



RE/MAX Lakes Realty provides these covenants/bylaws/horizontal property regime declarations as a convenience, and in no way guarantees the accuracy of these documents, and in no way represents that these documents are up to date and/or legally binding. It is the responsibility of any potential buyer, seller, investor, and/or real estate agent to contact any association contact and/or the Dickinson County recorder's office in order to satisfy themselves as to the very latest available documents.

These documents are the property of Sellboji.com, BojiHomes.com and RE/MAX Lakes Realty. The downloading of these documents for use by any other Real Estate Agency is strictly prohibited.

## CONDITIONS OF AND RESTRICTIONS ON OWNERSHIP USE, AND THE OWNERSHIP, USE, OCCUPATION, 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 purposes only; except for the rights of Developer and such other persons or entities so designated by Developer and except that the home office of a physician; dentist; artist; attorney; architect; real estate agent, broker or developer; engineer; teacher or other recognized professional shall be allowed in his or her home provided that: not more than one assistant shall be regularly employed therein and no colleagues or associates shall use such office; not more than one half of the area of one floor shall be used for such office; and no advertising sign or display shall be permitted.
  - (b) An Owner has the right to decorate windows bounding his/her Unit, however, this right is limited to the extent that only drapes, curtains, sheers and shutters may be used which must be lined so that they appear white from the outside of the building. Nothing shall be hung between the interior surface of the window and the drapes, curtains, sheers or shutters used. No clothesline, towels, clothing or other objects shall be permitted to be hung outside the Unit.
  - (c) No more than one dog and two cats and one bird may be kept by the Owner of a Unit as pets and any such pet must weigh less than 25 pounds at any stage of growth (infancy or maturity), unless an exception is made by the Association. No exotic, dangerous or vicious animals shall be allowed. In no event shall an Owner or its guests, family members and invitees, have or allow a pet considered vicious or dangerous animals, including without thereby limiting, dogs which have the appearance and characteristics of being predominately of breeds of Staffordshire terrier, American pit bull terrier, American Staffordshire terrier. Any pets shall not be left unattended by the Owners, may not be tied in any common area and shall not be allowed to run free. Owners shall clean up all waste of their pet. All pets outside of a Unit must be on a leash and accompanied, at all times, by an adult. Fencing or invisible fencing is not allowed. The handling and conduct of permitted pets shall be subject to any rules and regulations adopted by the Association. In the event a pet is deemed to be a nuisance by a majority of the Board at a duly called meeting, due to the pet causing a disturbance of the other occupants of the Units by excessive noise, disruptive or aggressive behavior, the owner not taking proper care of the pet or not following the Association's rules or regulations for pet control, the Board may require the Owner of the Unit where the pet is located or staying to permanently remove the pet from the premises.
  - (d) The Association shall have the authority to adopt rules and regulations governing the use of the Common Areas and recreation facilities and such rules shall be observed and obeyed by the Owners, their family members, tenants, guests or invitees.
  - (e) The right to sell, transfer or convey any condominium Unit may be subject to such reasonable and uniform objective standards relating to financial responsibility and/or character as may now, or hereafter, be adopted by the Association in the form of rules and regulations. No restriction shall include a right of first refusal or similar right to the Association. No such restriction shall be based upon race, religion, sex or place of national origin.
  - (f) All leases shall be in writing and shall be subject to the terms of this Declaration and of the Articles of Incorporation, Bylaws and any rules or regulations adopted by the

Association. Except for the Developer, in no event shall Owner lease his/her Unit for less than 1 year. There shall be no sub-leasing. All leases shall be in writing with a copy thereof provided to the Owners' Association prior to the date of possession. No lease shall relieve the Owner of the Unit from liabilities and responsibilities to the Owners' Association and other Owners as set forth in the Declaration, or imposed under the laws of the State of Iowa.

(g) No noxious or offensive activity shall be carried on in any condominium Unit, nor shall anything be done or be permitted to remain in any condominium Unit which may be or become a nuisance or annoyance to Owner or tenants, or which unduly interferes with the peaceful possession and property use of the Units by its Owners. No Owner shall cause or suffer or harbor the source of any noise, light, smoke, or activity which disturbs the peace, comfort and quiet enjoyment of other Owners or those claiming under or through the Owners. Owners and/or other tenants shall exercise extreme care not to disturb other Owners or tenants with excessive noise. No Unit or part thereof shall be used for any unlawful purpose. The Association shall have the right, power and authority to establish reasonable rules and regulations for the prevention and suppression of nuisances.

(h) There shall be no obstruction of any common elements. No fences, wires, lines, sheds, outbuildings or other structures of any kind may be erected by any owner in any common area or facility without the prior approval of the Association. Nothing shall be stored on any common elements (excepting those areas designated for storage of personal property by the Owners of the condominium Units) without the approval of the Association. Vehicular parking upon general common elements may be regulated or assigned by the Association. Repair or maintenance of automobiles in any general common element is strictly prohibited.

(i) Except for such signs as may be posted by the Developer for promotional or marketing purposes, no signs of any character which are visible from the outside of a condominium Unit shall be erected, posted or displayed upon, from or about any condominium Unit, unless first reviewed and approved by the Association. This provision shall not prohibit "for sale" or "rental" signs. However, such signs shall be limited to no more than two signs per Unit with said signs to be no larger than four (4) square feet. Said signs can only be placed in the following locations: on the non-lakeside window inside a Unit and on a area designated by the Association at the entrance of the condominium regime. All signs shall be reviewed and approved by the Association prior to display and shall be removed as soon as practical after the Unit advertised is sold or rental.

(j) The halls and passageways of all buildings shall be used only for ingress and egress.

(k) No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or used materials, or trash of any other kind shall be permitted within any condominium Unit or be permitted to remain in public view, but shall be deposited in the receptacles provided for that purpose and in accordance with the City of Okoboji ordinances. Refuse and garbage shall be disposed of in a manner consistent with the regulations of the health department and good sanitation practices. All trash receptacles and garbage cans shall be stored at all times within garages or approved enclosures. This restriction shall not preclude the placement of waste containers outside of such area on a temporary basis if so required by governmental regulation or terms of a contract with a commercial waste collector.

