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 Scott County Iowa
 Rita A. Vargas Recorder

File **2008-00029909**

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DECLARATION OF CONDOMINIUM

This Declaration is made and entered into by Jack Haberman and Marion Meginnis, husband and wife, hereinafter referred to as "Developer";

WHEREAS, Developer is the owner of the following described real estate:

Lots 1 and 2 in Block 1 in Forrest and Dillon's Addition to the City of Davenport, Iowa,

WHEREAS, it is the desire and intention of Developer to enable all of said real estate together with all buildings, structures, improvements and other permanent fixtures and whatsoever kind thereon, and all rights and privileges belonging or in anywise pertaining thereto (hereinafter called "Property") to be owned by Developer and by each successor in interest of Developer, under that certain type or method of ownership commonly known as "Condominium" and described as a "Horizontal Property Regime" under Chapter 499B of the Iowa Code, said property to be known as Gaines Street Condominium, and hereafter so referenced;

WHEREAS, by this Declaration Developer intends to subdivide the property into separate parcels of real estate, hereinafter defined as Units which, in accordance with the provisions herein contained, shall nevertheless be subjected to the benefits and burdens of a Horizontal Property Regime; and

WHEREAS, Developer is further desirous of establishing for the mutual benefit of all Owners and occupants of Units, certain easements and rights on, over and upon the property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Developer desires and intends that the several Owners, occupants of the Units in said property shall at all times enjoy the benefits of, and shall hold their interests subject to the rights, easements, privileges and restrictions hereinafter set forth, all of which shall be in furtherance of a plan to promote and protect the co-operative aspect of said Gaines Street Condominium, and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the property.

NOW, THEREFORE, Developer, as owner of the property hereinafter described and for the purposes set forth, DECLARES AS FOLLOWS:

ARTICLE I

DEFINITIONS

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follow:

1.01 Development Parcel. The entire tract of real estate above described.

1.02 Building Complex. One building, consisting of four (4) units, designed for use as a one-family dwelling, or such other incidental uses as permitted by this Declaration. There is attached as Exhibit "A" hereto, a site plan showing to scale the location thereon of the building as constructed, which building contains the units submitted to this regime. The one-family dwelling building is a level structure constructed from poured concrete, frame, brick, glass and metal.

1.03 Unit. A Unit shall be used to designate a part of the development parcel intended for use as a one-family dwelling, as shown on Exhibit "A". "Unit" shall have the same meaning as the term "apartment" defined in Section 449B.2 of the Iowa Code.

1.04 Common Elements. All portions of the property except the Units. "Common Elements" shall have the same meaning as "General Common Elements" defined in Section 499B.2 of the Iowa Code.

1.05 Unit Ownership. Ownership of a part of the property, consisting of one Unit and the undivided interest in the Common Elements appurtenant thereto.

1.06 Owner. The person or persons whose estates or interest individually or collectively, aggregate fee simple absolute ownership of a Unit. "Owner" shall have the same meaning as the term "Co-Owner" defined in Section 499B.2 of the Iowa Code.

1.07 Occupant. Person or persons, other than Owner, in possession of a Unit.

1.08 Association. An Association to be formed, as hereinafter provided, to manage all the property subject to this Declaration. Said association is also designated herein as "The Association" and shall have the same meaning as the term "Council of Co-Owners" defined in Section 499B.2 of Iowa Code.

1.09 Member. "Member" shall mean every person or entity who holds membership in the Association.

1.10 Board. The Board of Directors of the Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Article V.

ARTICLE II

UNITS

2.01 Exhibit "A", "A-1" "A-2", "A-3" and "A-4" - Description and Ownership. All Units shall be legally described as shown on the surveys identified as Exhibit "A", "A-1", "A-2", "A-3" and "A-4" and attached thereto. Every deed, lease, mortgage or other instrument may legally describe a Unit by its building number and its identifying number or symbol as shown on Exhibit "A" and every such description shall be deemed good and sufficient for all purposes and to incorporate by reference the necessary language of Exhibit "A", "A-1", "A-2", "A-3" and "A-4". No Unit Owner shall, by deed, plat or otherwise, subdivide or in any other manner cause any unit to be separated into any tracts or parcels smaller than the whole unit as shown in Exhibit "A", "A-1", "A-2", "A-3" and "A-4".

2.02 Utility Lines Through Units. Pipes, wires, conduits, flues, ducts, chutes, public utility lines and structural components running through a Unit and serving more than one Unit shall be a part of the Common Elements.

