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*Original*

INSTR. NO. 996853

**DECLARATION OF SUBMISSION OF PROPERTY  
TO HORIZONTAL PROPERTY REGIME FOR  
CONDOMINIUM OWNERSHIP OF PREMISES  
AT MALIBU CONDOMINIUM**

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This Declaration of Submission of Property to the Horizontal Property Regime, is made and executed in Spirit Lake, Iowa, the 19th day of November, 1999, by William T. Smith, Michael Carlton and Betty Carlton (hereinafter referred to as "Declarant"), pursuant to the provisions of the Horizontal Property Act, Chapter 499B, Code of Iowa.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the City of Okoboji, Dickinson County, Iowa, and more particularly described as follows:

SEE EXHIBIT "A"

and;

WHEREAS, Declarant intends to put certain improvements upon the aforesaid premises and it is the desire and the intention of the Declarant to divide the project into condominium units and to sell and convey the same to various purchasers, pursuant to the provisions of the aforesaid Horizontal Property Act, and to impose upon said property mutually beneficial restrictions, covenants, and conditions; and

WHEREAS, Declarant desires and intends by filing this Declaration to submit the property and buildings and other improvements constructed thereon, together with all appurtenances thereto, to the provisions of the aforesaid Act as a condominium project;

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

ARTICLE I

Definitions

1. Declarant or Developer. The term "Declarant" and "Developer" shall mean William T. Smith, Michael Carlton and Betty Carlton which has made and executed this Declaration, and its

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successors and assigns.

2. Declaration. The term "Declaration" shall mean this instrument by which Declarant establishes the project as provided under the Horizontal Property Act.

3. Project or Regime. The term "project" or "regime" shall mean the entire parcel of real estate property referred to in this Declaration to be divided into condominiums, including all structures thereon.

4. Unit. The term "unit" shall mean one or more rooms occupying all or part of a floor or floors, intended for use as a residence and not owned in common with other owners in the regime. The boundary lines of each unit are the interior surfaces of party and exterior walls, bearing walls, bottom or basement floors, top story ceilings, window and window frames, doors and door frames, and trim, and includes the portions of the building so described and the air space so encompassed. A patio balcony or similar structure appurtenant to a particular unit which is not encompassed by four walls, a ceiling, and a floor shall be deemed a room and constitute a portion of that unit.

5. General Common Elements. The term "general common elements" shall have the meaning as defined in Article V.

6. Limited common elements. The term "limited common elements" shall have the meaning as defined in article VI.

7. Building. The term "building" shall mean and include a structure occupied by one or more units and bounded by the ground beneath such units, the outer surface of such units' window frames, doors and door frames, roof, exterior walls, the plane bisecting such unit's party walls, and the patio, balcony or courtyard abutting said other boundaries.

8. Garage. The term "garage" means a structure abutting a driveway, used for the building and intended for, but not limited to, the storage of an automobile. Each garage space is a limited common element and appurtenant to a specific unit. Not every unit will be assigned a garage at the time it is purchased from the Declarant. Declarant has the right to build excess garages for sale as a limited common element to owners.

9. Condominium. The term "condominium" means the entire estate in the real property owned by and owner, consisting of an undivided interest in the common elements and ownership of a separate interest in a unit.

10. Owner. The term "owner" means any person with an ownership interest in a unit in the project.

11. Association. The term "association" means Malibu Condominiums Owners Association and its successors.

12. Condominium Documents. The term "condominium documents" means this Declaration,

and all exhibits attached hereto including the Articles and Bylaws of the Association.

## ARTICLE II

### Name

The name by which this horizontal property shall be identified is: Malibu Condominiums.

## ARTICLE III

### Description of Land and Units

1. Description of Land. Land hereby initially submitted to the regime is located in the City of Okoboji, Dickinson County, Iowa, and is legally described in Exhibit "A." Additional land and units and other improvements thereon may be submitted to the regime by Developer in accordance with Article VII hereof. The project has a total of ten (10) units consisting of one (1) building, two (2) stories in height. The units completed or to be completed which are shown and designated by number on Exhibit "B" attached hereto, are hereby submitted to the regime. Exhibit "B" contains and such contents shall be governed for the purposes of this Declaration and for purposes of meeting the requirements of Section 499.4 of the 1993 Code of Iowa, as amended, the following:

- (a) The number identifying each unit from every other unit;
- (b) A letter designation for each unit referred to in paragraph 3 of this Article for purposes of describing such unit and the building which it occupies; and
- (c) Approximate area of units and percentage of Ownership in Common Elements.
- (d) The location of each unit and common elements to which each such unit has or will have access.
- (e) A copy of the site plan.

2. Roads. All streets in the project shall be private roads and shall be owned and maintained by the Association.

3. Description of Units. Annexed hereto and made a part hereof as Exhibit "C" is a Floor Plan of all units. Such floor plan describes the features of the units available in each building, location, approximate area, and numbers of rooms.

## ARTICLE IV

### Ownership Interests

1. Exclusive Ownership of Unit. Each owner shall be entitled to exclusive ownership and

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possession of their unit. An owner shall not be deemed to own the undecorated or unfinished interior surfaces of the party and exterior walls, bottom floor or floors, top story ceilings, windows and doors bounding their unit nor shall the owner be deemed to own any elements within their unit which are included in limited or general common elements notwithstanding the fact that such elements are within the perimeter of such unit. The owner, however, shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior surface of the walls, floors, ceilings, windows and doors bounding their unit and also shall have such exclusive rights with respect to general or limited common elements which are within their unit.

2. Ownership Units. For purposes of this Declaration and the Bylaws of the Association, appurtenant to each unit shall be one ownership unit. The ownership unit appurtenant to each unit is hereby created by this Declaration and shall be counted for all purposes stated herein and in the other Condominium Documents irrespective of any actual occupancy or use of the unit to which appurtenant. Ownership units of units which may be submitted to the regime of Supplemental Declaration in accordance with Article VII hereof shall be created upon such submission.

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

4. Undivided Fractional Interest. An undivided interest in the land and other common elements of the regime, regardless of whether such elements are general or limited common elements, shall be appurtenant to each unit. The amount of such undivided interest appurtenant to each unit shall be a fraction (expressed as a percentage), the numerator of which is the number of ownership units appurtenant to the unit (determined by the Declarant) and the denominator of which shall be the total of ownership units in the project as set forth in this Declaration.

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

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

7. Association Membership and Voting Rights. Appurtenant to each unit shall be membership in Malibu Condominiums Owners Association and as many votes in the affairs of the Association and of the regime as that unit's fractional interest in the general common elements bears to the total number of votes provided, however, that the exercise of such voting and membership rights shall be subject to the applicable provisions of the Articles and Bylaws of the Association and of the other Condominium Documents. The action of such Association shall be deemed the action of the owners; and such action, when taken in accordance with the Bylaws of the Association and this Declaration shall be final and conclusive upon all unit owners.



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

- (a) For ingress and egress through the common areas and for maintenance, repair, and replacement as authorized;
- (b) Through the units and common facilities for maintenance, repair and replacement or reconstruction of common elements, but access to units shall be only during reasonable hours except in case of emergency;
- (c) Every portion of a unit contributing to the support of the building is burdened with an easement of such support for the benefit of all such other units; and
- (d) Through the units and common areas for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility or other services to the other units in the common areas.

9. Existing and Future Ownership to Future and Existing Common Elements. If additional property is submitted as provided in Article VII, existing unit owners shall have full right of easement of access, ingress, egress, use and enjoyment in and to any additional common elements and recreational facilities subsequently added and any owners who become members by virtue of ownership of any unit which is a part of additional properties shall have full right of easement of access, ingress, egress, use and enjoyment in and to the existing common elements and recreational facilities.

10. Encroachment Easements. If any portion of the common elements encroaches upon any unit, or if any unit encroaches upon any other unit or upon any portion of the common elements upon completion of construction, or if any such encroachment shall occur thereafter as a result of shifting or settling of the buildings or from alterations, repair or improvement to the common elements or as a result of repair or restoration of the common elements or a unit after damage by fire or other casualty or as a result of such events a valid easement shall exist for such encroachment and for the maintenance thereof so long as the buildings, common elements and units exist.

11. Title to the Common Elements. The Declarant hereby covenants for itself, its successors and assigns, that the corresponding fractional or percentage share in the common elements, free and clear of all mechanics' liens or any liens or encumbrances whatsoever except covenants and conditions created by this Declaration shall be appurtenant to a unit. The transfer of title to the share of common elements shall be accomplished when the title is transferred and delivered to the unit owner. Prior to the conveyance of the common elements, the Declarant shall submit to the Association the plans and specifications for the construction and development of any and all improvements to be made thereon by the Declarant. Declarant covenants and agrees with the Association and the owners that it will do all work as set forth in the plans and specifications submitted to the Association, and in accordance with the site development plans, delivery of warranty deeds to the common elements prior to the full completion of all improvements as set out

in the plans and specifications for construction and development of all improvements according to the final site plan to the common elements shall not constitute a release of Declarant from performing all the obligations of such improvements or work. Declarant at the time of completion of all improvements to the common area hereby warrants to the Association and owners that the same is free of defects of material and workmanship or any damages sustained during construction work being performed by or for the Declarant. In addition, the Declarant warrants to the owners and the Association upon completion of all improvements to the common areas that all money due and payable for work, labor or materials performed in connection with said improvements to the common elements have been paid and lien waivers will be supplied by Declarant of such payment or in manner similar to that as provided in Section 572 .23 of the 1999 Code of Iowa, as amended. Until the Declarant has completed the work as set forth in the plans and specifications, Declarant shall have the right to enter upon the common elements for the purpose of completing such work.

12. Taxes and Special Assessments on Common Elements. Taxes and special assessments that would normally be levied by a governmental body against the common elements shall be divided and levied in equal amounts against the individual units occupied or to be occupied which levies shall be a lien against said individual units. The Association shall have the right, power and authority to collect such levies as part of the annual assessment, if such taxes and special assessments are not collected by the governmental body from the owner or paid by the owner to the governmental body when the same is due and payable.

## ARTICLE V

### General Common Elements

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

- (a) The land on which the buildings are erected.
- (b) The foundations, floors, exterior walls of each unit and the buildings, ceilings and roofs, garbage incinerators and in general all devices or installations existing for common use, except as limited in the next Article.
- (c) Compartments or installations of central services for public utilities, water tanks and pumps servicing common facilities.
- (d) Premises for lodging of service personnel engaged in performing services other than services within a single unit.
- (e) All roads, paths, landscaping and planting, recreational facilities including recreation areas, outside lighting facilities and wiring, and all sewer, water, and other utility or service lines or facilities serving more than one unit.

## ARTICLE VI

### Limited Common Elements

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

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

- (a) All exterior walls of the buildings including the portions thereof on the unit side of the block work of such walls, interior load bearing walls and all other elements which are structural to a unit are reserved for that unit (or units where partitions separate two units) contained in the building.
- (b) Garages appurtenant to units which have garages.
- (c) The particular immediate driveway or area of driveway to each garage.
- (d) A sewer, water, television or other utility or service line, heater, furnace, water pump, or facility which services one unit only.