(l) No structure of a temporary character, trailer, semi-trailer, tent, shack, boat, motorcycles, snowmobiles, all terrain vehicles, campers, boats, boat trailers, flathead trailers, travel trailers, other recreational vehicles, inoperable vehicles or the like shall be maintained upon or parked in driveways or any common elements at any time, other than on a strictly temporary basis not to exceed 48 hours. For purposes of computing the 48 hours, the relocation of the items at issue within the condominium regime or the temporary removal and return of said item shall not restart the 48 hour time limit, unless said item is removed entirely for not less than ten days. In the event of violation of this provision, the Association may, after reasonable notice, cause the removal of such boat.

snowmobile, recreational vehicle, trailer or other vehicle and assess the costs of such removal to its Owner and the respective Unit. The Association may issue a special individual permit for longer periods upon hearing.

(m) No Owner or other person shall install any telephone wire, air-conditioning unit, solar panels, solar collectors, or other machine or device on the exterior of the Building except as permitted by the Association. No tower, antenna, satellite dish or similar reception device shall be placed on any Building or common area unless the tower, antenna, satellite dish or similar reception device is one which is not or cannot be prohibited pursuant to the Federal Over-the-Air Reception Devices Rule, 47 C.F.R. §1.4000, or other similar governmental mandate in effect at the time of placement. Any tower, antenna, satellite dish or similar reception device not removed by the Owner upon sale of a Unit shall be deemed to have a date of placement, as to the new Owner, as of the date of closing. The directors of the Association shall adopt regulations governing the placement and maintenance of those towers, antennas, satellite dishes and other reception devices which cannot be prohibited. No Owner shall place, or allow the placement of, a tower, antenna, satellite dish or similar reception device upon a building or common area except for the personal use of the Owner or permissible tenants of the Owner. The Owner shall be responsible to the Association for any expense, liability, or damage of any kind incurred as a result of any tower, antenna, satellite dish or similar reception device placed or maintained on a Building or common area. The Association will not be responsible for any loss or damage to any tower, antenna, satellite dish or similar reception device.

(n) Nothing shall be altered in, constructed in, or removed from the common elements, except upon written consent of the Board of Directors of the Association.

(o) 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.

(p) Nothing shall be done or kept in any Unit or in the common areas, which will increase the rate of insurance on the common areas, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his/her Unit or in the common areas, which will result in the cancellation of insurance on any Unit or any part of the common areas, or which would be in violation of any law.

(q) Agents of, or contractors hired by, the Association may enter any Unit when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable.

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

(s) Unit Owners are reminded that alteration and repair of the Building is the responsibility of the Association, except for the interior of the Units. No work of any kind is to be done upon the exterior building walls, or upon interior boundary walls, or doors without first obtaining the approval of the Association. Work inside a Unit will be coordinated with the Association before proceeding.

(t) Each Unit occupant shall keep his/her Unit and balcony, deck or patios to which he/she has sole access in a good state of presentation and cleanliness, and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors, windows, balcony, deck or patio thereof, any dirt or other substance.

(u) No vehicle belonging to a Unit occupant or to a member of his/her family or guest, tenant or employee shall be parked in such a manner as to impede or prevent ready access to any entrance to or exit from the building by another vehicle. No vehicles of any kind may be parked on the approaches to the garages. Further, bicycles and mopeds not stored in a garage which is part of a Unit shall not be stored in common elements except



in the parking areas designed by the Association. All garage doors shall be kept closed at all times except when being opened for purposes of ingress and egress, or when a garage Owner, family member, or guest is personally present in the garage area. No garage shall be used to store discarded items, junk, or other unsightly materials. Garages shall not be used as a shop nor shall said garages be rented to someone not having a residence in a corresponding Unit.

(v) Complaints regarding the services of the building shall be made in writing to the Board of Directors, or to the managing agent, or to the manager.

(w) Only gas or electric grills shall be allowed. No wood burning stoves, charcoal grills, chimneys, fire pits, or the like allowed.

(x) Every boat hoist shall have the same color, to be determined by Association. Each Unit shall be assigned one space for one boat hoist not exceeding 12,000 lbs capacity and a boat no larger than 36 feet, with the boat/hoist location to be assigned by the Association at the Association's discretion. No lifts shall be stored on shore. Installation and removal of the lifts shall be the responsibility and cost of the individual Owner(s). However, should the owner fail to remove its lift by the deadline established by the Association, the Association may do so and charge the cost thereof to the respective Unit and its owner. Removal of docks shall be done by the Association as a common expense. Catwalks for access to lifts will be installed at the expense of the Association and as approved by the Board. No boats, lifts or lift spaces may be rented. No individual may install additional docks or catwalks except as approved by the Association. No private docks shall be allowed on the premises, other than the docks provided by the Association. All docks shall be in conformance with the applicable state and local law. If enough space is available, the Association may, at the Association's sole discretion, assign space for a lift for a personal watercraft for each respective Unit and/or assign additional boat spaces. No lift may be used for a boat for a non-owner.

(y) Mail, trash and milk delivery containers shall be subject to approval of the Association to assure proper appearance in harmony with other such receptacles.

(z) No part of any Unit shall be maintained or allowed to exist in such a manner as to constitute an eyesore, a nuisance or a danger to the health, safety or welfare of any Owner(s).

3. The Association shall have the authority to amend and adopt reasonable rules and regulations governing the use of the condominium property and such rules shall be observed and obeyed by the Owners, their guests, and licensees. Such rules after being properly adopted shall have the same force and effect as if contained in this Declaration.

## ARTICLE X

### CONDEMNATION

1. Taking by Eminent Domain. Payment for the taking of a portion of a Unit, or of the common elements, by eminent domain or the conveyance under threat thereof shall be deemed to be proceeds from insurance on account of casualty and shall be deposited with the insurance trustee to be held in trust for the Unit Owners and their first mortgage holders, as their interests may appear. Even though the awards may be payable to Owners, the Unit Owners shall deposit the awards with the insurance trustee. And, in the event of failure to do so, in the discretion of the Association a special assessment shall be made against a defaulting Owner in the amount of his/her award, and the amount of such award shall be set off against the sums hereinafter made payable to such Owner. The proceeds of the award shall be distributed or used in a manner heretofore provided for insurance proceeds except that when the Horizontal Property Regime is not to be terminated, and one or more Units are taken in part, the taking shall have the following effects:

(a) If the Unit is Reduced But Tenantable. If the Unit taking reduces the size of the Unit, and the remaining portion of the Unit can be made tenantable, the award for the

taking of a portion of the Unit shall be used for the following purposes in order stated, and the following changes shall be effected in the Horizontal Property Regime:

(i) The Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of the condominium Unit.