ARTICLE III

COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

3.01 Description. The Common Elements shall consist of the property as hereinbefore defined, excepting therefrom all the property and space designated as Units as shown and described in Exhibit "A", "A-1", "A-2", "A-3" and "A-4" attached hereto. The Common Elements shall include, but not by way of limitation, the land, utility installations, and such component parts of foundations, walls, ceilings, roofs and paving as are not located within the Units.

3.02 Ownership of Common Elements. Undivided Interest and Use. Each Owner shall own an undivided interest in the Common Elements as a tenant in common with all the Other Owners of the property, and, except as otherwise limited in this Declaration and in the By Laws of the Association, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit and such other incidental uses permitted by this Declaration, and the By Laws of the Association, which right shall be appurtenant to and run with his Unit. Percentage ownership in common elements shall be equal between the two units.

3.03 No Partition of Common Elements. There shall be no partition of the Common Elements through judicial proceedings or otherwise until this Declaration is terminated and the property is withdrawn from its terms.

ARTICLE IV

GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS

4.01 No Severance of Ownership. No owner shall execute any deed, mortgage, lease or other instrument affecting title to his Unit ownership without including therein both his interest in the Unit and his corresponding percentage of ownership in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

4.02 Easements.

4.02a Each Unit is given an easement for the purpose of maintaining a sewer lateral and water line from the main to the unit. Each owner shall be responsible for the maintenance of said lines up to the point where the lines become common lines, at which point the maintenance of said line to the main shall be the responsibility of the Association.

4.02b Unit Utility Lines. Each Unit is given an easement for the purpose of bringing utility wires for electric or telephone service from the poles erected or any distribution system installed by the utility companies, into the Unit. Said wires shall be located by the utility companies in such fashion as to not unduly interfere with the use of any part of another unit.

4.02c Easements Granted by Association. The Association may hereafter grant easements for utility purposes, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along and on the Common Elements for the benefit of the Development parcel.

4.02d Easements Are Perpetual. All easements and rights described or authorized 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 any Owner, and occupants of Units and all other persons having an interest in the Property, or any part or portion thereof.

4.02e Legality of Easements. Reference in the deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees, and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

ARTICLE V

THE UNIT OWNER'S ASSOCIATION

5.01 Formation. Developer shall cause to be established an Association to be called Gaines Street Condominium Home Owners Association, or a name similar thereto. The responsibility of the Association shall be to administer the Common Elements, approve the annual budget, provided for, and collect monthly assessments, and arrange for the management and insuring of the Property. Upon the formation of the Association every Unit Owner shall become Member therein, which membership shall terminate upon the sale or other disposition by such Member of his Unit ownership, at which time the new Unit Owner shall automatically become a Member therein.

5.02 Voting Rights. The voting rights and rights and privileges in said Association shall be determined by the By Laws of said Association. Acceptance of the deed to a Unit shall constitute acceptance of such By Laws.

ARTICLE VI

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

6.01 The Units and Common Elements shall be occupied and used as follows:

6.01a Single Family Residence. Except as hereinafter provided, no part of the Property shall be used for other than housing and the purposes for which the Property was designed. Each Unit shall be used as a residence for a single family and for no other purpose.

6.01b Developer Promotional Use. During the period in which sales of Units by Developer are in process, but in no event for any period extending beyond sixty (60) months from the recordation of this Declaration, Developer or its sales agent or mortgagee may occupy, or grant permission to any person to occupy, with or without rental, as determined by Developer, one or more units for business or promotional purposes, including clerical activities, sales offices, model homes for display and the like; provided that the activities in the Units so occupied do not interfere with the quiet enjoyment of any other Owner or occupant.

6.01c No Adverse Use. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without the prior consent of the Association except as hereinafter expressly provided. Each owner shall be obligated to maintain and keep in good order and repair his own Unit.

6.01d Insurability. Nothing shall be done or kept in any unit or in the Common Elements which will increase the rate of insurance of any building, or contents thereof, applicable for residential use, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on any building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the common elements, provided, however that furniture, fixtures, equipment and decorative items provided by the

Association may be placed in any of the Common Elements at the discretion of the Board of Directors of said Association.

6.01e Alterations of Common Elements. Nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Association, except as provided in this Declaration or in the By Laws of the Association.