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

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

## ARTICLE VII

### Declarant's Reserved Rights and Powers

1. Declarant's Activities. Subject to the Ordinances, Rules and Regulations of the County of Dickinson, Iowa, for the period during which Declarant exercises the functions and duties of the Board of Directors of the Association as set forth in Article VIII, Declarant and its successors and assigns are irrevocably and perpetually empowered, notwithstanding any use, restriction or other provision hereof to the contrary, to sell, lease or rent units to any person and shall have the right to transact on the condominium property any business relating to the construction, repair, remodeling, sale, lease or rental of units, including but not limited to, the right to maintain signs, employees, independent contractors and equipment and materials on the premises, to use common elements (general and limited), to show units, all signs and all items and equipment pertaining to sales or rentals or construction and any unit furnished by the Declarant for sales purposes shall not be



considered common elements and shall remain its separate property. Declarant retains the right to be and remain the owner of completed but unsold units under the same terms and conditions as other owners including membership in the Association saved for its right to sell, rent or lease.

2. Easements. For the period during which Declarant exercises the functions and duties of the Board of Directors of the Association as set forth in Article VIII, Declarant expressly reserves perpetual easements for ingress, egress and utility purposes as may be required across and under the land submitted hereby.

3. Additional Property, Supplemental Declaration.

(a) Declarant reserves the right, which can be assigned by it at any time, to submit additional parcels of land to the regime together with units thereon. The maximum number of units which can be erected on the premises described on Exhibit "A" is 10 units.

(b) Supplemental Declarations, when executed and filed for record in accordance with paragraph (a) of this section, are and shall be automatically incorporated herein by reference and made a part hereof with like effect as though the buildings, land, units and other improvements had been submitted at the time of execution of this Declaration. Supplemental Declarations shall be solely executed by Declarant, its successors and assigns, notwithstanding the ownership of units by others, and Declarant shall have and exercise such right and power not only in its own capacity but also for all existing unit owners, and each unit owner does, therefore, agree to such Supplemental Declaration and documents as may be necessary to add such additional land, buildings, units and other improvements to this regime, and such additional construction by Declarant shall in no way be deemed an interference with the ownership, use or enjoyment of any unit submitted to the regime or appurtenances thereto.

(c) In the event the Declarant submits additional units to the regime as provided in this Article, there shall be one (1) ownership unit appurtenant to each additional unit.

(d) No Supplemental Declaration shall affect the number of ownership units assigned to the units previously submitted to the regime; but the ownership unit appurtenant to each unit submitted by Supplemental Declaration shall have the same use and effect as the ownership unit appurtenant to each unit submitted by this Declaration and shall effect its undivided fractional interest.

(e) Nothing herein contained shall be construed to compel the Declarant to submit additional lands to this regime nor to prevent the use of any land not hereby or hereafter incorporated into this regime for such purposes as it desires and as may be otherwise lawful.

4. Permitted Variation in Unit and Building Design. With respect to units submitted by

Supplemental Declaration, Declarant further reserves the right to construct and submit unit buildings and such units of different size, design, materials or in different number from those described in Exhibits "B" or "C" as applicable, provided always that no unit shall be smaller than 900 feet. Declarant further reserves the right to amend any Supplemental Declaration with respect to the location, and description of streets, whether public or private.

5. Construction of Units - Variation and Adjustments. The construction of units submitted hereby and in any Supplemental Declaration shall be in accordance with the terms of this Declaration except as to permitted variations as set forth in the paragraph next above, and the plans and exhibits attached hereto except that variations therefrom or adjustments of an insubstantial character not meaningfully prejudicial to the rights of owners of completed units or to the owners of such units being constructed (including variation in the room size or design and a variation in area of a unit of not more than 5%) is permitted and shall not constitute an amendment of this Declaration and each owner agrees to accept their unit in substantial compliance to such plans and exhibits.

6. Designation of Association Directors. Declarant shall have the right to name all members of the Board of Directors of the Association until the Organizational Meeting of the Association to be held pursuant to the provisions of the Bylaws. Thereafter, the Board of Directors shall be selected in the manner specified in the Bylaws of the Association.

## ARTICLE VIII

### Management of the Regime

1. Association: Council of Co-Owners. The operation of the condominium shall be by an association. The name of the association shall be Malibu Condominiums Owners Association. Copies of its its Bylaws are attached hereto as Exhibits "D". Until the occurrence of one of the following, all rights, duties and functions of the Board of Directors shall, at Declarant's option, be exercised by Declarant:

- (a) December 31, 2000.
- (b) The completion and sale of eighty-one (81%) of all units in the project proposed by the Declarant to be constructed on the Regime.
- (c) The receipt by the Association of written notice signed by the Declarant turning over the rights, duties and functions of the Board to the Board.

Thus, until such time, all management duties and responsibilities are vested in the Declarant. Until the Board of Directors receives its full rights, duties, and functions as aforesaid, it will serve as an advisory committee to the Declarant. The action of the Association shall constitute the action of the owners or the Council of Co-Owners whenever such action is permitted or required herein or by Chapter 499B of the 1999 Code of Iowa, as amended.

2. Compliance. All owners, tenants, families, guests and other persons using or occupying

the regime shall be bound by and strictly comply with the provisions of the Bylaws of the Association and applicable provisions of other Condominium Documents, and all agreements, regulations and determinations lawfully made by the Association and its directors, officers or agents shall be binding on all such owners and other persons. A failure to comply with the Bylaws or the provisions of the other Condominium Documents or any agreement or determination thus lawfully made shall be grounds for an action to recover sums due for damages on the part of the Association or any owner as applicable and any mandatory or other injunctive relief without waiving either remedy.

3. Powers of Association. Each owner agrees that the Association has and shall exercise all powers, rights and authority granted unto it, including those of the Council of Co-Owners and the owners as a group by Chapter 499B of the 1999 Code of Iowa, as amended, and such as are more particularly set forth in the Condominium Documents, including but not limited to the making of assessments chargeable to owners and the creation of a lien on units thereof, and acquire a unit at foreclosure sale and to hold, lease, mortgage or convey the same. Each owner hereby waives any rights to delay or prevent such foreclosure by the Association which they may have by reason of a homestead exemption.

4. Partition. All unit owners shall be deemed to have waived all rights of partition, if any, in connection with such acquisition.

5. Membership, Voting Rights. The members of the Association shall consist of all of the record owners of units. After proper notification and after receiving the approval of the Association as elsewhere required, change of membership in the Association shall be established by recording in the public records of Dickinson County, Iowa, a deed or other instrument establishing a record title to a unit in the condominium. The membership of the prior owner shall be thereby terminated. Each member of the Association shall be entitled to cast a number of votes equal to the number of units owned. One ownership unit is appurtenant to each unit.

6. Restraint Upon Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to their unit.

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

8. Discharge of Liability. Except for permitted mortgages and assessments, all owners shall promptly discharge any lien which may hereafter be filed against their condominium.

9. Limitation of Association's Liability. The Association shall not be liable for any injury or damage to property caused by or on the common elements or by another owner or person in the project or by any other means unless caused by the gross negligence of the Association. No diminution or abatement of common expense assessments shall be claimed or allowed for

inconvenience or discomfort arising from the making of repairs or improvements of the common elements or from any action taken to comply with any law, ordinance or orders of a governmental authority.

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

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

<u>Name</u>	<u>Address</u>
Michael Carlton	56 Hill Dr. Milford, IA 51351

## ARTICLE IX

### Maintenance, Alteration and Improvement

1. Definitions. Certain terms used in this Article shall have a meaning as follows, provided any dispute over the characterization of work within one of the following meanings shall be conclusively decided by the board of Directors of the Association.

- (a) "Maintenance" or "repair" shall mean the act of maintaining, restoration, renovation, reconstruction, replacement, rebuilding and similar work necessary to preserve a unit or the property in its original condition as completed.
- (b) "Improvement" shall mean the addition of a new structure, element or facility, other than a structure, element or facility otherwise provided for by this Declaration or any Supplementary Declaration.

2. Maintenance by Association.

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



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

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

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

### 3. Maintenance by Owner.

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

(b) The owner of each unit shall be responsible for maintaining any plumbing fixture, heating ducts and all other utilities or portions thereof located within the boundaries of their unit. The owner shall also, at their own expense, keep in a clean and sanitary condition their unit, and any balcony, garage or storage place which is for the exclusive use of their unit. Neither the Association nor the regime shall be liable or responsible for any loss or damage caused by theft or otherwise of articles which may be store by the owner in such storage places.

(c) The unit owner shall maintain, at their expense, any improvement or other alteration made by them.

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

4. Alterations or Improvements by Owner. No unit owner shall make or permit to be made any structural alteration to a unit or to a building without first obtaining written consent of the Architectural Control Committee of the Board of Directors of the Association (which consent may be given by a general rule or regulation) which shall determine the proper insurance of such improvement or other alteration, and the effect of such improvement or alteration on insurance of other property of the regime, and which shall arrange with such unit owner for the payment of the



cost of any additional insurance thereby required; provide alterations (including fixtures and structural alterations) comprising part of the building of the unit of such unit owner when situated within such unit may be made without obtaining consent of the Architectural Control Committee. Alterations to the exterior of any building or common element shall not be made if, in the opinion of the Architectural control Committee, such alteration would not become the integrity and appearance of the regime as a whole. Such owner shall do no act or work which will impair the structural soundness or integrity of the building or safety of the property or impair any easement. The improvement or alteration of audit shall cause no increase or decrease in the number of ownership interests appurtenant to such unit.

5. Alterations or Improvements by the Association. Whenever in the judgment of the Board of Directors the common elements shall require additions, alterations or improvements costing in excess of \$3,000.00, and the making of such additions, alterations or improvements shall have been approved by a majority of the unit owners, the Board of Directors shall proceed with such additions, alterations or improvements and shall assess all unit owners for the cost thereof as a common charge. Any additions, alterations, or improvements costing \$3,000.00 or less may be made by the Architectural Control Committee without approval of unit owners, and the cost thereof shall constitute part of the common expenses.

6. Alterations or Improvements for Public Roads or Other Public Purposes. In addition to annual assessments authorized herein, the Association shall levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any special assessment obligation for public roads, public utilities or other public purposes which any government entity may assess on any project even though the assessment boundaries may only cover a portion of the properties falling within this Declaration. Any such special assessment shall be spread against the Association and/or all the unit owners each for their proportionate share. The Association may enter into a contract and waiver with the government entity concerning any project involving a special assessment. If contract and waiver is used and adopted, the Association, on behalf of all unit owners and members of the Association, shall execute all documents required in connection with said contract and waiver in the form generally required by the government entity. The Association may execute such documents only after securing a vote of a majority of members in person or by proxy at a meeting duly called for this purpose. If the Declarant, for each unit owner within the properties, the owner of any unit, and the Association and its successors and assigns enter into a contract and waiver agreement with the government entity, they hereby waive, in connection with said assessment, all legal formalities of whatever kind and character required by the laws of the State of Iowa to be observed by municipalities in the construction of like improvements where expenses of said improvements are to be assessed against a project, district or area. All questions of jurisdiction, the amount of the assessment, and all other legal requirements, are hereby waived in favor of the government entity.