(ii) The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit of record, the remittance being payable jointly to the Owner and the mortgagees.

(b) Unit Made Untenantable. If the taking destroys or so reduces the size of the Unit that it cannot be made tenantable, the awards for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Horizontal Property Regime:

(i) The market value of such Unit immediately prior to the taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit of record, the remittance being payable jointly to the Owner and the mortgagee(s).

(ii) The remaining portion of such Unit, if any, shall become a part of the common elements and shall be placed in condition for use by all of the Unit Owners in a manner approved by the Association; provided, if the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be paid for by assessment as a common expense among all remaining Units.

(iii) If the amount of the award for the taking is not sufficient to pay the market value of the condemned Unit to the Owner, and to condition the remaining portion of the Unit for use as part of the common elements, the additional funds required for such purposes shall be raised by assessments against all of the Unit Owners who will continue as Co-Owners of condominium Units after the changes in the Horizontal Property Regime affected by the taking. In the event that the market price cannot be determined by negotiations, it shall be determined by a district court judge in the Iowa District Court in and for Dickinson County. Each party hereby knowingly, voluntarily and intentionally waives any right to trial by jury it may have in any action or proceeding by one party against the other, in law or in equity, in connection with this Condominium Regime, the Units located therein, and claims/transactions related hereto. In the event that litigation results from or arises out of this Condominium Regime, the Units located therein, and claims/transactions related hereto or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees and court costs in addition to any other relief to which the prevailing party may be entitled.

(iv) If the amount of the award for the taking exceeds the amounts necessary to pay the market value of the condemned Unit to the Owners as provided in subparagraph (i) above and to condition the remaining portion of the Unit for use as part of the common elements as provided in subparagraph (ii) above, the excess funds shall be payable to the Owner of the condemned Unit.

(c) The Association shall thereafter have the right to file among the land records an amendment to this Declaration to incorporate all necessary changes.

## ARTICLE XI

### **DESTRUCTION; CASUALTY AND REPAIRS**

1. In the event less than one-half of the entire project is damaged or destroyed by fire or other peril, it shall be deemed that the Association shall have immediately voted unanimously to repair, reconstruct or rebuild and the same shall be promptly repaired or reconstructed in substantial conformity with the original plans and specifications using the proceeds of insurance available for that purpose, if any. Provided, however, if 75% or more of the ownership Units within 20 days from such damage and destruction notify



the Board of Directors in writing, requesting a vote of the Association members concerning the question of rebuilding, repairing or reconstructing the damage or destruction, the Association shall hold such meeting and shall commence such rebuilding, repairs or reconstruction unless Unit Owners (other than the Developer) to which at least 67% of the votes in the Association are allocated and the eligible holders of first mortgages on Units to which at least 67% of the votes on Units subject to mortgages appertain approve in writing the termination of the Condominium Regime.

2. In the event the proceeds of insurance are not sufficient to repair damage or if destruction is caused by any peril not herein required to be insured against, then the repair or reconstruction of the damaged common elements shall be accomplished promptly by the Association at its common expense and the repair or reconstruction of any condominium Unit shall be accomplished promptly by the Association at the expense of the Owner of the affected condominium Unit. The ratable share of the expense of such repairs or reconstruction may be assessed and the lien for the same shall have all the priorities heretofore provided for in this Declaration and by the Bylaws of the Association.
3. In the event that one-half (1/2) or more of the entire project is substantially damaged or destroyed by fire or other casualty, it shall be deemed that the Association shall have immediately voted unanimously to repair, reconstruct, rebuild and the same shall be promptly repaired or reconstructed in substantial conformity with the original plans and specification using the proceeds of insurance available for that purpose, unless Unit Owners (other than the Developer) to which at least 67% of the votes in the Association are allocated and the eligible holders of first mortgages on Units to which at least 67% of the votes on Units subject to mortgages appertain approve in writing not proceeding with repair or reconstruction. In that event the project shall be deemed to be owned in common by the Owners of all of the condominium Units in the same proportions as that previously established for ownership of appurtenant undivided interests in the common elements, and the project shall be subject to an action for partition at the suit of the Owner of any condominium Unit or the holder of any lien thereon, in which event the net proceeds of sale, together with the net proceeds of any insurance paid to the Association or its members in common, shall be considered as one fund and shall be divided among the Owners of all the condominium Units as herein provided, after first paying out of the share of the Owner of any condominium Unit, to the extent such share is sufficient for the purpose, all liens upon such condominium Unit.
4. In addition to the limitation on termination of the Condominium Regime set forth above, in the event of substantial loss to the Units and/or common elements of the condominium property, unless the Unit Owners (other than the Developer) to which at least 67% of the votes in the Association are allocated and the eligible holders of first mortgages on Units to which at least 67% of the votes on Units subject to mortgages appertain have given their prior written approval, the Association may not:
  - (a) Change the prorata interest or obligations of any Unit in order to:
    - (i) levy assessments or charges;
    - (ii) allocate distribution of hazard insurance proceeds or condemnation awards;
    - (iii) determine the prorata share of ownership of each Unit in the common elements; or
  - (b) Partition or subordinate any Unit; or
  - (c) Seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements by act or omission (the granting of easements for public utilities or other public purposes consistent with the intended use of the common elements by the condominium project not being a transfer within the meaning of this clause); or
  - (d) Use hazard insurance proceeds for losses to any condominium property (whether Units or common elements) for other than the repair, replacement, or reconstruction of the condominium property.

