before the appointed time of each meeting.

## **AVCA BYLAWS CHANGE**

### **ARTICLE III. SECTION 8. NOTICE OF MEETINGS**

It shall be the duty of the Secretary to deliver a Notice by email, regular U.S. Mail or hand delivery of each annual meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Unit Owner of record, at least 10 days but not more than 30 days prior to such meeting. The mailing of a notice in the manner provided in this Section shall be considered notice served.

Approved at AVCA Annual Meeting August 14, 2014.

Please add to your Bylaws.

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Section 4. Election. The Unit Owners will elect a board of directors.

Section 5. Annual Meetings. The first annual meeting of the Unit Owners shall be held on or about August 5, 2006. Thereafter, the annual meeting of the Unit Owners shall be held on or about the first Saturday of each August of each succeeding year. At such meeting there shall be elected by ballot of the Owners, the Board of Directors in accordance with the requirements of these By-Laws. The Unit Owners may at the annual meeting also transact such other business as may properly come before them.

Section 6. Special Meetings. It shall be the duty of the President to call a special meeting of the Owners upon a petition signed by a majority of the Unit Owners being presented to the Secretary. The notice of any such special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of a majority of the Unit Owners.

Section 7. Place of Meetings. Meetings of the Unit Owners shall be held at the Condominium of the President or such other place convenient to the Unit Owners as may be designated by the President.

Section 8. Notice of Meetings. It shall be the duty of the Secretary to mail a Notice by regular U.S. Mail of each annual meeting or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Unit Owner of record, at least ten (10) days but not more than (30) thirty days prior to such meeting. The mailing of a notice in the manner provided in this Section shall be considered notice served.

Section 9. Waiver of Notice. Before or at any meeting of the Unit Owners, any Unit Owner may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of consent to such meeting. Attendance by an Unit Owner at any meeting of the Unit Owners shall be a waiver of notice by said Unit Owner of the time and place thereof unless the Unit Owner's attendance is solely for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 10. Adjourned Meetings. If any meeting of Unit Owners cannot be organized because a quorum has not attended, the Unit Owners who are present, either in person or by proxy, may adjourn the meeting at a time not less than twenty-four (24) hours nor more than one (1) week from the time the original meeting was called.

#### ARTICLE IV Administration and Meetings

Section 1. Number and Election of Directors. The initial Board of Directors shall consist of two (2) Directors. Directors shall serve a terms of one (1) year. Directors may be re-elected. Each director shall hold office for the term for which he is elected and until his successor shall have been

elected and qualified. The number of directors may be increased or decreased by amendment to these By-laws as provided herein. Any increase in the size of the board of directors shall create a vacancy which may be filled immediately by the existing directors without any vote of the shareholders. No decrease in the number of directors shall have the effect of shortening the term of office of any incumbent director.

Section 2. Semi-Annual Meetings. The Board of Directors shall conduct semi-annual meetings (or more often as necessary) to conduct business. Written minutes shall be kept of these semi-annual meetings. The board of directors may provide by resolution the date, time and place, either within or without the State of Iowa, for the holding of additional regular meetings without other notice than such resolution.

Section 3. Special Meetings. Special meetings of the board of directors may be called by or at the request of the President or any two (2) directors. The person or persons authorized to call special meetings of the board of directors may fix any place, within or without the State of Iowa, as the place for holding any special meeting of the board of directors called by them.

Section 4. Notice. Notice of any special meeting shall be given at least three days previous thereto by written notice delivered personally or mailed to each director at his last known address. Such notice shall be deemed to be delivered when deposited in the United States mail so addressed and postage prepaid. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Section 5. Quorum. A majority of the number of the directors fixed by these By-laws shall constitute a quorum for the transaction of business; provided, that if less than a majority of such number of directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 6. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the Articles of Incorporation or the By-laws require the vote of a greater number of directors.

Section 7. Vacancies. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the directors then in office, even if less than quorum of the board of directors. A director so elected shall be elected for the unexpired term of his predecessor in office or the full term of such new directorship.

Section 8. Compensation. The board of directors shall serve without compensation.

Section 9. Presumption of Assent. A director of the corporation who is present at a meeting of its board of directors, or of a committee of directors, at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 10. Informal Action by Directors. Any action required by Iowa Law to be taken at a meeting of directors of the corporation, or any action which may be taken at a meeting of the directors or of a committee of directors, may be taken without a meeting if a consent in writing setting forth the action so taken, shall be signed by all of the directors or all of the members of the committee of directors, as the case may be.