## ARTICLE X

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

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

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

- (a) A unit shall be used or occupied for single family dwelling purposed only.
- (b) A unit may be rented or leased by the owner or their lessee provided the entire unit is rented, the occupancy is only by the lessee and their family or sublessee and their family and the period of rental is at least one month unless some other period is established in the regulations or Bylaws of the Association. No lease shall relieve the owner as against the Association and other owners from any responsibility or liability imposed by the Condominium Documents.
- (c) Nothing shall be altered in, constructed in, or removed from the common elements, limited or general, of the Association, which may be given through regulations of the Association.
- (d) No livestock, poultry, or other animals of any kind shall be raised, bred, or kept in any unit or in any common area, limited or general, except that domestic pets such as dogs and cats may be kept so as not to interfere with the peaceful enjoyment of the premises by the other unit owners.
- (e) No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the unit owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.
- (f) Nothing shall be done or kept in any unit or in the common elements which will increase the rate of insurance on the common elements, without the prior written consent of the Association. No owner shall permit anything to be done or kept in their unit or in the common elements which will result in the cancellation of insurance on any unit or any part of the common elements, or which would be in violation of any law.
- (g) The Association shall have the authority to adopt rules and regulations governing the use of the property and such rules shall be observed and obeyed by the owners, their guests, and licensees.
- (h) Agents of or contractors hired by the Association may enter any unit when

necessary during reasonable business hours and with twenty-four (24) hours' notice except in case of an emergency, in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the owners as practicable.

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

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

(k) Unit owners must keep their units heated to a least forty-five degrees Fahrenheit (45°F) at all times and may not winterize their units.

(l) Unit owners must turn off water service to their units if their unit is to be vacated for more than seven days.

(m) A unit owner, other than Declarant, shall not place "for sale" or "for rent" signs or similar signs in or on a unit, the building, or the project.

3. No Waiver. Failure of the Association or any owner to enforce any covenant, condition, restriction or other provision of Chapter 499B of the 1993 Code of Iowa, as amended, this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

## ARTICLE XI

### Architectural Control Committee

From and after completion of construction and conveyance by Declarant of each unit, no building, fence, wall, awning, canopy, or other structure shall be commenced, erected or maintained upon such unit, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, material and location of the same are in conformity to applicable Building Codes and any other applicable ordinances of applicable government entities.

Such improvement shall be submitted to and approved in writing as to harmony of external design, and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an Architectural Control Committee composed of three or more representatives appointed by the Board of Directors. In the Event said Board, or its designated committee, fails to approve or disapprove such design or location within thirty (30) days by written

notice after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The prevailing party in an action brought by the Association pursuant to this Article shall be entitled to recover from the other party reasonable attorneys' fees together with all necessary costs and disbursements in connection therewith. The Architectural Control Committee shall advise the Board of Directors of the Association on future maintenance and capital improvement to the properties and perform such other functions as provided in the Bylaws and as the board of Directors may from time to time designate

## ARTICLE XII

### Insurance and Casualty

1. General Liability and Property Damage. Comprehensive general liability and property damage insurance shall be purchased by the Association as promptly as possible following organization, and shall be maintained in force at all times, the premiums thereon to be paid by assessments. Prior to the organizational meeting, such insurance shall be procured by Declarant. The insurance shall be carried with reputable companies authorized to do business in the State of Iowa in such amounts as the Board may determine. The policy or policies shall name as insured all the owners of the Association, Association and mortgagees. Declarant shall be named as an additional insured on such policy or policies until such time as Declarant shall have conveyed all of the condominiums in the project (including all supplements thereof). The policy or policies shall insure against loss arising from perils in both the common areas and the units and shall include contractual liability coverage to protect against such liabilities as may arise under the contractual exposures of the Association, and/or the Board.

2. Fire and Casualty. Fire and other hazard insurance shall be purchased by the Association as promptly as possible following its organization and shall thereafter be maintained in force at all times, the premiums thereon to be paid out of the maintenance fund. Policies shall be provided for the issuance of certificates or such endorsement evidencing the insurance as may be required by the respective mortgagees. The policy, and certificates so issued, will bear a mortgage clause naming the mortgagee's interest in said property. The policy or policies shall insure against loss from perils therein covered to all of the improvements in the project, except as may be separately insured. Such policy or policies shall contain extended coverage, vandalism, and malicious mischief endorsements. The improvements to be insured under this clause shall be continually insured to value, and the policy or policies shall contain full replacement cost insurance. If reasonable available the policy or policies shall contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild. The policy or policies shall name as insured all of the owners of the Association, Association, mortgagees and Declarant, so long as Declarant is the owner of any of the condominiums in the project. The policy or policies shall also cover personal property owned in common.

3. Fire and Casualty on Individual Units. Except as expressly provided in this Article, no owner shall separately insure their condominium or any part thereof against loss by fire or other casualty covered by the insurance carrier under Section 2. Should any owner violate this provision,



substantially in accordance with the original plans and specifications. If the cost to repair or rebuild exceeds available insurance by \$10,000.00, then owners of the individual units, by vote of not less than a majority of those present and entitled to vote, in person or by proxy, at a duly constituted owners' meeting held within 30 days from the date of such damage or destruction, shall determine whether the Board of Directors shall be authorized to proceed with repair or reconstruction.

(c) Total Destruction. In the event of fifty percent (50%) or more damage to, or destruction of, the project's buildings by fire or other casualty, the owners of the individual units, by vote of not less than a majority of those present and entitled to vote, in person or by proxy, at a duly constituted owner's meeting, held within 30 days from the date of such damage or destruction, shall determine whether the Board of Directors shall be authorized to proceed with repair or reconstruction, or whether said project shall be sold; provided, however, that the determination shall be subject to the express written approval of all record owners of mortgages upon any part of the regime.

In the event of a determination to rebuild or repair, the Board shall have prepared the necessary plans, specifications, and maps, and shall execute the necessary documents to effect such reconstruction or repair as promptly as practicable and in a lawful and workmanlike manner.

In the event of a determination not to rebuild, the Board shall have prepared and filed, as promptly as practicable, a corrected subdivision map, converting the project into an unimproved parcel of land, which shall be offered for sale forthwith, at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed, the net proceeds of such sale, and the proceeds, if any, of insurance carried by the Association, and/or by the owners as a whole on the project, including coverage on the units and the common elements, shall be distributed to the unit owners in proportion to their units of ownership, except that where there is a mortgage of record or other valid encumbrance on any one unit then, and in that event, with respect to said unit the Association will distribute said proceeds as follows: First to the record owners of mortgages upon units and common elements in the regime in satisfaction of the balance currently due on said encumbrances and then the remaining proceeds, if any to satisfy any individual encumbrance executed in good faith and for value, with that portion remaining; if any, to the unit owner of record.

(d) In the event that the common elements are repaired or reconstructed pursuant to the provisions of paragraphs (a), (b) or (c) of this clause and there is any deficiency between the insurance proceeds paid for the damage to the common elements and the contract price for repairing or rebuilding the common elements, the Board shall levy a special assessment against each owner in proportion to their units of ownership in the common elements to make up such deficiency. If any owner shall fail to pay said special assessment or assessments within thirty (30) days after the levy thereof, the



Board shall make up the deficiency by payment from the assessment, and remaining owners shall be entitled to the same remedies as those provided in Article IX of this Declaration, covering a default of any owner in the payment of maintenance charges.

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

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

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

9. Review of Insurance Needs. Insurance coverage will be analyzed by the Board, or its representative, at least every two (2) years from the date hereof and the insurance program revised accordingly.

### ARTICLE XIII

#### Termination

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

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

(b) Agreement. The condominium project may be terminated at any time by the approval in writing of all of the owners of the condominium and by holders of all mortgages affecting any of the units by filing an instrument to that effect, duly recorded, as provided in Section 499B.8 of the 1999 Code of Iowa, as amended. It shall be the duty of every unit owner and their respective mortgage holder to execute and deliver such instrument and to perform all acts as in manner and form may be necessary to effect the sale of the project when at a meeting duly convened of the Association, the owners of at least three-fourths of the voting power, and all record

owners of mortgages upon units in the regime, elect to terminate and/or sell the project.

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

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

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

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

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

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

#### ARTICLE XIV

##### Amendments and Miscellaneous

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

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

(b) Resolution. A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by any member of the Association. Except as

provided elsewhere, the resolution must be adopted by a vote of not less than 66-2/3% of all owners present and entitled to vote, in person or by proxy; provided; however, no amendment effecting a substantial change in this Declaration or the Bylaws of the Association shall (i) affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof and who does not approve said amendment in writing, and (ii) affect the rights of Declarant without its consent.

(c) Bylaws. In the case of an amendment to this Declaration by reason of an amendment to the Bylaws of the Association, then in the manner specified in such Bylaws.

(d) Execution and Recording. An amendment adopted pursuant to (b) or (c) above shall be executed by an officer specifically delegated to do so with the formalities required by Chapter 499B of the 1999 Code of Iowa, as amended. Upon the recordation of such instrument in the office of the Dickinson County Recorder, the same shall be effective against any persons owning an interest in a unit or the regime.

2. Effectiveness. Upon its recordation at the Dickinson County courthouse by the President or other officer appointed for that purpose, an amendment adopted in the manner specified in Section 1 of this Article shall be effective against any persons having interest in a unit or the regime regardless of whether said person had such interest at the time said amendment was adopted in accordance with Section 1 of this Article.

3. Supplemental Declarations. A supplemental Declaration or Declarations submitting additional land to the regime may be adopted and recorded by the Developer in accordance with the provisions of Article VII hereof.

4. Ownership Units. No amendment shall change the number of ownership units appurtenant to a unit, not the share of common elements appurtenant to it, nor increase the owner's share of the common expenses, except as such may result from the submission of additional property to the regime as provided in Article VII hereof, unless the record owner of the unit concerned and all record owners of mortgages thereon shall affirmatively join in the adoption of such amendment.

5. Other Properties Submitted to Regime. All of the covenants, conditions and obligations contained in these Declarations of Submissions to the Horizontal Property Regime are equally applicable to all future properties submitted hereunder.

6. Binding Effect. This Declaration and the covenants contained herein are to run with the land described on Exhibit "A" and shall be binding on all parties and all persons claiming under them until January 1, 2014, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of a majority of the then unit owners it is agreed to change said covenants in whole or in part. This Declaration and the covenants contained herein shall inure to the benefit of the Declarant, its successors or assigns, the unit owners, their successors or assigns, the Association and its successors or assigns.

7. Violation. If the Declarant, unit owner, or the Association, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants or restrictions herein, it shall be lawful for any other person or persons owning any other lots in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction and either to prevent them from so doing or to recover damages or the dues for such violation.

8. Priority. This Declaration will supersede and take precedent over any provision in the Articles of Incorporation or Bylaws of the Association now or hereafter. In the event of any conflict or apparent conflict with this Declaration and Article or Bylaws provision, the conflicting provision in the Articles or Bylaws shall be disregarded.

9. Enforcement. The Association, or unit owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any unit owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10. Plural and Gender. Whenever the context so permits or requires, the singular shall include the plural and plural the singular, and the use of any gender shall include all genders.

11. Severability. The invalidity of any covenant, restriction, agreement, undertaking, or other provision of any Condominium Documents shall not affect the validity of the remaining portions thereof.