## ARTICLE XII

### INSURANCE AND FIDELITY BONDS

1. The Association shall obtain and maintain at all times, to the extent available, at least, the following insurance (hereinafter referred to as "Condominium Property Insurance"):

(a) Insurance on the Condominium Property in an amount equal to full replacement value of the Condominium Property (as determined annually by the Association) and with a replacement cost endorsement which provides for the payment of all losses without deduction or allowance for depreciation. "Condominium Property" for the purpose of this Article XII shall include all property, real, personal, or mixed submitted to the regime other than personal property of any Owner, and includes specifically, without limitation, the general and limited common elements (except land, foundation, excavation, and other items normally excluded from coverage), building service equipment and supplies, and other common personal property belonging to the Association. In addition, any fixtures, equipment or other personal property within the Unit which are to be financed by a mortgage to be purchased by FNMA or FHLMC (whether or not such property is a part of the common elements) shall be covered by such insurance. Such coverage shall afford protection against, at least, the following:

(i) loss or damage by fire or other hazards covered by the standard extended coverage endorsement and additional extended coverage endorsement;

(ii) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, and as is commonly required by prudent institutional mortgage investors in the area, including, but not limited to, as applicable and available, vandalism, malicious mischief, agreed amount, demolition cost, increased cost of construction, boiler and machinery explosion or damage, and any other perils normally covered by the standard "all risk" endorsement when available and such other insurance as the Association may from time to time determine; and

(b) Comprehensive general liability insurance coverage covering all of the common elements, commercial space owned and leased by the Association, and public ways of the condominium project. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location, and use. However, such coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common elements, and legal liability arising out of lawsuits related to employment contracts of the Association. Such policies must provide that they may not be canceled or substantially modified, by any party, without at least ten days' prior written notice to the Association and to each holder of a first mortgage on any Unit in the condominium which is listed as a scheduled holder of a first mortgage in the insurance policy. FNMA and FHLMC may also require such coverage to include protection against such other risks as are customarily covered with respect to condominiums similar in construction, location, and use, including, but not limited to, host liquor liability, workers' compensation, and employers liability insurance, contractual and all-written contract insurance, bailee's liability, elevator collision, garage keepers liability, and comprehensive automobile liability insurance. FHLMC may require that a certificate of the liability policy be provided to the seller/servicer of the mortgage owned by FHLMC, with the seller/servicer to be named as the certificate holder, and showing the information required under Section 6410 on the FHLMC Seller/Servicer Guide.

(c) Workmen's' compensation insurance to the extent necessary to comply with any applicable law;

(d) Non-conforming structure endorsement to the extent necessary;

(e) Officers and directors' errors and omissions policy; and



- (f) Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Association.
2. The premiums for the insurance coverage shall be a common expense to be paid by monthly assessments levied by the Association against Owners of each of the Units. The premiums attributable to coverage on the condominium Units and the Common Elements shall be apportioned among the Units. Deductibles may not exceed the lower of \$10,000.00 or 1% of the applicable amount of coverage. Funds for such deductibles must be included in the Association's reserves and be so designated. The insurer's minimum liability per accident under boiler and machinery coverage must equal the insurable value of the building housing such boiler or machinery or \$2,000,000.00, whichever is less.
  3. The Association, or its designee, shall have the exclusive authority to adjust losses under the insurance policies.
  4. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners of Units or their mortgagees.
  5. Each Unit Owner shall obtain additional insurance at his/her own expense upon his/her condominium Unit provided that no Owner shall maintain insurance coverage which will tend to decrease the amount which the Association Owners may realize under any insurance policy which it may have in force. This insurance policy shall be endorsed to include the Association as an additional named insured and to provide at least 30 days notice to the Association of any termination or non-renewal of the policy. If a Unit Owner fails to comply with this provision, then the Association may obtain this insurance and charge the cost of this insurance policy as an assessment to the Unit and to the non-compliant Unit Owner. In addition and not in limitation, the Association may charge said non-compliant Unit Owner shall be responsible to the Association for at least \$50.00 per day in liquid damages for each day in violation thereof.
  6. All policies shall provide that such policies may not be canceled or substantially modified without at least 30 days prior written notice to any and all insureds named therein, including the Association and any and all mortgagees of the condominium Units.
  7. The Association shall from time to time designate an insurance trustee. The Association shall be responsible for fees and expenses of the insurance trustee which shall constitute a common expense of the Association.
  8. Except as hereinafter provided, the insurance trustee named in the condominium property endorsement shall receive and hold the amount payable under the Condominium Project Insurance and apply the same to the cost of reconstruction or repair of a damaged or destroyed condominium Unit. The work of repairing or reconstruction of the damaged or destroyed condominium Unit shall be commenced within 30 days from the date of the damage or destruction. The work shall be accomplished in accordance with the same plans and specifications by which the condominium Units were originally constructed, subject, however, to the prior written approval of the Association. The insurance trustee shall make available and pay to the Owner the amount of insurance proceeds received by the insurance trustee for the reconstruction and repair of the condominium Unit. The payment of the proceeds of insurance shall be made as the work progresses at such time and upon, compliance by the Owner with such conditions as the insurance trustee shall impose, in order to assure full restoration or repair of the damaged portions of the condominium Unit in a workmanlike manner, free and clear of any mechanic's and materialmen's liens and any encumbrances, liens, claims or charges other than a first mortgage lien. If the cost of the reconstruction or repair exceeds the amount paid to the insurance trustee, the excess shall be paid by the Owner; provided, however, that in the event a decision not to reconstruct is made according to the terms of Article XI hereof, this Condominium Regime shall be considered terminated. In the event of such termination, the Board of Directors shall have the responsibility of closing out the affairs of the Condominium Project in an orderly manner. All damaged or destroyed condominium Units must be repaired or restored unless a determination not to do so is made by Unit Owners and eligible holders of first mortgages as provided in Article XI above.