6.01f Adverse Use and Signs. Except as provided in Paragraph 6.01b of Article VI of the Declaration, no industry, business, trade, occupation or profession of any kind, commercial, religious, education, or otherwise, shall be conducted, maintained, or permitted on any part of the Property, nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted on any part of the Property or in any Unit therein except as noted herein. The right is reserved by Developer, or its agent, to place "For Sale" or "For Rent" signs on any unsold or unoccupied Units, and the right is hereby given to any mortgagee, who may become the Owner of any Unit, to place such signs on any Unit owned by such mortgagee.

6.01g Exterior Appearance. Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Units, and no sign, awning, canopy, shutter, radio or other antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof without the prior consent of the Association.

6.01h For Sale Signs. In the event that Unit Owner desires to sell his Unit Ownership he may cause to be erected one for sale sign on the common element in front of his Unit not exceeding six (6) square feet in surface area.

6.01i Pets. No animals, livestock, fowl, or reptiles of any kind shall be raised, bred, or kept in any Unit or in the Common Elements, except that dogs, cats or other normal household pets, not exceeding one in number, may be kept in any unit, subject to rules and regulations adopted by the Association, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further that any such pet or pets causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days written notice from the Association.

6.01j Nuisances. No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or Occupants.

6.01k Structural Damage. Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of the Building or which would structurally change the Buildings except as is otherwise provided herein.

6.01l Unsightly Use of Common Elements. No clothes, sheets, blankets, laundry or any kind of other articles shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials. All garbage containers shall be stored inside the Units

and shall be of metal construction.

6.01m Parking on Common Elements. there shall be no parking of baby carriages, playpens, bicycles, wagons, toys, vehicles, boats, campers, trailers, benches or chairs on any part of the Common Elements; provided, however, that automobiles may be parked on the surfaced areas designated for such use.

ARTICLE VII

INSURANCE ON DAMAGE OR DESTRUCTION AND DISPOSITION OF INSURANCE PROCEEDS

CONDEMNATION

7.01 Insurance - Fire and Casualty. The Association shall secure a policy or policies of fire and casualty insurance as provided in the By Laws of the Association. Unit owners shall provide insurance for personal property and furniture or other property located in a unit and owned by the Unit Owner. All proceeds of insurance payable as a result of casualty losses except on furniture and personal property shall be paid to the Association and shall be distributed as follows:

7.01a Sufficient Insurance Proceeds. In the event the improvements, or any portion thereof, including the Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage paid shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied in payment therefor, any excess of such insurance proceeds, after completion and payment of such repair, restoration or reconstruction to be paid to the Association to apply against common expenses; provided, however, that in the event, within thirty (30) days after said damage or destruction the owners elect as hereinafter provided in Article IX either to sell the Property or to withdraw the Property from this agreement, then such repair, restoration or reconstruction shall not be undertaken.

7.01b Insufficient Coverage. In the event the improvements, or any portion thereof, including the Units, shall suffer damage or destruction from any cause, and such damage or destruction is not insured against or the insurance proceeds are not sufficient to pay the cost of repair, restoration or reconstruction, then unless the Owners shall, within thirty (30) days or any such longer time permitted by law after said damage or destruction, elect, as hereinafter provided in Article VIII either to sell or to withdraw the Property from the provisions of this agreement and terminate the same, such repair, restoration or reconstruction shall be undertaken by the Association and each Owner shall be liable for the payment of one-fourth (1/4) of the cost of such repair, restoration or reconstruction in excess of the available insurance proceeds paid as a result of said damage or destruction. Should any Owner refuse or fail after reasonable notice to pay his share of such cost in excess of available insurance proceeds, the amount thereof may be advanced by the Association or by any one or more of the other Owners and the amount so advanced shall constitute a lien on the interest of the Owner so failing or refusing in favor of the Association or the Owner or Owners so making the advance which lien

shall have the same force and effect any may be enforced in the same manner as provided in the By Laws of the Association.

7.01C Method for Handling Insurance Proceeds. In the event of repair, restoration or reconstruction of the improvements the available insurance proceeds shall be paid out (after disbursement of Funds, if any, required to be furnished by the Association) on architect's certificates or other proper evidence satisfactory to the Association indicating that the amount paid out from time to time does not exceed the value of the repair, restoration or reconstruction that has been or is being effected, and that the balance of the available insurance proceeds remaining in the hands of the Association are sufficient to complete the repair, restoration or reconstruction. Satisfactory waivers of lien shall also be furnished to the Association at the time of each payout.