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



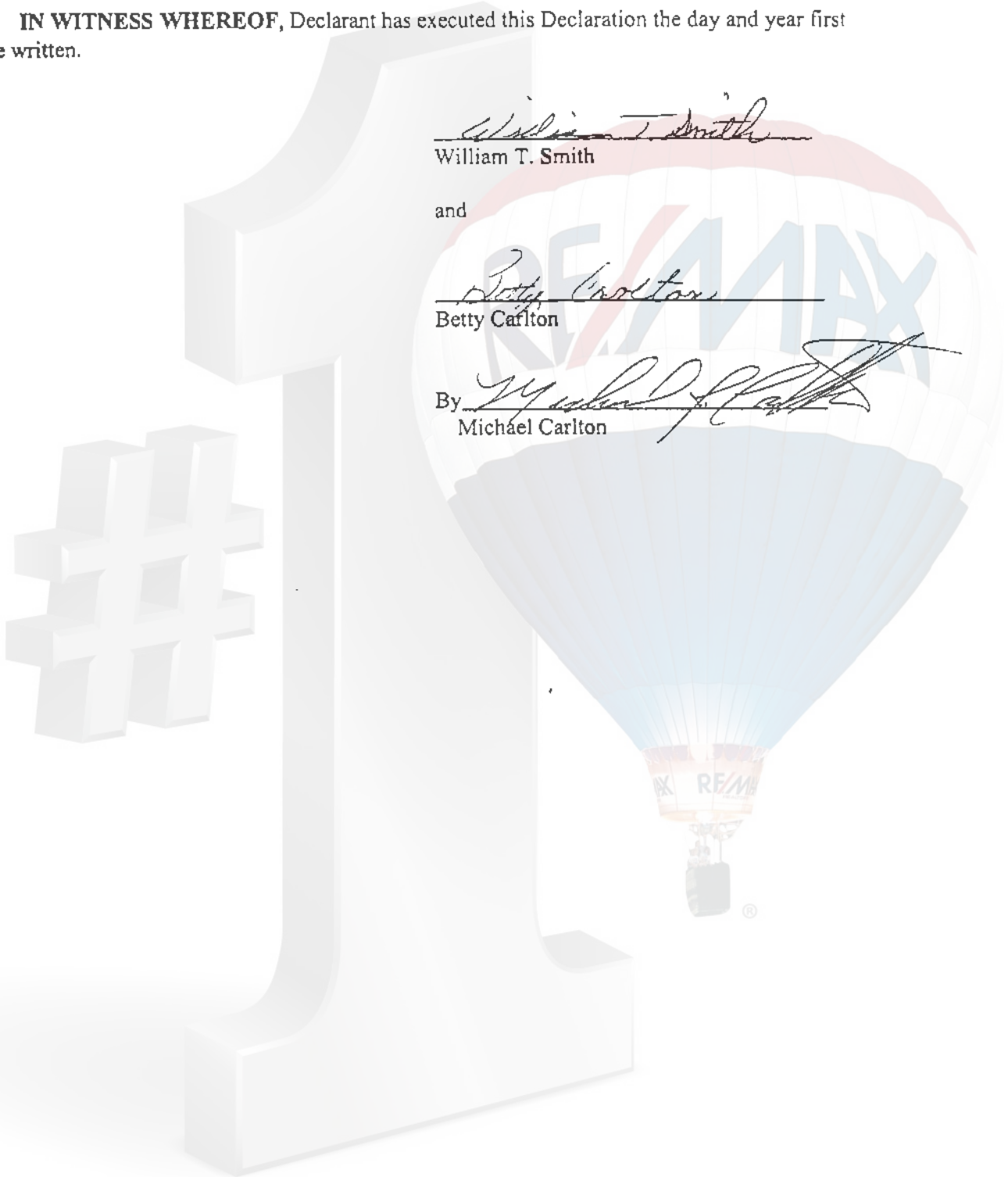
IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

William T. Smith  
William T. Smith

and

Betty Carlton  
Betty Carlton

By Michael Carlton  
Michael Carlton





"Exhibit A"

**MALIBU CONDOMINIUMS  
ON LOT 2 OF THE  
PLAT OF  
COUNTY CLUB ESTATES  
OKOBOJI, IOWA**

**DESCRIPTION OF AREA PLATTED**

A PART OF LOT 23, BLOCK A, OF THE SUBDIVISION OF BLOCKS I, L, J, AND K, BECK'S REPLAT OF OKOBOJI CITY, IN THE CITY OF OKOBOJI, DICKINSON COUNTY, IOWA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 23, BLOCK A SOUTH  $89^{\circ}53.7'$  WEST 25.00 FEET FROM THE NORTHEAST CORNER OF SAID LOT 23; THENCE SOUTH  $89^{\circ}53.7'$  WEST 121.33 FEET ALONG THE NORTH LINE OF SAID LOT 23; THENCE SOUTH  $0^{\circ}11.0'$  WEST 466.67 FEET; THENCE NORTH  $89^{\circ}53.8'$  EAST 121.33 FEET; THENCE NORTH  $0^{\circ}11.0'$  EAST 466.67 FEET TO THE POINT OF BEGINNING CONTAINING 1.30 ACRES.

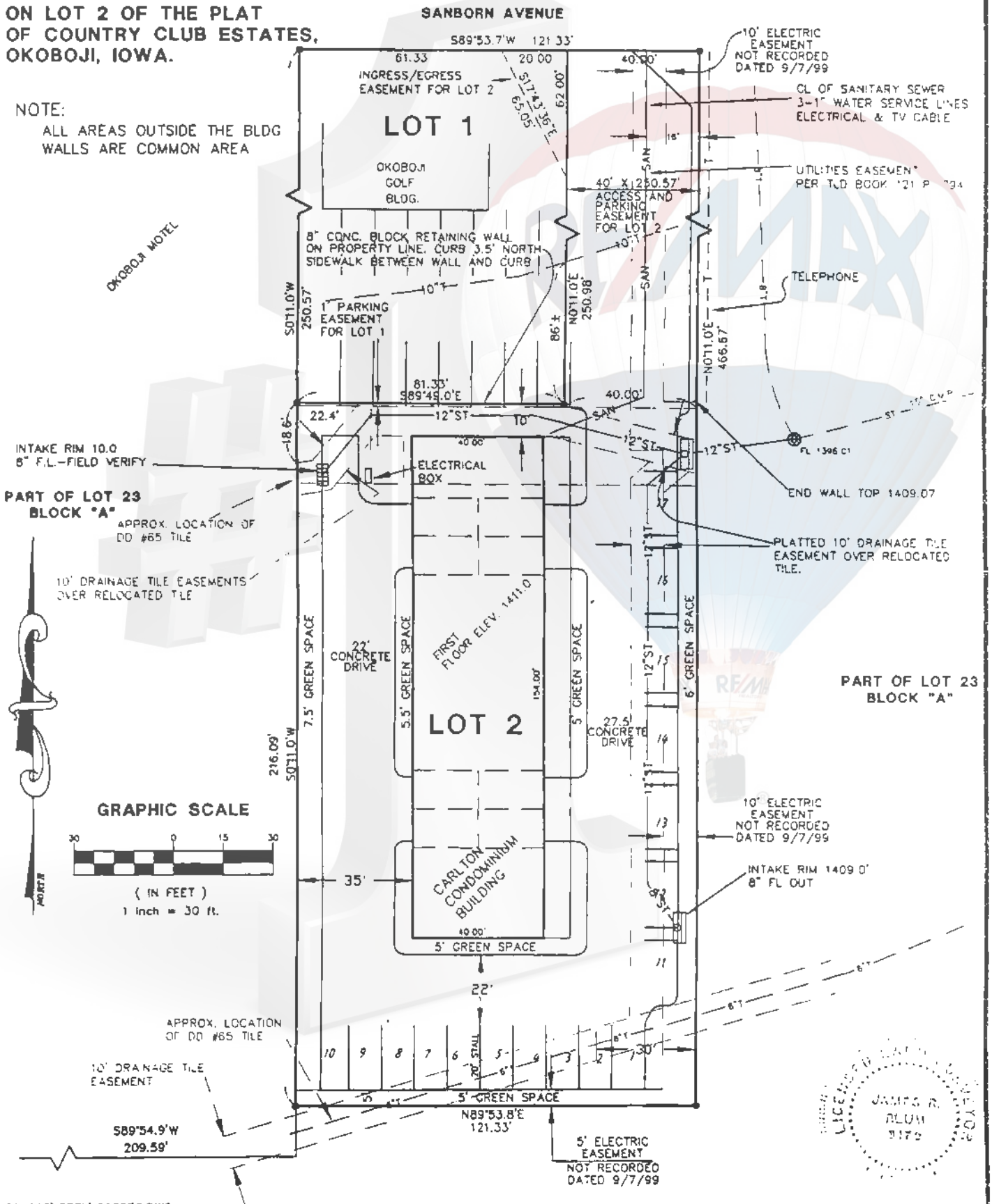
Exhibit B

Jacobson-Westergard & ASSOC., INC. 105 S 8th ESTHERVILLE, IOWA 51334 (712) 362-2647

**SITE PLAN OF  
MALIBU CONDOMINIUMS  
ON LOT 2 OF THE PLAT  
OF COUNTRY CLUB ESTATES,  
OKOBOJI, IOWA.**

SHEET 1 OF 3

NOTE:  
ALL AREAS OUTSIDE THE BLDG  
WALLS ARE COMMON AREA



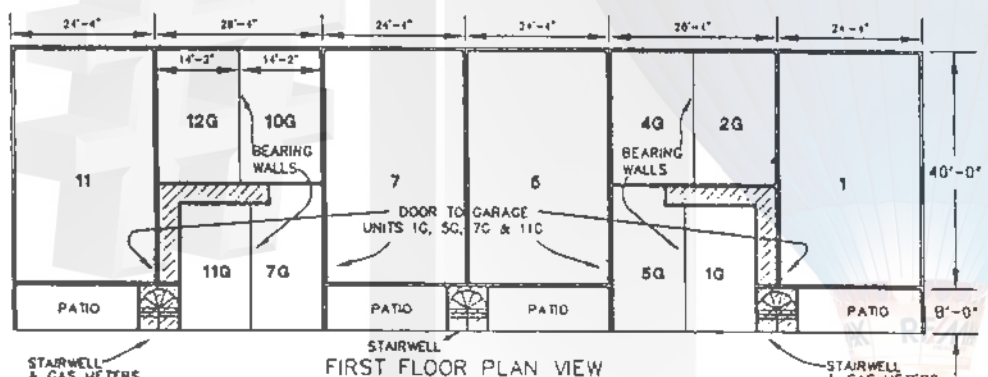
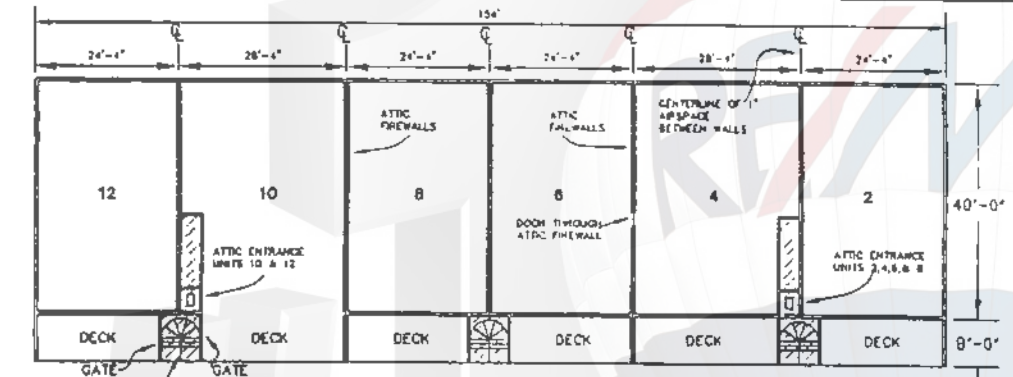
S99085\PREL\99085C.DWG