9. Any insurance obtained pursuant to the requirements of this Article, except under subsection (h) hereof, shall be subject to the following provisions:
- (a) All policies shall name as insured the Association of the Owners of this Condominium Regime for the use and benefit of the individual Unit Owners, and may also be issued in the name of an authorized representative of the Association including any insurance trustee with whom the Association has entered into an Insurance Trust Agreement. Such policies shall be written with a company or companies licensed to do business in the State of Iowa and holding A rating of "A-XI" or better, by Best's Insurance Reports and a policyholder's rating of "A" or better, and in any event meeting the qualification requirements set forth in the FNMA Correctional Home Mortgage Selling Contract Supplement and the FHLMC Sellers Guide.
- (b) Exclusive authority to negotiate losses under said policies shall be vested in the Board of Directors or its authorized representative, including any trustee with which the Association may enter into any Insurance Trust Agreement, or any successor trustee, each of which shall herein elsewhere be referred to as the "insurance trustee" and all proceeds covering any loss shall be payable to the insurance trustee, or to his/her successor. All proceeds from an insured loss under such policy shall be held in trust for the use and benefit of the Association and the Owners of all Units and their respective first mortgagees as interest may appear. Each Unit Owner and each Unit Owner's first mortgagee, if any, shall be beneficiaries of such policies according to the respective Unit's undivided ownership interest in the common elements. Such insurance proceeds shall be applied and distributed in accordance with the articles relating to insurance in the Declaration and Bylaws.
- (c) In no event shall the insurance coverage obtained and maintained pursuant to the requirements of this Article be brought into contribution with insurance issued in the name of any individual Unit Owner purchased as herein permitted by such Owner of a condominium Unit or their mortgagee. Any "no other insurance" or similar clause in any policy obtained by the Association pursuant to the requirements of this Article shall exclude such policies from consideration.
- (d) All policies shall provide that such policies may not be canceled or substantially modified without at least 10 days prior written notice to any and all insureds named thereon, including the Association any and all mortgagees of the condominium Units. Policies are unacceptable where:
- (i) under the terms of the insurance carrier's charter, by-laws, or policy, contributions, or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC, or if made against any other party could become a lien on the mortgaged property superior to the outstanding liens or
  - (ii) by the terms of the carrier's charter, by-laws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members, or
  - (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.
- (e) All fire and other hazard insurance policies shall provide that, notwithstanding any provisions thereof which give the carrier the right to erect or restore damage in lieu of making a cash settlement, such option shall not be exercisable when in conflict with the provisions of the Declaration and the Bylaws.
- (f) All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Board of Directors, their agents and employees, the respective condominium Unit Owners, their residence employees and agents Independent contractors shall not be considered agents, employees or servants of the Association or of the respective condominium Unit Owners within the meaning of said waiver.



(g) The insurance policy shall contain a provision that the insurance shall not be prejudiced:

(i) By any act or neglect of any occupants or Owners of the building when such act or neglect is not within the control of the condominium Unit Owners collectively; or

(ii) By failure of the condominium Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the premises over which the condominium Unit Owners collectively have no control.

(h) The Owner of any condominium Unit (including the holder of any mortgage thereon) may obtain additional insurance (including a "condominium Unit-Owner's endorsement" for improvements and betterments to the condominium Unit made or acquired at the expense of the Owner) at his/her own expense. Such insurance shall be written either by the same carrier as that purchased by the Association pursuant to this Article, or if written by another carrier, shall provide that it shall be without contribution as against the same. Such insurance shall contain the same waiver of subrogation provisions as set forth in Section 9(f) of this Article. The Developer recommends that each Owner of a condominium Unit in the project obtain, in addition to the insurance hereinabove provided to be obtained by the Association, a "Tenant's Policy", or equivalent, to insure against loss or damage to personal property, including but not limited to decorated surfaces of walls, floor coverings, plumbing and electrical fixtures, non-load bearing walls and appliances used or incidental to the occupancy of the condominium Unit, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "condominium Unit Owner's endorsement" covering losses to improvements and betterments to the condominium Unit made or acquired at the expense of the Owner.

(i) Certificate of insurance shall be issued to each Unit Owner and mortgagee upon request, in a form acceptable to the mortgagee. Specimen policies shall be provided to any mortgagee upon request.

(j) Casualty policies shall contain the standard mortgagee clause (without contribution) as is commonly accepted by private institutional mortgage lenders in the area and which appropriately names FNMA and FHLMC if such corporations are holders of first mortgages on Units within the Condominium Regime. If FHLMC owns the first mortgage on a Unit, the seller/servicer of the mortgage and its successors and assigns shall be named and the mortgagee on the mortgagee clause.

(k) Casualty policies shall also include an "Agreed Amount Endorsement," and if available, an "Inflation Guard Endorsement."

10. Blanket fidelity bonds shall be required to be maintained by the Association for all officers, directors, and employees of the Association and all other persons handling, or responsible for, funds of or administered by the Association. Where the management agent has the responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees, and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months' aggregate assessments on all Units plus reserve funds. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The premiums on all bonds required herein, except those maintained by the management agent, shall be paid by the Association as a common expense. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten days' prior written notice to the Association or insurance trustee. The Federal National Mortgage Association also requires, as a condition to approval of



condominium projects, that such bonds provide that the FNMA Servicers, on behalf of FNMA, also receive such notice of cancellation or modification.

### ARTICLE XIII

#### CONTROL OF ASSOCIATION

Notwithstanding anything to the contrary provided herein, so long as the Developer retains an interest in 12.50% or 4 of the Units subject to this Declaration, Developer shall have sole voting control and authority relating to the Association, the Board of Directors and all other matters relating to the operation of the Association. At such time as the Developer no longer retains an ownership interest in 12.50% or 4 Units, all such voting control and authority shall automatically transfer back to the Board of Directors and the Unit Owners.