7.01d Decision to Withdraw Property from the Condominium. In the event the improvements, or any portion thereof, including the Units, shall suffer damage or destruction from any cause and the Owners shall within thirty (30) days after said damage or destruction pursuant to paragraph 7.01a of this Article or within thirty (30) days or any such longer time permitted by law after said damage or destruction pursuant to paragraph 8.01b of this Article elect as hereinafter provided in Article VIII either (a) to repair, reconstruct or rebuild, or (b) to sell or to withdraw the Property from the provisions of this Declaration and terminate the same, and if the decision is to sell or terminate, then the Association shall distribute one-fourth (1/4) of the available insurance proceeds to each Owner and his mortgagee, if any.

7.01e Mortgagee Beneficiary. The insurance covenants contained in this Article VI are covenants for the benefit of any mortgagee of a Unit and may be enforced by any such mortgagee, but nothing herein contained shall be construed so as to give any mortgagee the right to determine or participate in the determination of whether to reconstruct or repair.

7.02 Condemnation; General. If all or any 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.

7.02a 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 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.

7.02b 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 the 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.

7.02c Mortgage. 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 shall be entitled to timely written notice of any such proceedings 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.

ARTICLE VIII

SALE OR WITHDRAWAL AND TERMINATION

8.01 Affirmative Action. The Owners by affirmative vote of at least seventy (70%) percent of the total vote, at a meeting of voting Members duly called for such purpose, may elect to sell the Property as whole, or to withdraw the Property from the provisions of this Declaration, and to terminate the same. The interest of any Owner of the minority of thirty (30%) percent or less not voting in favor of such action may be purchased by any of the Owners voting in favor thereof, or the Association on behalf of those Owners voting in favor thereof, at its then fair market value.

8.02 Conveyance. In the event the election is made to terminate this Declaration and to withdraw the property from its status as a horizontal property regime, then upon the consummation of the purchases of dissenting Owners' interests as herein provided, all of the Owners and their respective spouses shall duly execute, acknowledge and record an instrument setting forth the facts and circumstances, waiving dower and homestead rights insofar as such rights affect the exclusive ownership of any Unit, and expressly declaring their intention so to withdraw the Property. The instrument shall provide that titles to all Units shall thereby be conveyed and become vested in all the then Owners of the Common Elements as tenants in common, in the same proportions as such Owners shall then own said Common Elements, subject, however, to the rights of any mortgagee or other person having a bona fide lien of record against any Unit, unless such lien holder shall consent in writing to the transfer of his lien to the appropriate owner's undivided interest in the whole Property resulting from the recording of such instrument.

ARTICLE IX

REMEDIES FOR BREACH OF COVENANTS, RESTRICTIONS AND REGULATIONS

9.01 Abatement and Enjoyment. The violation of any restriction or condition or of the By laws of the Association or regulation adopted by the Association, or the breach of any covenants or provisions herein contained, shall give Developer or the Association the right, in addition to the rights set forth in the next succeeding section:

(a) To enter any Unit upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon or therein contrary to the intent and meaning of the provisions hereof, and Developer or the Association or its agents, shall not thereby be deemed guilty in any manner or trespass; or

(b) to enjoin, abate or remedy by appropriate legal proceeding, either at law or in equity, the continuance of any breach. Developer's rights under this Section 9.01 shall terminate upon conveyance by Developer of all of the Units.

9.02 Involuntary Sale. If any Owner (either by his own conduct or by the conduct of any other occupant of his Unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the regulations adopted by the Association and such violation shall continue for thirty (30) days after notice in writing from the Association, or shall occur repeatedly during any thirty (30) day period after written notice or request to cure such violation from the Association, then the Association shall have the power, by action of a majority of its Board of Directors, to issue to the defaulting Owner a ten (10) days notice in writing to terminate the rights of the said defaulting Owner to continue as an Owner and to continue to occupy, use or control his Unit and against the defaulting Owner for a decree of mandatory injunction against the Owner or occupant, subject to the prior consent in writing of any mortgagee having a security interest in the Unit ownership of the defaulting owner, which consent shall not be unreasonably withheld. IN the alternative a decree may be obtained declaring the termination of the defaulting Owner's right to occupy, use or control of the Unit owned by him on account of the breach of covenants, and ordering that all the right, title and interest of the Owner in the property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Owner from re-acquiring his interest at such judicial sale, The proceeds of any such judicial sale shall first be paid to discharge court costs, master's or commissioner's fees, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding, and all such items shall be taxes against the defaulting Owner in said Decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, may be paid to the Owner. Upon the confirmation of such sale, the Unit owner shall

