

Prepared by and return to:

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**DECLARATION OF SUBMISSION OF PROPERTY
TO HORIZONTAL PROPERTY REGIME
FOR
WHISPERING PINES CONDOMINIUMS**

NOW ON THIS _____ day of _____, 2007, the undersigned, BRL Development, L.C., an Iowa limited liability company (hereinafter referred to as “Developer”), hereby executes this instrument of Declaration of Submission of Property to a Horizontal Property Regime to be known as “Whispering Pines Condominiums”, all pursuant to Chapter 499B, Code of Iowa, the same to take effect when filed for record in the office of the Recorder of Black Hawk County, Iowa.

ARTICLE I

PURPOSE AND DEFINITIONS

1. Purpose. The condominium Units which are a part of this Horizontal Property Regime are intended to be the first phase of a development which may include, at the option of the Developer, additional condominium Units. The Developer’s option to include additional condominium Units shall continue for up to twenty (20) years, unless earlier waived by Developer or Developer’s successors or assigns.

2. Definitions. The terms employed in this Declaration shall have meanings given them in Chapter 499B of the Code of Iowa, unless the context or the more particular provisions of any portion of this Declaration require a different meaning.

ARTICLE II

DESCRIPTION OF LAND

1. Description of Land. The land hereby conveyed and submitted to the Horizontal Property Regime, including the buildings and all improvements erected thereon, has a legal description as follows:

Lot 2 of the Final Plat of Pinnacle Prairie Town Homes,
Phase 1, City of Cedar Falls, Black Hawk County, Iowa.

A Final Plat of the property is attached hereto as Exhibit A.

2. Additional Phases. The Developer expressly reserves the right to amend and supplement this Declaration at any time for the purpose of adding additional real estate, buildings and improvements to this Horizontal Property Regime, all as hereafter provided for a period of up to twenty (20) years.

ARTICLE III

DESCRIPTION OF BUILDINGS

1. Description of Buildings. At the time of the filing of this Declaration, fourteen (14) buildings are contemplated. Two (2) of the buildings will be one story in height and will have two (2) units. Twelve (12) of the buildings will have four (4) units, two (2) of which will be one story in height and two (2) of which will be two stories in height. Some of these four (4) unit buildings will have full basements and some of same will be on a slab, depending upon the grade of the surrounding terrain and market demand at the time of construction. At the present time, one of the four (4) unit buildings is under construction. All of the buildings will be constructed as set forth on the plans which are attached hereto as Exhibits B and C and will be of frame construction with principal materials of construction being wood, concrete, concrete blocks, steel reinforcement, brick, sheetrock, wooden doors, and trim. The Units may be used solely for residential purposes.

2. Access. Exhibit B shows the location of Oster Parkway, a public street that provides ingress to and egress from the land and buildings to other streets in Cedar Falls, Iowa.

3. Additional Phases. The Developer hereby expressly reserves the right to amend and supplement this Declaration from time to time for the purpose of describing additional land, buildings, and Units.

ARTICLE IV

LEGAL DESCRIPTION OR IDENTIFICATION OF UNITS AND COMMON ELEMENTS BY PLAN AND NUMBER: CERTIFICATES

1. Plans and Exhibits Attached. At the time of the submission of this Horizontal Regime, one (1) building is under construction. The building under construction is designated as Building 4510. Building 4510 contains Units 4510-1, 4510-2, 4510-3, and 4510-4. The Developer intends at this time to construct fourteen (14) buildings. The other thirteen (13) buildings not yet under construction are Buildings 4511 through Building 4523 as shown on Exhibit B. There is attached to this Declaration Exhibits B and C showing to the extent possible the location of each Unit within the building, the number of rooms for each Unit, the dimensions thereof, and the area of the Units, the common area to which each Unit has access or is afforded access, and the particulars of the building, all as they relate to the building under construction, and shown and depicted by survey plans and/or graphics insofar as possible. Exhibit B includes the certificate of William Claassen, a licensed Professional Engineer and Land Surveyor.

2. Optional Items; Permitted Variations. Various optional items may be provided by Developer during construction by arrangement with and at extra cost to a Unit purchaser. The Developer and owner may by agreement delete, relocate, modify or add interior non-load bearing partitions. The addition of any optional item by either Developer on its own initiative in the addition, substitution, deletion or variation by agreement with a purchaser is agreed to by all other Unit owners and shall not be construed to constitute an amendment to or variation from the terms of this Declaration, and, in addition, shall not in any event vary or modify the fraction of ownership interest appurtenant to such Unit as herein provided.

3. Amendment by Developer. It is expressly understood that, as additional buildings and Units are constructed, both on the land described in Article II above, and other lands and real estate which may be added to this Declaration through later amendment by the Developer, that additional plans, exhibits, and certificates will be provided and attached as an amendment to this Declaration in order to accurately describe and identify the Units, as they are constructed.