### ARTICLE XIV

#### AMENDMENT

1. Procedure. Except as otherwise provided in this Declaration in Article XI and Article XIII pertaining to amendment to this Declaration, control of the Association or termination of the Condominium Regime as a result of destruction, damage or condemnation, this Declaration may be amended and such amendment shall be made in the following manner:
  - (a) The consent in writing of Owners of Units to which at least 67 percent of the votes in the Association are allocated and the approval of the eligible holders of first mortgages on Units to which at least 67 percent of the votes of Units subject to mortgages appertain shall be required to terminate the Condominium Regime.
  - (b) In the case of an amendment to this Declaration by reason of an amendment to the Bylaws of the Association, in the manner specified in such Bylaws, such amendment shall be effective upon its execution and recordation by the President or other officer of the Association, authorized therefore by Resolution.
  - (c) In the case of all other amendments to this Declaration, by written agreement of the Unit Owners to which at least 67 percent of the votes in the Association are allocated, provided eligible holders of a first mortgage of record to which at least 51% of the votes of Units subject to a mortgage appertain so approve in writing.
  - (d) No amendment shall be valid without the written approval of the Developer as long as the Developer owns 12.50% or 4 Units unless used personally, rented or leased to others by the Developer.
  - (d) Developer may, until all phases of the Condominium Regime contemplated herein have been completed or until the Developer has sold 87.5% or 21 Units in this regime, make amendments to this Declaration without the approval of the Unit Owners or its lienholders, or mortgagees. Any supplemental or amendment to this Declaration filed by the Developer need be executed only by the Developer or its assigns notwithstanding ownership of Units by others and no consent of other Owners, or its lienholders or mortgagees shall be required.
2. Effectiveness. Upon its recordation at the Office of the Dickinson County Recorder by the President or other officer appointed for that purpose, an amendment adopted in the manner specified in Paragraph 1 of this Article, or as otherwise provided in other Articles herein, shall be effective against any 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 in accordance with Paragraph 1 of this Article.

## ARTICLE XV

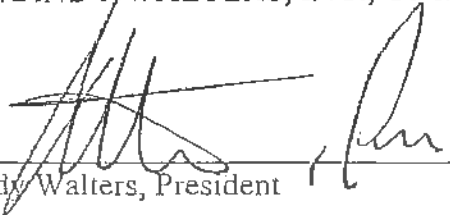
### EXPANSION OF CONDOMINIUM REGIME

1. The right to enlarge the Condominium Regime from time to time, is reserved exclusively to Developer and shall be exercised by Developer, if at all, not later than the date five years after the date of recording this Declaration. Developer shall have and exercise the right to enlarge the condominium not only in its individual capacity but also as agent for the Owners of all Units in the condominium as now constituted or hereafter enlarged and such Unit Owners do hereby irrevocable appoint Developer as their agent for the purpose of so enlarging the condominium.
2. The right to enlarge the Condominium Regime by adding thereto additional buildings and/or additional land upon which additional buildings, Units, and other improvements exist or are to be constructed, shall be exercised by Developer, if at all, by executing and acknowledging a supplemental declaration to such effect made pursuant to the Horizontal Property Act. Such supplemental declarations shall be designated by the title "First Supplemental Declaration of Condominium," "Second Supplemental Declaration of Condominium" and so forth in a numerical series. Each such supplemental declaration shall constitute an amendment of and, by appropriate reference thereto, shall be incorporated into this Declaration of Condominium by which the condominium is originally established. Such supplemental declaration shall be effective when recorded in the Office of the Recorder of Dickinson County, Iowa.
3. The land now included in the Condominium Regime consists of that described as the Land on page 1 hereof. The Condominium Regime may be enlarged, from time to time, by adding buildings on the Land and/or by adding or parcels and buildings thereon from the additional land lying contiguous to the Land already dedicated.
4. The additional buildings to be constructed upon the Land and upon any additional land shall all be added to the Condominium Regime by supplemental declaration, and the Units contained therein, shall be of a quality, type of construction, and general character equal or superior to and compatible with the original Building located on the Land and the Units contained therein.
5. If HUD, the VA or FNMA holds, insures or guarantees any mortgage on existing Units at the time the Developer wants to proceed with any expansion of the Condominium Regime as provided in this Article, each such agency or entity must give its written consent to the particular phase of expansion. Provided, however, such consent shall not be withheld if the proposed expansion substantially conforms to the plan of expansion set forth in this Article XV and in the Recitals of the Declaration.
6. The buildings to be included in any additional phase and appurtenant improvements must be substantially completed before the phase can be added to the Condominium Regime by the filing of a supplemental Declaration. All taxes and other assessments relating to the property in any additional phase covering any period prior to the addition of each phase must be paid or otherwise satisfactorily provided for by the Developer prior to filing the Supplemental Declaration for that phase. If FNMA holds any mortgage on an existing Unit at the time any additional land is added to the Condominium Regime, FNMA must be furnished with title evidence in a form satisfactory to it, which discloses any lien, easement or other encumbrance affecting the additional land to be added which will affect the existing Condominium Regime after such addition. All of the original cost of any land, or the buildings, apartments, and other improvements existing or to be constructed thereon, which are added to the condominium by a supplemental declaration, shall be paid for by Developer and no part thereof shall ever be assessed against any apartment Units as a common expense.
7. The fractional interest in the common elements appurtenant to each Unit in the Condominium Regime as now constituted or hereafter enlarged shall be a fraction having as its numerator one and having as its denominator the total of all Units in the Condominium Regime.

IN WITNESS WHEREOF, we have hereunto set our hands this 24<sup>th</sup> day of July, 2007.

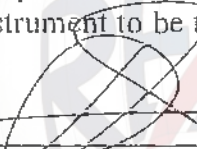
WHISPER OAKS, L.C., an Iowa Limited Liability Company:

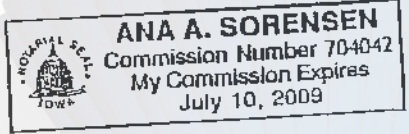
By: RANDY WALTERS, INC., Co-Manager:

  
\_\_\_\_\_  
Randy Walters, President

STATE OF IOWA, COUNTY OF Dickinson ss:

On this 24<sup>th</sup> day of July, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Randy Walters to me personally known, who, being by me duly sworn, did say that he is the President of said corporation and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged the execution of said instrument to be the voluntary act and deed of the corporation by it and by him voluntarily executed.