Drawn	Checked By	CLIENT: W. T. SMITH AND MICHAEL J. & BETTY J. CARLTON 56 HILL DRIVE MILFORD, IOWA 51351	I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa Signed <i>James R. Blum</i> 11-4-99 Date James R. Blum, L.S., License renewal date 12/31/2000	
Date 11-4-99	By C.J.T.			J.R.B.
Survey Notes	Project No.			
Book	Page			S99085

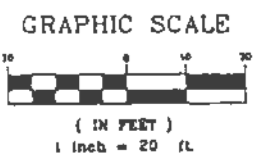


*Exhibit C*

Jacobson-Westergard & ASSOC., INC. 105 S 8th ESTHERVILLE, IOWA 51334 (712) 362-2647



LIMITED COMMON AREAS



WEST ELEVATION

MALIBU CONDOMINIUM  
ON LOT 2, COUNTRY CLUB  
ESTATES, OKOBOJI, IOWA



SHEET 2 OF 3

R14/PROJ/599085/PLANS/ELEV.dwg

Drawn	Checked By	CLIENT: W. T. SMITH AND MICHAEL J. & BETTY J. CARLTON 58 HILL DRIVE MILFORD, IOWA 51351	I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa. Signed <i>James R. Blum</i> 11-4-99 Date 12/31/2000	
Date 10-28-99	By C.J.T.			J.R.B.
Survey Notes	Project No.			899086
Book	Page			

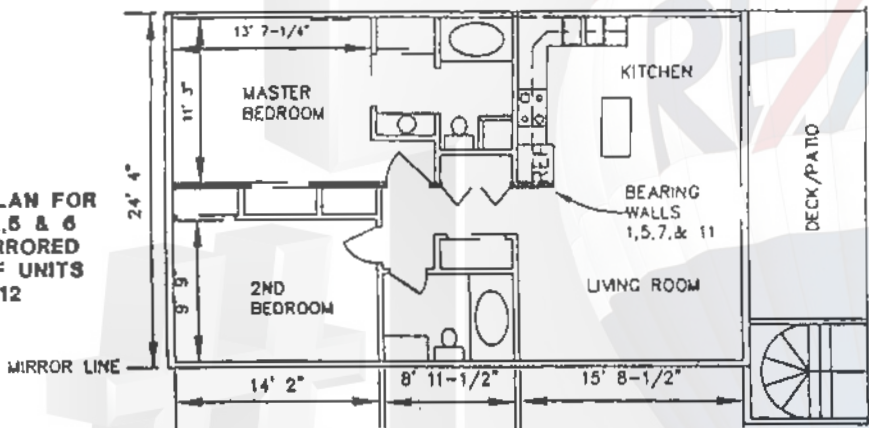
Exhibit C

Jacobson-Westergard & ASSOC., INC. 105 S 6th ESTHERVILLE, IOWA 51334 (712) 362-2647

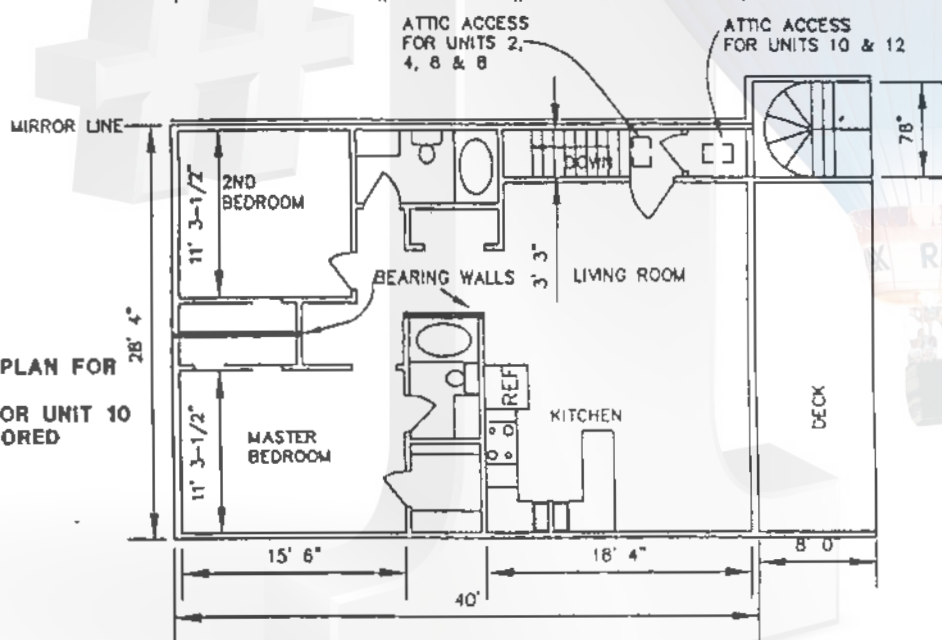
MALIBU CONDOMINIUMS  
TYPICAL UNIT FLOOR PLANS

NOTES: ALL EXTERIOR WALL ARE BEARING WALLS  
THERE ARE NO UNITS 3 & 9, THEY ARE GARAGE UNITS

FLOOR PLAN FOR  
UNITS 1, 2, 5 & 6  
ALSO MIRRORED  
IMAGE OF UNITS  
7, 8, 11, & 12



FLOOR PLAN FOR  
UNIT 4  
PLAN FOR UNIT 10  
IS MIRRORED



GRAPHIC SCALE



( IN FEET )  
1 inch = 10 ft

R14/PROJ/S99085/PLANS/ELEV.dwg

SHEET 3 OF 3



Drawn	Checked By	CLIENT: W. T. SMITH AND MICHAEL J. & BETTY J. CARLTON 56 HILL DRIVE MILFORD, IOWA 51351	I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa. Signed <i>James R. Blum</i> 11-4-99 Date James R. Blum, L.S., Lic. No. 9179 License renewal date 12/31/2000	
Date 10-28-99	By C.J.T.			J.R.B.
Survey Notes	Project No.			S99085
Book	Page			

121 52



INSTR. NO. **005194**

EX. DATE

00 SEP 22 AM 10:37

JAN 1 1999  
EXPIRES JAN 1 2000

**SUPPLEMENTAL DECLARATION OF  
SUBMISSION OF PROPERTY TO  
HORIZONTAL PROPERTY REGIME FOR  
CONDOMINIUM OWNERSHIP OF  
PREMISES AT MALIBU CONDOMINIUM**

This Supplemental Declaration of Submission of Property to Horizontal <sup>21<sup>st</sup></sup>

Property Regime for Condominium Ownership of Premises at Malibu Condominium is made and executed at Spirit Lake, the 21<sup>st</sup> day of ~~August~~ <sup>September</sup>, 2000, by William T. Smith, a single person, and Michael Carlton and Betty Carlton, husband and wife, as Declarants and pursuant to a proper resolution passed by the Property Owner's Association according to the provisions of the Horizontal Property Act, Chapter 499B, Code of Iowa.

This Supplement will add the following language to Article I, Section 8, Garage, of the original Declaration filed for record November 19, 1999, at 4:03 p.m. in Book 14, Page 27, Miscellaneous Records, Office of the Dickinson County Recorder.

**GARAGES**

The Declarants have, pursuant to Article VII and pursuant to Article I(8), constructed four additional garages in the Southeast corner of the real estate subject to the Declaration of Horizontal Property Regime for Condominium Ownership of Premises at Malibu Condominium. The garages constructed are shown in Supplemental Site Plan of Malibu Condominiums as prepared by James R. Blum, L.S., a duly licensed land surveyor under the laws of the State of Iowa, a copy of said Supplemental Site Plan is attached hereto as Exhibit "A" and by this reference made a part hereof. Those garages are designated at Garage 1, Garage 2, Garage 3 and Garage 4.

The Declarants do hereby publish and declare that the garages described above and as set forth in the Supplemental Site Plan as shown on Exhibit "A" is held and shall be held and conveyed subject to the covenants, conditions, uses, limitations and obligations all as set forth in the Declaration of Submission of Property to Horizontal

15 469

10:37 AM  
Sept. 22, 00

Property Regime for Condominium Ownership of Premises at Malibu Condominiums filed for record on November 19, 1999, at 4:03 p.m. in Book 14 at Page 27, Miscellaneous Records, Office of the Dickinson County Recorder.

These garages are considered to be a limited common element pursuant to that Declaration. The Supplemental Site Plan attached as Exhibit "A" meets the requirements of §499.4, Code of Iowa, by demonstrating the following: the number identifying each specific garage unit from any other garage unit is shown on the site plan; the garages are designated as numbers 1, 2, 3 and 4; the approximate area of each unit is 12 x 22; the location of each garage is shown on the Supplemental Site Plan which is attached as Exhibit "A".

#### RESTRICTIONS ON GARAGE OWNERSHIP

Garage 1, Garage 2, Garage 3 and Garage 4 as shown on the Supplemental Site Plan attached hereto as Exhibit "A" may only be purchased and owned by a person with an ownership interest in a "unit" in the project. If an owner of a garage unit sells his condominium unit and the new buyer does not want to own a detached garage unit, then the garage owner shall have one year to sell to another condominium unit owner. If no purchaser can be found in one year, the Condominium Association shall purchase the garage unit at market value as determined by an agreed upon independent certified appraiser.

#### TITLE TO THE COMMON ELEMENTS

An owner of a "unit" who purchases a detached garage identified as Garage 1, Garage 2, Garage 3, or Garage 4, and who has an ownership interest in said garage does not acquire any additional percentage of ownership in Common Elements by purchasing said garage. In other words, each unit owner will have an undivided 1/10th interest in the general common elements and by acquiring an additional detached garage does not acquire any additional interest in the general Common Elements and will continue to have a 1/10th interest in the general Common Elements.

This Supplemental Declaration shall not affect the number of ownership units assigned to the units previously submitted to the Regime.

TAXES ON GARAGE UNITS

An owner of a "unit" who purchases a garage shall be responsible for taxes and special assessments levied by a governmental body on that garage.

OTHER PROVISIONS

In all other respects, the Declaration of Property to Horizontal Property Regime as filed for record on November 19, 1999, at 4:03 p.m. at Book 14, Page 27, Office of the Recorder is ratified and affirmed and remains in full force and effect. Likewise the Amended Declaration of Property to Horizontal Property Regime as filed on January 19, 2000, at 12:22 p.m. in Miscellaneous Records Book 14 at Page 451, Office of the Dickinson County Recorder shall remain in full force and effect.

IN WITNESS WHEREOF Michael J. Carlton and Betty Carlton, husband and wife, and William T. Smith, a single person.

Michael J. Carlton  
MICHAEL J. CARLTON

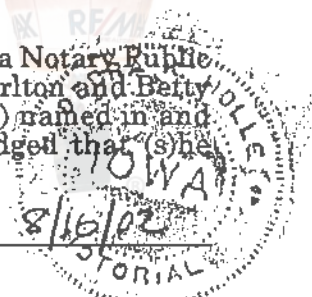
Betty Carlton  
BETTY CARLTON

William T. Smith  
WILLIAM T. SMITH

STATE OF IOWA, COUNTY OF Iowa } SS

On this 21<sup>st</sup> day of September, 2000, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Michael J. Carlton and Betty Carlton, husband and wife, to me known to be the identical person(s) named in and who executed the within and foregoing instrument and acknowledged that (s)he executed the same as his/her voluntary act and deed.