Section 11. Resignation. Any director may resign at any time by giving written notice of this resignation to the president or the secretary. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be specified therein, it shall take effect immediately upon its receipt. Except as specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 12. Removal of Directors. Any or all directors may be removed, with or without cause, at a meeting of the Unit Owners called expressly for that purpose if the votes cast in favor of the removal exceed the votes cast against the removal. The vacancy on the board of directors caused by any such removal may be filled by the shareholders at such meeting or otherwise as provided in Section 7 of this Article.

Section 13. Indemnification. The corporation shall, to the fullest extent permitted by law, indemnify and hold harmless each director now or hereafter serving the corporation or any of its subsidiaries.

Section 14. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of all of the affairs of and may do all such acts and things which are not prohibited by law, by the Declaration or by these by-laws.

Section 15. Other Duties. In addition to duties imposed by these by-laws, the Board of Directors shall be responsible of the following:

- (a) Care, upkeep, and surveillance of the Common Elements;
- (b) Assessment and collection of assessments from the Unit Owner;
- (c) Designation and dismissal of the personnel necessary for the maintenance and operation of the common elements.

## ARTICLE V Officers

Section 1. Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be members of the Board of Directors and shall serve as such officers without compensation. Any member of the Board of Directors may at the same time hold the position of any two officers, except President and Vice President. The officers shall be appointed by the Board of Directors and shall serve one (1) year terms. Officers may be reappointed. The officers shall have responsibility for the day-to-day operation of the Association.

Section 2. Removal of Officers. Upon an affirmative vote of a majority of the Board of Directors, any officer or assistant thereto, may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 3. President. The President shall be the chief executive officer. The President shall preside at all meetings of the Board of Directors and of the Unit Owners and shall have all of the general powers and duties which are usually vested in the office of president, including but not limited to the power to appoint committees from among the Unit Owners from time to time as he may in his discretion decide if appropriate to assist in the conduct of the affairs of the Board of Directors.

Section 4. Vice President. The Vice President shall take the place of the President and perform those duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed by the Board of Directors.

Section 5. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and Members; shall have charge of such books and papers as the Board of Directors may direct; and shall in general, perform all the duties incident to the office of the Secretary.

Section 6. Treasurer. The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association; shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors. The Treasurer is authorized to pay the contractual obligations as they come due.

## ARTICLE VI Assessments

Section 1. Assessments. There shall be an initial assessment per unit of \$ 500.00 to be paid at closing by the Unit Owner when Units are originally purchased from the Developer. Monthly

assessments per Unit shall be in the sum of \$ 100.00. All assessments are nonrefundable. The monthly assessment may be changed by the Board of Directors as the circumstances require. Such assessments shall include monthly payments to a general operating reserve fund, part of which may be allocated to a reserve fund for contingencies. Each Unit Owner will voluntarily pay said monthly assessment to the Treasurer or his designate not later than the 5th of each month and upon failure to do so shall be subject to the provisions of Section 499B.17 of the Code of Iowa dealing with the collection of common expenses assessed by the Board of Directors.

Section 2. Notice of Unpaid Assessments. The Board of Directors shall, at the request of a mortgagee or purchaser of a Unit, report any unpaid assessments due from the Unit Owner of such Unit.

#### ARTICLE VII Amendments

These By-laws may be amended by the Board of Directors in a duly constituted meeting for such purpose. Any such amendment shall be duly recorded in order to be effective.

#### ARTICLE VIII Compliance and Severability

These By-laws are set forth to comply with the requirements of Chapters 499B of the Code of Iowa. In case any of these By-laws conflict with the provisions of said statute or any other rule of law, it is hereby agreed and accepted that the provisions of the statute or law will apply and By-laws conflicting therewith shall be deemed inoperative and null and void without invalidating the remaining By-laws.

#### ARTICLE IX Arbitration

Any dispute or controversy arising between Unit Owners regarding the By-laws as a result of the inability of the Association to act due to the voting requirements specified herein, or otherwise arising out of the terms of this document, shall be submitted to and determined by arbitration in Dubuque, Iowa, in accordance with the rules of the American Arbitration Association subject to the provisions of Iowa law. The Unit Owners agree to be bound by the determination of the Arbitrator and agree to execute any additional documents necessary to make the Arbitrator's decision enforceable as a judgment of the courts of the State of Iowa. In the event any Unit Owner fails to sign such documents or otherwise comply with the Arbitrator's decision, any costs or expenses (including reasonable attorney fees) incurred by the Association as a result shall be assessed against the Unit Owner and his Unit.