  
\_\_\_\_\_  
Notary Public in and for said State

  
ANA A. SORENSEN  
Commission Number 704042  
My Commission Expires  
July 10, 2009

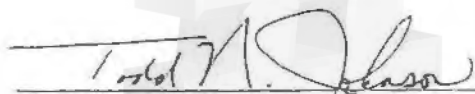


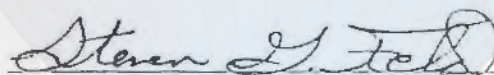
CONSENT OF MORTGAGEE  
TO  
SUBMISSION OF PROPERTY  
TO  
CONDOMINIUM REGIME

United Community Bank of Milford, Iowa is the holder of mortgages against the real estate submitted to the Whisper Oaks a/k/a Whispering Oaks Condominium Regime by the Declaration of Submission of Property to Horizontal Property Regime for the Whisper Oaks a/k/a Whispering Oaks Condominiums to which this Consent is attached. Such mortgages are dated December 2, 2005 and were filed December 6, 2005 and January 4, 2006 in Mortgage Record Book 305, Page 961 and Book 307, Page 905, respectively, of the Dickinson County Recorder's Office. By the undersigned(s)' execution of this Consent, the undersigned(s), as duly authorized representative(s) of United Community Bank of Milford, Iowa, hereby consent to the submission of the property covered by such mortgage to the Whisper Oaks a/k/a Whispering Oaks Condominium Regime, and agree that from the time of the filing of said Declaration in the Office of the Dickinson County, Iowa recorder, the lien of such mortgage shall become a lien on the individual Units and their undivided percentage interest in the common elements of the Condominium Regime, and such mortgage shall be partially released as to each such Unit and its undivided percentage interest in the Condominium Regime upon payment to the undersigned of an amount to be agreed to as to each such Unit between the Developer and the undersigned prior to the sale of each Unit to a third party.

Dated this 31<sup>st</sup> day of July, 2007.

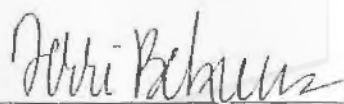
UNITED COMMUNITY BANK OF MILFORD, IOWA

  
\_\_\_\_\_  
Todd N. Johnson, Vice President

  
\_\_\_\_\_  
Steven G. Feld, Executive Vice-President

STATE OF IOWA, COUNTY OF DICKINSON, ss:

On this 31<sup>st</sup> day of July, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Steven G. Feld and Todd N. Johnson to me personally known, who, being by me duly sworn, did say that he/she/they is/are the Executive Vice-President and Vice President of said corporation and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he/she/they acknowledged the execution of said instrument to be the voluntary act and deed of the corporation by it and by him/her/them voluntarily executed.

  
\_\_\_\_\_  
Notary Public in and for said State



BUILDING PLANS CERTIFICATION

STATE OF IOWA )  
 )ss:  
COUNTY OF DICKINSON )

The undersigned, being duly sworn upon oath, depose and state that I am a duly licensed surveyor in the State of Iowa.

I further state that I reviewed the building plans for the building and units of the Whisper Oaks a/k/a Whispering Oaks Condominiums (attached hereto as Exhibit B), provided to me by Cooper, Crawford & Associates, L.L.C., Civil Engineers, and the building and units appear to be constructed in accordance therewith.

*James R. Blum*  
By: *James R. Blum*  
Signature James R. Blum

Subscribed and sworn to before me by the said James R. Blum on this 22nd day of May, 2007.

**JENNIFER FERRIS**  
Commission Number 738782  
My Commission Expires  
January 27, 2009

*JF*  
Notary Public in and for the State of Iowa

SURVEYOR'S CERTIFICATION

STATE OF IOWA )  
 )  
 ) ss:  
 )  
COUNTY OF DICKINSON )

I, James R. Blum, L.S., being duly sworn upon oath, depose and state that I am a duly licensed Land Surveyor in the State of Iowa.

I further state that the attached Exhibit A (Site Plan) has been prepared by me and under my direct supervision and represents the Site Plan for the land and building to be included in the Whisper Oaks a/k/a Whispering Oaks Condominiums, in Spirit Lake, Iowa.

*James R. Blum*  
*James R. Blum*  
\_\_\_\_\_  
Signature of Surveyor, James R. Blum

Subscribed and sworn to before me by the said James R. Blum, on the 22nd day of May, 2007.

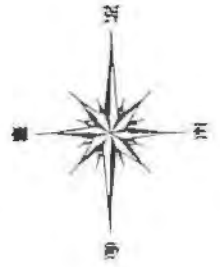
 JENNIFER FERRIS  
Commission Number 738782  
My Commission Expires  
January 27, 2009

*JF*  
\_\_\_\_\_  
Notary Public in and for the State of Iowa



LEGEND

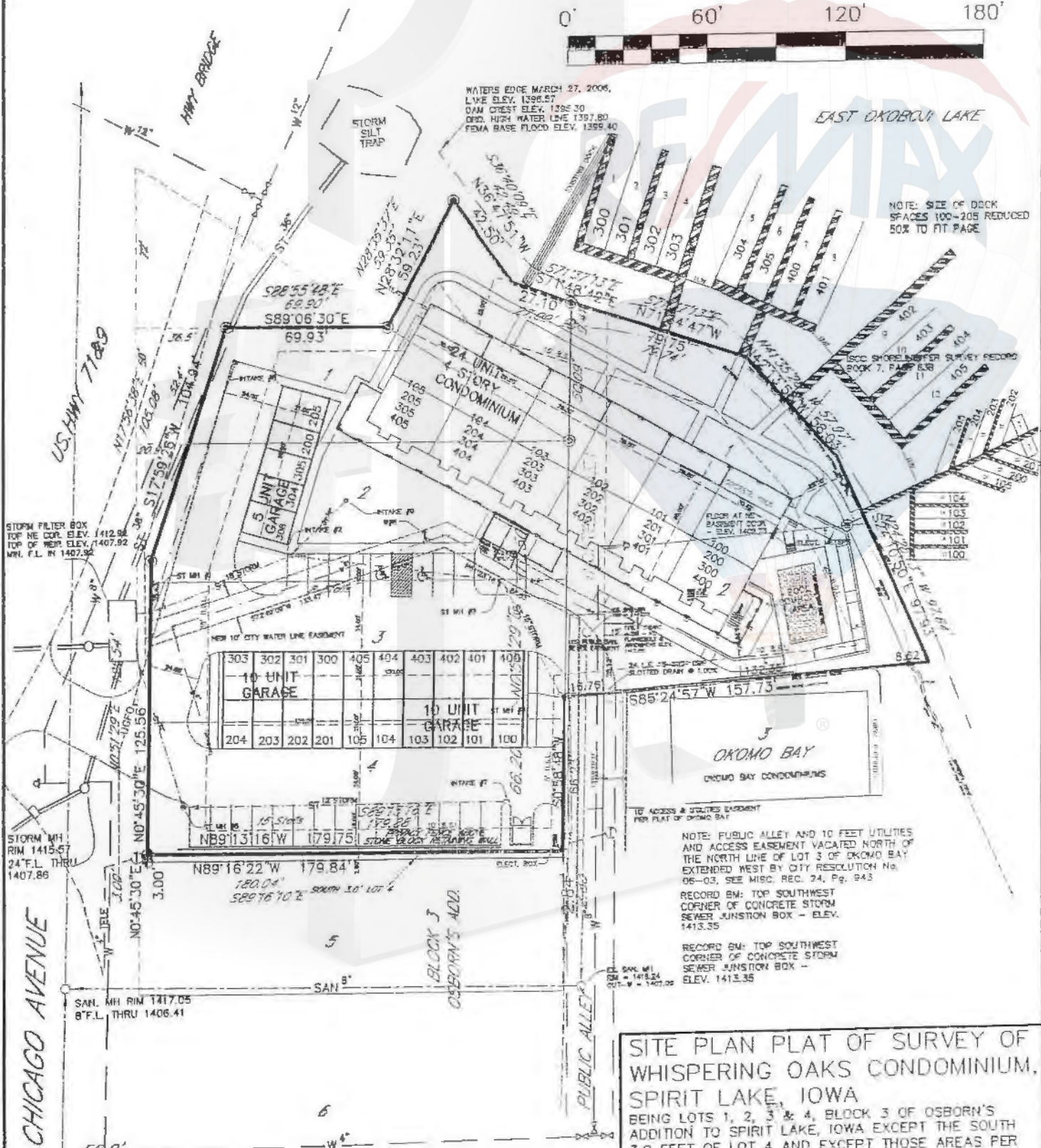
- ⊕ FD G. PIPE OR AS NOTED
- ⊙ FD 5/8" Y. CAPPED REBAR L.S. 9179
- SET 5/8" Y. CAPPED REBAR L.S. 9179
- RECORD DISTANCE/BEARING