Debra K. Halle  
Notary Public - State of Iowa



STATE OF IOWA, COUNTY OF Iowa } SS

On this 21<sup>st</sup> day of September, 2000, before me, the undersigned, a Notary Public in and for said County and State, personally appeared William T. Smith, a single person, to me known to be the identical person(s) named in and who executed the within and foregoing instrument and acknowledged that (s)he executed the same as his/her voluntary act and deed.

Debra K. Halle  
Notary Public - State of Iowa

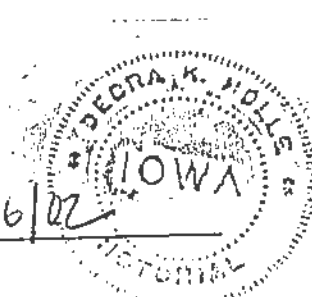


EXHIBIT "A"

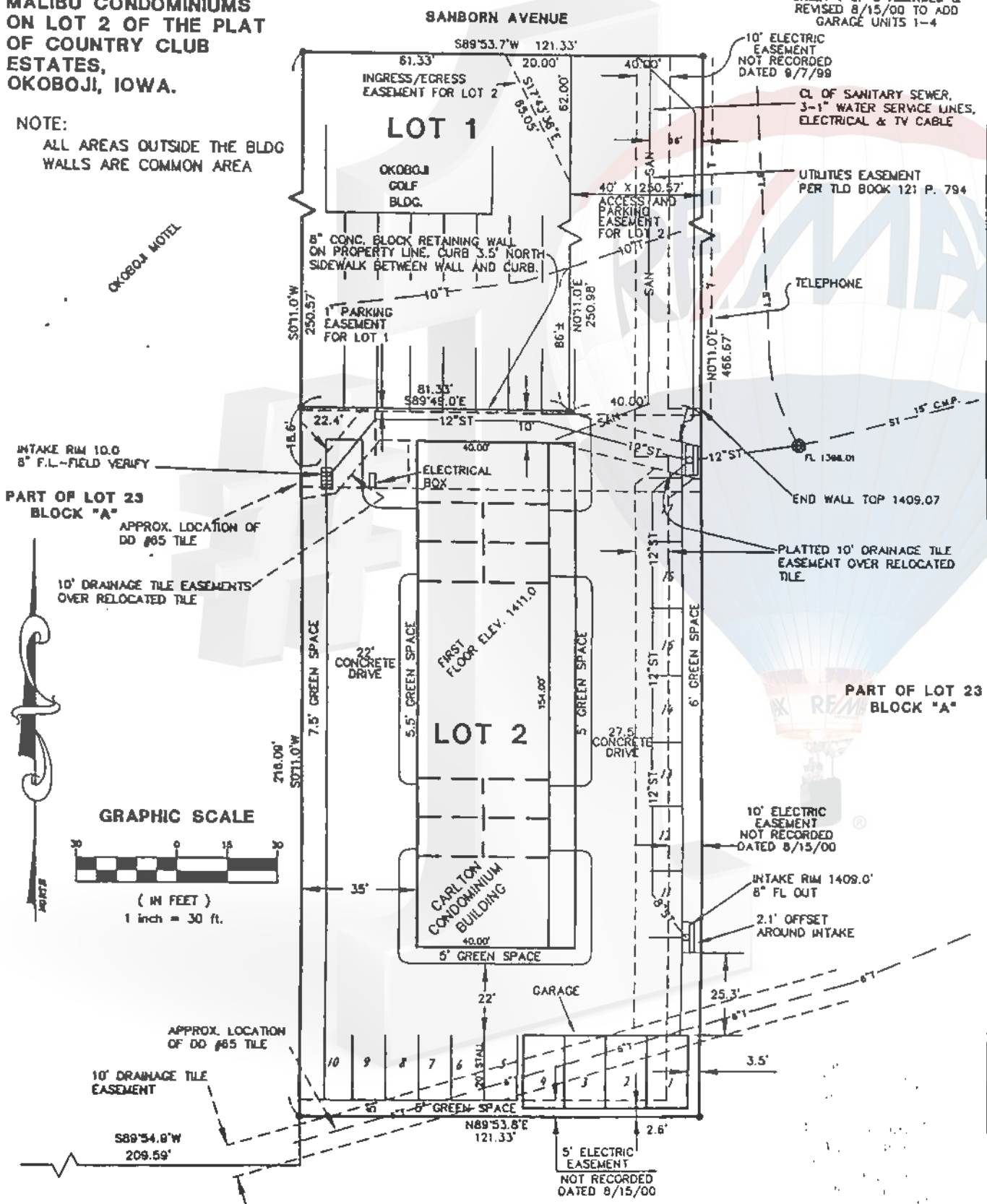
Jacobson-Westergard & ASSOC., INC. 105 S 6th ESTHERVILLE, IOWA 51334 (712) 362-2647

AMENDED  
SITE PLAN OF  
MALIBU CONDOMINIUMS  
ON LOT 2 OF THE PLAT  
OF COUNTRY CLUB  
ESTATES,  
OKOBOJI, IOWA.

SHEET 1 OF 3

SHEET 1 OF 3 AMENDED &  
REVISED 8/15/00 TO ADD  
GARAGE UNITS 1-4

NOTE:  
ALL AREAS OUTSIDE THE BLDG  
WALLS ARE COMMON AREA



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Drawn	Checked By	CLIENT: W. T. SMITH AND MICHAEL J. & BETTY J. CARLTON 56 HILL DRIVE MILFORD, IOWA 51351
Date 8-15-00 By C.J.T.	J.R.B.	
Survey Notes	Project No.	
Book	Page	
		899085

I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa.

Signed *James R. Blum* Date 8-15-00  
James R. Blum, L.S. Lic. No. 9179  
License renewal date 12/31/2000



*Exhibit D*  
BYLAWS OF

MALIBU CONDOMINIUM

These are the Bylaws of MALIBU CONDOMINIUM OWNERS ASSOCIATION (hereinafter referred to as "Association"), an organization created for the purpose of administering Malibu Condominiums, a horizontal property regime (condominium) established pursuant to Chapter 499B of the 1999 Code of Iowa, as amended, as filed by William T. Smith, Michael Carlton and Betty Carlton ("Declarant or Developer"), located on certain portions of the City of Okoboji, Dickinson County, Iowa (hereinafter sometimes referred to as the "Regime"), to-wit:

Please see Exhibit A attached hereto for legal description.

**L. MEMBERS AND VOTING RIGHTS**

1. The owners of each condominium unit shall constitute the members of the association and membership shall automatically cease upon termination of all interests which constitute a person an owner. Developer shall be and have the rights of members with respect to unsold units. Whenever only one spouse is a record titleholder, the other spouse shall be considered for the purposes of membership an owner and shall be bound by the provisions of all condominium documents including the Declaration.

2. An owner of record shall be recognized as a member upon notification to the Association without further action for so long as they hold an ownership interest. If ownership is acquired but not of record, or if acquired other than by way of conveyance or other formal instrument of transfer (such as by death, judicial act or dissolution), the person acquiring or succeeding to ownership shall present the Board of Directors of the Association evidence satisfactory to it of facts evidencing lawful ownership status prior to exercise of any rights of membership in the Association. (Failure to provide such evidence shall not, however, relieve an owner of its ownership obligations.) A fiduciary or other official acting in the representative capacity shall exercise all membership rights and privileges of the owner which they represent.

3. If more than one person is owner of record of the same unit, all such owners shall constitute one member but each remains jointly and severally liable for all membership obligations. In such cases, or if more than one fiduciary or other official is acting in the premises, the votes entitled to be cast by the owners of that unit shall be cast by the person named for that purpose on a certificate signed by all such owners or fiduciaries or other

officials and filed with the Board of Directors and such person shall be deemed to hold an ownership interest to such unit for purposes of voting and determining the representation of such ownership interest at any meeting or for purposes otherwise provided herein. If such certificate is not executed and filed with the Board of Directors, such membership shall not be in good standing and the votes for that unit shall not be considered in considering a quorum or a vote or for any other purposes until this Bylaw is complied with.

4. The owners of each unit shall be entitled to one vote on all matters to be determined by the members of the Association either as such or as units or as contemplated by Chapter 499B of the 1999 Code of Iowa, as amended, as their ownership interest determined by the Declaration, including any supplements or amendments thereto, submitting the property to the regime.

## II. MEMBER'S MEETINGS

1. The annual and any special meetings shall be held at a time and at a place within Dickinson County, Iowa, chosen by the Board of Directors and all such meetings, annual or special, shall be held at such particular time and place as is set forth in the notice thereof.

2. A special meeting shall be held whenever called by the President or, in the President's absence or disability, the Vice President, or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from members entitled to cast one-fourth of the votes of the entire membership.

3. The Secretary or the Secretary's designate shall give written notice to each member of the annual meeting. The person or persons calling a special meeting pursuant to paragraph 2 hereof shall give like written notice of such special meeting. All notices shall set forth the time and place and purpose or purposes for which the meeting will be held. No action shall be taken at a special meeting which is not directly related to the purpose or purposes stated in the notice of meeting for which such meeting is held.

4. Notice of members' meeting shall be given by mailing or delivering same not less than ten (10), nor more than fifty (50), days prior to the date of the meeting. Notice shall be deemed to be given if mailed by first class mail to the member at the address of the member's unit within the Regime, unless at the time of giving such notice they have given written direction, delivered to an officer or member of the Board of Directors specifying a different mailing address to be carried on the rolls of the Association. If more than one person is the owner of record of the same unit or if more than one fiduciary or one official is acting in the premises, those shall be duly given when given in accordance with this paragraph to the person named in the certificate filed with the Board of Directors in accordance with paragraph 3 of Article I. Notice of any meeting may be waived in writing by the person entitled thereto.

5. A quorum at a members' meeting shall consist of the presence of members or other members in person or by proxy, holding a majority of the ownership units outstanding. The acts carried or approved by a vote of a majority of the ownership units represented at a meeting at which a quorum is present shall constitute the acts of the members (all members) unless a different rule is provided

herein or by Declaration or other agreement to which the Association is a party. The President, or, in the President's absence or disability, the Vice President shall preside at each members' meeting; if neither the President nor the Vice President is able to preside, a chairman shall be elected by the members present at such meeting. If the required quorum is not forthcoming at any meeting and the meeting is called subject to the notice requirements herein, the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided such subsequent meeting shall be held within sixty (60) days following such preceding meeting.

6. At any membership meeting, the presence of a person holding an ownership interest and the exercise of the voting rights of an owner or person entitled to cast votes, by proxy, shall be permitted and recognized provided such proxy must be in writing and signed by the person holding ownership units or entitled to cast votes and shall set forth the unit with respect to which such rights are pertinent, and the period which the proxy is to be in force and effect. Decision of the Board of Directors as to the sufficiency of any proxy for recognition shall be final and not subject to appeal of the members.

7. At all meetings, the order of business shall consist of the following:

- (a) Election of chairman, if required.
- (b) Calling roll and certification of proxies.
- (c) Proof of notice of meeting or waiver of notice.
- (d) Reading and disposal of any unapproved minutes.
- (e) Reports of officers, if applicable.
- (f) Reports of committees, if applicable.
- (g) Election of Directors, if applicable.
- (h) Unfinished business.
- (i) New business.
- (j) Adjournment.