LOCATION OF BUILDINGS 1, 2, AND 3 ON LOT 1 OF BLOCK 9 OF ARBOR ESTATES IN THE CITY OF DUBUQUE, DUBUQUE COUNTY, IOWA

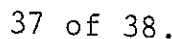
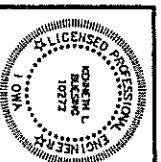
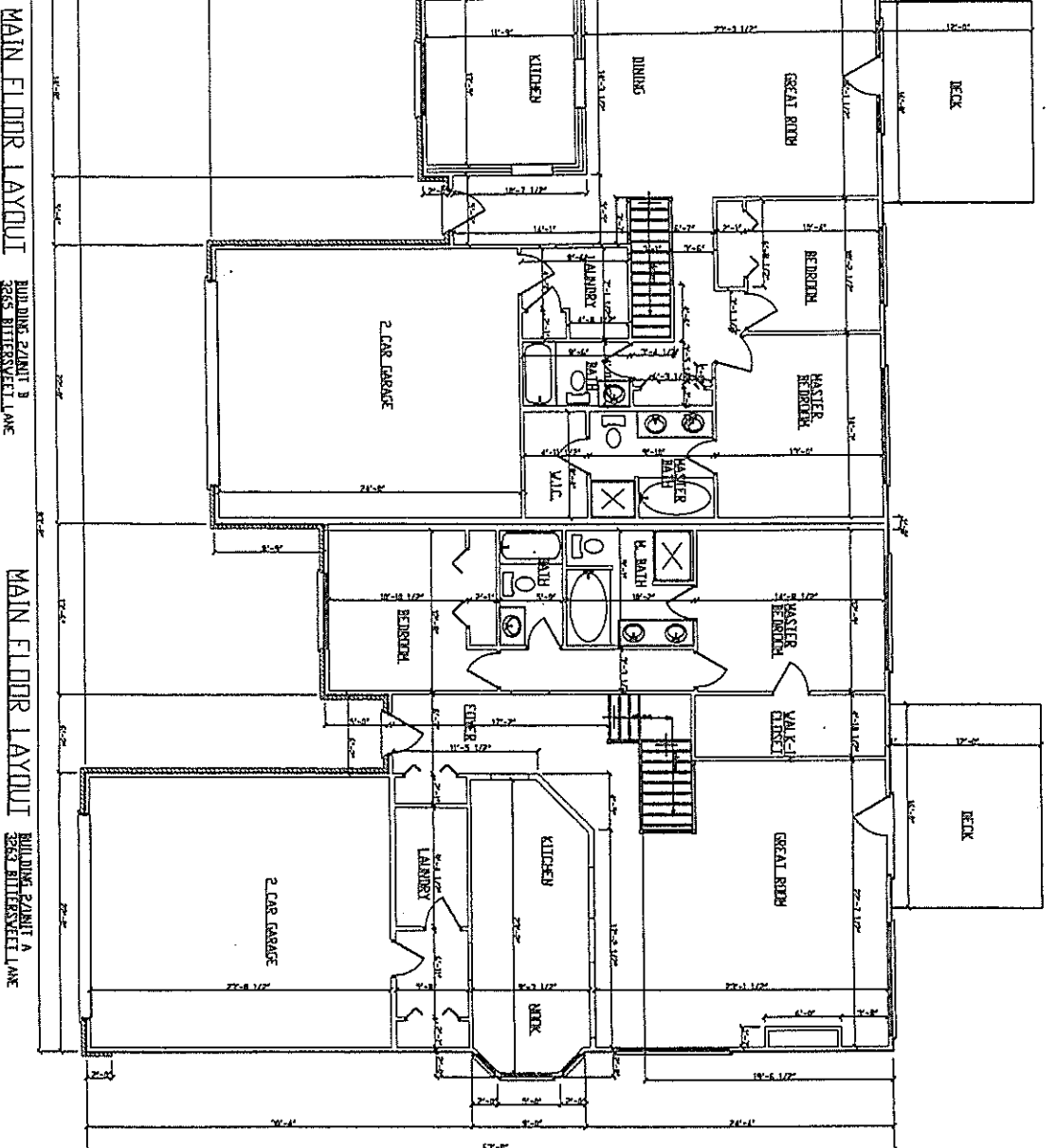


EXHIBIT "D"  
FIRST FLOOR PLAN  
OF BUILDING 2 ON LOT 1,  
BLOCK 9 OF ARBOR ESTATES  
IN THE CITY OF DUBUQUE



I HEREBY CERTIFY THAT THIS ENGINEERING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF IOWA.  
*Kenneth L. Buesing* (DATE)  
KENNETH L. BUESING  
LICENSE NUMBER 10272  
MY LICENSE RENEWAL DATE IS DECEMBER 31, 2006  
SHEETS COVERED BY THIS SEAL: SHEETS 1 AND 2

**BUESING**  
ENGINEERS AND ARCHITECTS  
1312 LOCUST ST. DUBUQUE, IA  
(563) 555-4344  
DRAWN BY: JS  
CHECKED BY: KLB  
DATE: 10/10/05  
SCALE: 3/32" = 1'  
SHEET 1 OF 2