WATERS EDGE MARCH 27, 2006,  
LAKE ELEV. 1398.57  
DAM CREST ELEV. 1398.30  
DSD. HIGH WATER LINE 1397.80  
FEMA BASE FLOOD ELEV. 1399.40

EAST OKOMO LAKE

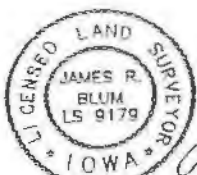
NOTE: SIZE OF DOCK  
SPACES 100-205 REDUCED  
50% TO FIT PAGE



NOTE: PUBLIC ALLEY AND 10 FEET UTILITIES AND ACCESS EASEMENT VACATED NORTH OF THE NORTH LINE OF LOT 3 OF OKOMO BAY EXTENDED WEST BY CITY RESOLUTION No. 06-03, SEE MISC. REC. 24, Pg. 843  
RECORD BY: TOP SOUTHWEST CORNER OF CONCRETE STORM SEWER JUNCTION BOX - ELEV. 1413.35  
RECORD BY: TOP SOUTHWEST CORNER OF CONCRETE STORM SEWER JUNCTION BOX - ELEV. 1413.35

SITE PLAN PLAT OF SURVEY OF WHISPERING OAKS CONDOMINIUM, SPIRIT LAKE, IOWA

BEING LOTS 1, 2, 3 & 4, BLOCK 3 OF OSBORN'S ADDITION TO SPIRIT LAKE, IOWA EXCEPT THE SOUTH 3.0 FEET OF LOT 4 AND EXCEPT THOSE AREAS PER DEED RECORD 14, PAGES 224 & 435 AND DEED RECORD 9, PAGE 10, SAID PROPERTY PER T.L.D. Bk. 129, Pg. 618. ALSO LOTS 1 & 2 OF THE PLAT OF OKOMO BAY, SPIRIT LAKE, IOWA AND THAT PORTION OF THE VACATED ALLEY BETWEEN OKOMO BAY AND BLOCK 3 OF OSBORN'S ADDITION LYING NORTH OF THE NORTH LINE OF LOT 3 OF OKOMO BAY EXTENDED WESTERLY



I hereby certify that this land surveying document was prepared and the related survey work was performed 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.  
James R. Blum 5/22/07  
James R. Blum, L.S. License No. 9179  
License Renewal Date: December 31, 2008  
Pages of sheets covered by this recd. 1

DRAWN BY: J.R.B.	SURVEY DATE: 5/15/06	CLIENT/PROPERTY: OAKS DEVELOPMENT Co. 2171 GRAND AVENUE DES MOINES, IOWA 50265
PROJECT NO: 5129FNLCONDO	SHEET NO: 1 of 1	

SEE ATTACHED FLOOR PLANS BY ARCHITECT FOR 24 UNIT BUILDING AND TWO GARAGES SHEETS 1 THROUGH 20



# Tometch Engineering, Inc.

10501 Buena Vista Court      Urbandale, IA 50322

July 12, 2007

Mr. Randy Walters  
Whisper Oaks, LLC  
2171 Grand Ave.  
West Des Moines, Iowa 50265

TE Job #: U06-086  
re: Whisper Oaks, Spirit Lake, Iowa

Dear Sir,

I have visited the site and inspected the property at the Whisper Oaks Condominium Project in Spirit Lake, Iowa. This inspection was to review if the building indicates any foundation movement or settlement. The structure is a 4 story condominium building with a concrete foundation and a steel framed balcony system on each face of the building. The interior structure is a wood framed system with load bearing partition walls. The foundation level also has storage units to the north (lake side).

We have reviewed the entire structure and find that the floors are level and the walls are plumb. There were no cracks in the wallboard system and no cracks in the foundation walls with the exception of normal shrinkage cracks. If there were any settling of the structure, there would be diagonal cracks radiating from the door and window frames, none of these cracks were observed.

Please call if I may be of further assistance.

### Certification:

I hereby certify that this engineering document was prepared by me or under my direct personal supervision and that I am a duly Registered Professional Engineer under the laws of the State of Iowa.

Signature: \_\_\_\_\_

Date: July 12, 2007      Registration #: 11121

My Registration Expires December 31, 2008