### **III. BOARD OF DIRECTORS**

1. The affairs of the Association shall be managed by an initial Board of three (3) Directors. The initial Board shall consist of such persons as the Declarant in the Declaration of Condominium may appoint and need not be members of the Association. The initial Board shall serve until the first annual members' meeting. From and after the first annual meeting of members, a Board of five (5) shall be selected from the members of the Association. An officer or designated agent of the association shall qualify to serve as a Director. Until the occurrence of one of the following, all rights, duties, and functions of the Board of Directors shall, at Declarant's option, be exercised by Declarant:

(a) December 31, 2000

(b) The completion and sale of eighty-one percent (81%) of all units in the project proposed by the Declarant to be constructed on the Regime.

(c) The receipt by the Association of written notice signed by the Declarant turning over the rights, duties, and functions of the Board of Directors to the Board.

Thus, until such time, all management duties and responsibilities are vested in the Declarant. Until the Board of Directors receives its full rights, duties, and functions as aforesaid, it will serve as an advisory committee to the Declarant.

2. At the first annual members' meeting and at each meeting thereafter, five (5) Directors shall be elected and the term of office of each Director shall extend until the next annual meeting of the members and thereafter until their successor is duly elected and qualified or until they are removed in the manner as elsewhere provided.

3. Each Director shall be elected by ballot (unless dispensed by unanimous consent) and by a plurality of the votes cast at the annual meeting of the members of the Association. Each person entitled to vote shall be entitled to vote for as many nominees as there are vacancies to be filled by election and each member shall be elected by a separate ballot unless provided otherwise by unanimous consent of the members.

4. Except as provided in paragraph 5 of this Article, vacancies on the Board of Directors may be filled until the date of the next annual meeting by a vote of a majority of the Directors remaining in office regardless of whether those remaining constitute a quorum.

5. The initial Directors shall be subject to removal only by the Declarant. Thereafter, a Director may be removed by concurrence of seventy-five percent (75%) of the members of the Association at a special meeting called for that purpose. The vacancy on the Board of Directors so created shall be filled by the persons entitled to vote at the same meeting.

6. The initial Directors shall serve without compensation; thereafter, Directors shall receive such compensation and expenses as is approved by the members entitled to vote at any annual or special meeting.

7. An organizational meeting of a newly elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. No further notice of the organizational meeting shall be necessary.

8. A majority of the Board may, by resolution, set the time and place for regular meetings of the Board and no notice thereof shall be required until such resolution is modified or rescinded. Special meetings of the Directors may be called by the President, Vice President, or any two Directors provided not less than two (2) days' notice shall be given, personally or by mail, telephone, or telegraph, which notice shall state the time, place and purpose of the meeting.

9. A quorum at a Directors' meeting shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting duly called at which a quorum is present shall constitute the acts of the entire Board of Directors, except where approval by a greater number of Directors is required by the Declaration or these Bylaws.



10. The presiding officer of a Directors meeting shall be the President, or in the President's absence, the Vice President.

11. The Board of Directors, by resolution by all members thereof, may designate from among its members such committees as it deems advisable and by resolution provide the extent and manner to which the same may have and exercise the authority of the Board, including designation of an Architectural Control Committee which shall have the duties and functions as set forth in the Declaration.

#### **IV. POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

All of the powers and duties of the Association shall be exercised by the Board of Directors, except as expressly limited in these Bylaws, including those existing under the common law and statutes, and the documents establishing the Regime. Such powers and duties of the Directors, which initially shall be exercised by the Declarant, shall be exercised in accordance with the provisions of the Declaration of Condominium which governs the use of the Regime, and shall include in addition to those elsewhere provided for but shall not be limited to the following:

1. To make and collect assessments against members for all common expenses.
2. To use the proceeds of assessment in the exercise of its powers and duties.
3. The maintenance, repair, replacement, and operation of the Regime property including all common areas, elements, and facilities, and units as applicable, and making or providing for payment for all such work and approving or delegating to the officers authority to approve vouchers therefor.
4. The reconstruction, repair, restoration, or rebuilding of the Regime property and of any units as applicable after casualty; construction of new improvements or alterations if approved; to make and amend regulations respecting the use and occupancy of the property in the Regime and to permit or forbid an action or conduct within the discretion committed to them in the Declaration, Bylaws, and Regulations of the members.
5. To enforce by legal means the provisions of the Horizontal Property Act, Bylaws of the Association, the Declaration, and the regulations for the use of the property in the Regime; and to take legal action in the name of the Association and on behalf of its members.
6. To contract for management of the Regime and to delegate to such contractor any or all powers and duties of the Association except such as are specifically required by the Declaration, Bylaws or Resolutions of the members to have approval of the Board of Directors or the membership of the Association.
7. To employ, designate, and remove personnel to perform services required for proper operation of the Regime, including employment of a professional manager.

8. To carry insurance on the property subject to the Regime and insurance for the protection of unit owners, occupants and the Association.

9. To pay the cost of all power, water, sewer, and other utility or other services rendered to the Regime and not billed directly to the owners of the individual units.

10. To conduct all votes or determinations of the members other than at a membership meeting.

11. To borrow money from any bank, lending institution or agency for the use and benefit of the Association and to secure the loan or loans by pledge of the assets of the Association, and from time to time to renew such loan and give additional security.

12. To do such other acts as are necessary and proper to effect the purpose of the Regime as stated in the Declaration and these Bylaws provided such acts are not otherwise prohibited.

#### V. OFFICERS

1. The officers of the Association shall be the President, who shall be a Director, a Vice President, who shall be a Director, and a Treasurer and Secretary which shall be filled by one person, all such officers shall be elected annually by the Board of Directors and may be peremptorily removed and replaced by the vote of two-thirds of the Directors at any meeting. The initial officers and their successors until the first annual meeting shall be chosen by the initial Board of Directors and shall serve until the first annual membership meeting. The Board of Directors may from time to time create and fill other offices and designate the powers and duties thereof. Each officer shall have the powers and duties usually vested in such office, and such authority as is committed to the office by the Bylaws or by specific grant from the Board, but subject at all times to the provisions of the Bylaws and to the control of the Board of Directors.

2. The President shall be the chief executive officer of the Association. The President shall preside at all membership meetings and meetings of the Board of Directors and shall have the power to appoint committees from among the members to assist in the conduct of the affairs of the Association and the Regime.

3. The Vice President shall preside over the membership meetings in the absence or disability of the President, and shall otherwise exercise the powers and duties of the President in the event of the absence or disability of the President and shall generally assist the President and exercise such other powers and duties as are prescribed by the Directors.

4. The Secretary and Treasurer, which shall constitute one office, shall keep the minutes of all proceedings of membership meetings and Directors' meetings and shall have custody and control of the Minute Book of the Association and shall keep or be in charge and control of the records of the Association and additionally as Treasurer have control of the funds and other property of the Association and shall keep the financial books and records thereof.

5. The compensation of all officers and employees shall be fixed by the Directors. This

provision shall not preclude the Board of Directors from employing a Director as an employee, nor the contracting with a Director for management of the Regime.

6. All transfers, conveyances, leases, mortgages or assignments of real estate or of any interest thereon shall be executed by any two of the following officers: President or Vice President and Secretary or Treasurer. All transfers, conveyances, leases or encumbrances of personal property of any interest therein shall be executed by any officer of the association or any agent authorized by the Board of Directors. All judgments or other liens shall be satisfied, discharged, released or assigned by any officer of the association.

#### VI. FISCAL MANAGEMENT

1. The Board of Directors, except as expressly limited by these Bylaws hereof, shall adopt a budget for each fiscal year (which shall be the same as the Association's fiscal year for Income Tax purposes) which shall include the estimated funds required to defray the common expenses and to provide and maintain funds for the following accounting categories according to good accounting practices:

(a) Current expenses which shall include all funds and expenditures to be made for the year for which the funds are budgeted, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves or to additional improvements. The balance of this fund at the end of each year shall be applied to reduce the assessments for current expense for the succeeding year.

(b) Reserve for deferred maintenance, which shall include funds for maintenance items which occur less frequently than annually.

(c) Reserve for replacement which shall include funds for repair or replacement required because of damage, destruction, depreciation or obsolescence.

2. The Board of Directors shall assess against each completed unit which has been sold by Declarant, and the owners thereof only shall be liable for a share of the items in the budget adopted pursuant to paragraph 1 which bears the same ratio to the total budget as the owner's interest bears to the total number of ownership interests in the Regime. Such share shall be assessed for the fiscal year for which the budget was prepared annually in advance and notice of such assessments shall be mailed or delivered not less than thirty (30) days prior to the first day of such fiscal year. Such assessment shall be due and payable from the respective unit owner or owners in twelve (12) equal installments, each installment being due and payable the first day of each calendar month, which day falls within such fiscal year. In the event notice of such assessment is not freely given, the amount of such assessment will not change but the due date for each installment which would otherwise be due and payable less than thirty (30) days from the giving of such notice shall be due and payable on the due date of the first installment which is due not less than thirty (30) days from the date of such notice mailed or delivered. In the event the annual assessment proves to be insufficient, the budget and assessments therefor, may be amended at any time by the Board of Directors. Such amended budget may be adopted at a special members' meeting upon an affirmative vote of a

majority of the owners' interest at such meeting. The additional amount so budgeted shall be assessed to each unit in the same manner as assessments for the annual budget and shall be prorated among the remaining installments due and payable in such year.

3. Assessments for common expenses for emergencies and extraordinary expenditures, which cannot be paid from the annual assessments for common expenses and the maintenance of funds shall be made only after notice of the need thereof to the unit owners concerned. After such notice and upon approval in writing by persons entitled to cast more than one-half of the votes in the Regime, the assessments shall become effective, and shall be due in such manner as the Board of Directors may require after thirty (30) days' notice thereof. In the event any expenditure for repair or replacement of any unit or common elements cannot be paid from annual assessments but can be at least ninety percent (90%) paid from insurance proceeds therefor, such expenditures may be made upon approval of the Board of Directors without approval of the members and an amended budget and assessment may be made therefore if necessary.

4. The Declarant shall not be liable for assessment on uncompleted and unsold units or unimproved property. The Declarant shall be liable for any portion of current expenses under paragraph 1(a) hereof that are not assessed against such units.

5. If an owner shall be in default of a payment of an installment upon an assessment, the Board of Directors may accelerate the remaining installments of the assessment upon notice thereof to such owner, and thereupon, the unpaid balance of the assessment shall become due upon the date stated in the notice, but not less than ten (10) days after delivery thereof to such owner either personally or by registered or certified mail. Interest shall be computed and due on balances due under this paragraph but unpaid on such due date at the maximum rate of interest allowable by law from the date such balance becomes due and payable, such interest shall be in addition to any other payments for which said owner is liable.

6. The holder of a mortgage on any unit, upon its filing written request with the Association, shall be given written notice by the Association of any default in the performance of said mortgagor's obligations under these Bylaws, the Declaration or other condominium documents which is not cured within thirty (30) days.

7. All sums assessed but unpaid including, but not limited to, interest with respect to a unit or against a unit owner, shall constitute a lien on such unit prior to all other liens except:

(a) Tax liens on the unit in favor of any assessing unit and special district, and

(b) All sums unpaid on the first mortgage of record.

Said lien may be foreclosed by the Association in the manner and with the consequences provided in Section 499B.17 of the 1999 Code of Iowa, as amended, in which event the owner shall be required to pay a reasonable rental for the unit. In the event the Association forecloses on any lien, the owner or owners of such unit, by their membership in this Association, specifically waive any rights to delay or prevent foreclosure which they may have against the Association by reason of the



**Homestead Exemption.** The Association may sue for money judgment for unpaid assessments and interest or sums due without foreclosing or waiving any lien which it holds.

8. If a mortgagee or purchaser of a unit obtains title as a result of foreclosure of a first mortgage, this mortgagee or purchaser, its successors or assigns, shall not be liable for the assessments chargeable to such unit due prior to the acquisition of title and such unpaid assessments shall thereafter be deemed to be common expenses collectible from all unit owners including the mortgagee or purchaser, its successors and assigns. The owner of a unit pursuant to a voluntary conveyance or by inheritance or devise shall be jointly and severally liable with the grantor or prior owner for all unpaid assessments against the grantor or prior owner, but without prejudice to the right of such grantee or devisee to recover from the grantor the amounts paid therefor. The grantee or other successor in interest of an individual subject to a levy of an assessment on account of default shall be liable for any such special assessment.

9. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which the moneys of the Association shall be deposited. Withdrawal of moneys from the accounts shall only be by checks signed by such persons as are authorized by the Directors.

#### VII. REFERENDUM

Any vote or determination required or permitted to be made by the members of the Association and not required by law or any of the condominium documents to be made at a meeting of the members may be taken or made pursuant to a referendum ballot. Such ballot may be initiated by one-third of the Board of Directors, or upon the written petition of members owning collectively 50% of the total membership and voting units. If such referendum is initiated, the Secretary shall forthwith prepare and mail to each member a ballot returnable in not less than nor more than thirty days from the date of mailing. If prior or subsequent to such petition, but not subsequent to such tally, a special membership meeting has been called to consider the same subject matter, the special meeting shall prevail and the referendum vote shall not be tallied.

#### VIII. AMENDMENT

1. These Bylaws may be Amended, altered, repealed, or new Bylaws adopted by the members at a regular or special meeting of the members upon the affirmative vote of 66-2/3% of all votes outstanding; provided, however, no amendment effecting a substantial change in these Bylaws shall Affect the rights of the holder of any mortgage recorded prior to recordation of such amendment who does not join in the execution thereof and who does not approve said amendment in writing and, provided further, that no amendment shall affect the right of the Declarant to exercise management and control of the Association as set forth in Article III hereof.

2. No amendment may be adopted at either a special or regular membership meeting not included in the notice thereof, except if notice of the proposed amendment has been given, a definite amendment relative to the same subject may be adopted by those present, in person or by proxy and possession the requisite percentage of membership and voting interests, provided further no vote by

proxy may be counted unless the proxy expressly provides for such contingency. Notice referred to herein shall be given in the manner prescribed in Article II, paragraph 3 of these Bylaws and shall be given to the persons described in Article II, paragraph 4 and the holder of any mortgage of record which has notified the Association of its interests not more than fifty (50) days nor less than thirty (30) days before the date such meeting will be held. More than one proposed amendment may be included in the notice of a meeting.

3. To the extent provided by Section 499B. 14 of the 1999 Code of Iowa, no modification nor amendment to these Bylaws shall be effective unless set forth in an amendment to the Declaration of Condominium, executed and recorded in the manner set forth in the Declaration and an amendment to these Bylaws shall constitute an amendment to the Declaration as provided for by law. Upon such recording said amendment shall be effective against all persons having an interest in a unit or the Regime regardless of whether said person had such interest at the time said amendment was adopted.

#### IX. MISCELLANEOUS PROVISIONS

1. The invalidity of any portion or provisions of these Bylaws shall not affect the validity of the remaining provisions or portions hereof.

2. The Association shall not have a seal.

3. The Board of Directors may require fidelity bonds from all directors, officers, or agents handling or responsible for Association funds and the expense of such bonds shall be common expense of the Association.

4. The Association shall promulgate such Rules and Regulations as it deems to be in the best interests of operating Malibu Condominiums Owners Association. The initial Board of Directors shall adopt the initial Rules and Regulations which may be added to, amended, modified or altered by the Board. Such Rules and Regulations, as amended, shall be binding upon all members, guests, and agents of members. An amendment to the Rules and Regulations shall not constitute an amendment to the Declaration and shall be valid and enforceable upon adoption without recording the same as an amendment to the Declaration.

5. The Association shall at all times maintain separate and accurate written records of each unit and owner and the address of each, and setting forth the status of all assessments, accounts and funds pertinent to that unit and owner. Any person other than a unit owner may rely on a certificate made from such records by an officer or agent of the Association as to the status of all assessments and accounts.

6. Each member shall have the obligation as such member as are imposed by the Regime documents as an owner, and no member shall have any power or authority to incur a mechanic's lien or other lien effective against the Regime property except as the same may attach only against a member's pertinent interest therein and be removable as such.

7. The Board of Directors may, in its discretion, issue written evidence of membership, but the same shall be evidence thereof only and in no manner shall be transferable nor negotiable, and the share of the member in the assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as pertinent to such assignment, hypothecation or transfer of the unit.

8. No provision or restriction otherwise void by reason of application of the Rule Against Perpetuities or Section 558.68 of the 1999 Code of Iowa, as amended, shall continue for a period longer than the life of the last to survive of the owners or partners of the Declarant, and their children in being, at the time of the initial recording of the Declaration of Condominium and twenty-one (21) years thereafter.

9. Each owner or lessee of their unit, as applicable, shall have a right to use and enjoy the common elements provided that such use shall be limited to the uses permitted by the Declaration of Condominium and other governing documents of the Regime.

#### X. DEFINITIONS

Unless the context otherwise requires, the terms used herein shall have the meanings stated in the Horizontal Property Act, and as follows:

1. Person. The term "person" shall include an individual, a corporation, or other legal entity or its representative.

2. Owner. The term "owner" for purposes of these Bylaws shall mean any person who owns or holds for themselves an interest in one or more units subject to the Regime provided that the holder of a leasehold interest in a unit shall not be an owner and further provided that the holder of an equitable interest shall be an owner.

3. Unit. The term "unit" means each unit subjected to the Regime of one or more rooms intended for use as a residence.

4. Ownership interest. The term "ownership interest" means the interest assigned to each individual unit by the Declaration of Condominium for purposes of voting, assessment, and determination of each unit's appurtenant interests in the common elements.

5. Common expenses. The term "common expenses" shall include:

(a) expenses of administration, expenses of maintenance, operation, repair or replacement of common elements, and the portions of units to be maintained by the Association,

(b) expenses declared common expenses by the Declaration or these Bylaws, and

(c) any valid charge against the Regime as a whole.

6. Singular, plural and gender. Whenever the context so permits or requires the use of the

singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

These Bylaws were duly enacted by the MAILBU CONDOMINIUMS OWNERS ASSOCIATION, on the 19th day of November, 1999.

MAILBU CONDOMINIUMS OWNERS ASSOCIATION

By: *Michael Carlton*  
Michael Carlton

By: *Betty Carlton*  
Betty Carlton

By: *William T. Smith*  
William T. Smith



#0295

MISC BK #14  
Fee \$16.00

Filed at 12:22 PM  
January 19, 2000

**AMENDMENT TO DECLARATION OF  
SUBMISSION OF PROPERTY TO  
HORIZONTAL PROPERTY REGIME FOR  
CONDOMINIUM OWNERSHIP OF  
PREMISES AT MALIBU CONDOMINIUM**

INSTR. NO. 000295

UK \_\_\_\_\_ PAGE \_\_\_\_\_  
00 JAN 19 PM 12: 22  
JAN BORTSCHELLEK  
RECORDER  
DICKINSON COUNTY, IOWA  
FEE \$ 16.00

This Amended Declaration of Submission of Property to Horizontal Property Regime for Condominium Ownership of Premises at Malibu Condominium is made and executed at Spirit Lake, the 18<sup>th</sup> day of January, 2000, by Wayne T. Smith, a single person, and Michael Carlton and Betty Carlton, husband and wife, as Declarants and pursuant to a proper resolution passed by the Property Owner's Association according to the provisions of the Horizontal Property Act, Chapter 499B, Code of Iowa,

**MARITAL STATUS OF DECLARANTS**

The marital status of the declarants is as follows:

William T. Smith is a single person;

Michael Carlton and Betty Carlton are husband and wife.

**LEGAL DESCRIPTION OF REGIME**

The legal description as contained in Exhibit "A", is amended to read as follows: Lot Two (2), of the Plat of Country Club Estates, City of Okoboji, Dickinson County, Iowa, pursuant to a plat dated May 19, 1999, and recorded May 21, 1999, in Plat Book 9, Page 59, and Miscellaneous Records 13, Page 231, in the office of the Dickinson County Recorder.

**GARAGES**

Article 1(8) of the Declaration is amended to read as follows:

8. Garage means a structure abutting a driveway, used for the building and intended for, but not limited to, the storage of an automobile. Units 1, 2, 4, 5, 7,

10, 11, 12 have a specific garage unit assigned to that unit. The garage assigned to those specific units are indicated with a "G" behind the unit number as indicated in Exhibit "C" of the Declaration of Property to Horizontal Property Regime for Condominium Ownership of Premises at Malibu Condominium as filed for record on November 19, 1999, at 4:03 p.m. in the office of the County Recorder at Book 14, Page 27. (Unit 1 also includes garage, 1G, Unit 2 also includes garage 2G, etc.) Units 6 and 8 currently do not have specific garages assigned to those condominiums, however, if the Declarant adds additional land to the Regime and builds garages thereon, the unit owners who do not have a garage shall have the first option to purchase those garages that are built on condominium property or on land adjacent to condominium property, subject to the terms and conditions of that sale as established by the Declarant or their assignees.

Garages 1G and 11G are also limited common areas of the condominium regime, and members of the Association shall have the right to enter 1G and 11G for the sole purpose of turning on and off water service to the member's respective unit.

#### ADDITIONAL CONSTRUCTION

Article VII, Subparagraph 3 is amended to read as follows:

Declarant reserves the right, which can be assigned by it at any time, to submit additional parcels of land to the Regime together with units thereon in order to

construct additional garages for members of the Condominium Association. Said construction is subject to approval of the Architectural Control Committee as set forth in Article XI.

**OTHER PROVISIONS**

In all other respects, the Declaration of Property to Horizontal Property Regime as filed for record on November 19, 1999, at 4:03 p.m. at Book 14, Page 27, Office of the Recorder is ratified and affirmed and remains in full force and effect.

IN WITNESS WHEREOF Michael J. Carlton and Betty Carlton, husband and wife, and William T. Smith, a single person.

*Michael J. Carlton*  
MICHAEL J. CARLTON

*Betty J. Carlton*  
BETTY CARLTON

*William T. Smith*  
WILLIAM T. SMITH

STATE OF IOWA, COUNTY OF DICKINSON } SS

On this 18th day of January, 2000, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Michael J. Carlton and Betty Carlton, husband and wife, to me known to be the identical person(s) named in and who executed the within and foregoing instrument and acknowledged that (s)he executed the same as his/her voluntary act and deed.



*Keith R. Detering*  
Notary Public - State of Iowa

STATE OF IOWA, COUNTY OF DICKINSON } SS

On this 18th day of January, 2000, before me, the undersigned, a Notary Public in and for said County and State, personally appeared William T. Smith, a single person, to me known to be the identical person(s) named in and who executed the within and foregoing instrument and acknowledged that (s)he executed the same as his/her voluntary act and deed.



*Keith R. Detering*  
Notary Public - State of Iowa