ARTICLE V

DESCRIPTION/DEFINITION OF COMMON ELEMENTS AND UNITS

1. This Horizontal Property Regime consists of Units that are separate parcels of real estate individually owned by owners thereof, and of common property (sometimes referred to as common elements) which is owned in common by the owners of the respective Units. The common elements are either “general common elements” or “limited common elements” and the same together with the Units are described and defined as follows:

- A. General Common Elements. The general common elements are the land described in Article II and all improvements, including the building situated on the land, except the Units and except such common elements as are limited common elements. The general common elements include, without being limited thereto, all property defined as such in Section 499B.2(5), Code of Iowa, the land described above, the foundations, basement floors or slabs, exterior walls of each Unit and of the building in which the Units are located, interior load-bearing walls, other structural elements of the building not reserved to a Unit, personalty required by the Owners’ Association for its functioning, ceilings and roofs, sidewalks, driveway, landscaping and plantings, outside lighting system and fixtures, outside parking lots and spaces, general water system and meter therefor, all ventilation and exhaust systems, gutters and down spouts, the lighting system, fixtures and equipment of the common areas, and in general all devices or installations existing for common use as shown on Exhibit B.

All sewer, water, electrical, gas, telephone and other utility or service lines, wiring, ducts, conduits, piping, facilities or systems for purposes of utility or other services to or for a Unit (as distinguished from the actual machine or piece of equipment to which they are connected) are general common elements notwithstanding where same are located in part within a Unit as hereinafter defined so long as the same is connected to any other such wiring, line and the like. The common elements shall include easements to Units for all such lines, wiring, ducts and the like above referred to for the furnishing of utility and other services or systems to the other Units and to the common property and easements of support in every portion of a Unit that contributes to the support of the improvements.

Notwithstanding the foregoing, the heating and air conditioning units, and the lines and pipes leading to and from a Unit for its heating and air

conditioning unit, as well as all gas and electrical supply and exhaust pipe and cap for fireplaces, shall not be common elements, but shall be the separate property of the designated Unit.

- B. Limited Common Elements. The limited common elements include such common property which is classified as limited by Section 499B.2(6), Code of Iowa. The common property which is specified and determined to constitute a limited common element for the use of a Unit includes, but is not limited to, the patio(s) or deck(s) adjoining a Unit and any non-load bearing partitions or walls within a Unit.

- C. Units. Each Unit shall consist of the area between the interior surfaces of its perimeter walls, including interior windows and interior doors and including the interior surface of the exterior door(s), and between the lower surface of the ceiling and the upper surface of the floor, and between the lower surface of the main floor and the upper surface of the basement floor. Each Unit shall further include the garage accessible from the interior of the Unit. Each garage shall consist of the area between the interior surfaces of its perimeter walls including the garage door and between the lower surface of the ceiling and the upper surface of the garage concrete slab. In all cases, a Unit shall include and be defined by the surfaces referred to and shall include any non-load bearing partitions within, except that all lines, wires, ducts and the like within any non-load bearing partition or wall shall be excluded and shall not constitute a part of the Unit for purposes of separate ownership of such Unit.

- D. Amendment by Developer. Whenever there is a reference in this Article V to a Unit, common elements, or limited common elements, such reference shall also include automatically any Units, general common elements and limited common elements which may be later added by amendment, at the option of the Developer.

ARTICLE VI

FRACTIONAL INTEREST OF UNIT IN THE COMMON ELEMENTS

The original Unit included in this Declaration has appurtenant and assigned to it an undivided 1/4 interest in the common elements. In the event the Developer exercises its right to add additional Units to this Declaration, then the undivided fractional interest after the amendment shall be expressed by the fraction where the numerator is one (1) and the denominator is the total number of Units, including the Units added by the

amendment made by the Developer. The sum of the fractional interests shall at all times equal one (1). The common interest of a Unit in the common elements shall be inseparable from each Unit and any conveyance.

ARTICLE VII

VOTING RIGHTS OF THE UNIT OWNERS

The total number of votes outstanding and entitled to be cast by the owners of the Units is four (4), which is equal to the number of Units. The total number of Units may be increased as provided in Article VIII. The owner (or owners collectively) of each Unit, as such and as an Association member, shall be entitled to cast one (1) vote for each Unit owned. The voting rights of Unit owners shall be as further defined in the Bylaws of the Owners' Association.

ARTICLE VIII

DEVELOPER'S RESERVED RIGHTS AND POWERS

1. Developer's Activities and Unit Ownership. Developer is irrevocably and perpetually empowered, notwithstanding any other use restriction or other provision of the condominium documents to the contrary, to sell Units to any person and shall have the right to transact on the condominium property any business relating to construction or sale of Units including but not limited to the right to maintain models, offices, signs, employees, equipment and materials on the premises and to use common elements to show Units. A sales office, signs, and all items and equipment pertaining to sales or other facilities furnished by the Developer shall not be considered common elements and shall remain its separate property. Developer retains the right to be and remain the owner of completed but unsold Units, all under the same terms and conditions as other owners, including membership in the Association, save for this right to sell. In addition, unsold Units owned by the Developer shall only be subject to assessment and lien for "current expenses" of the Association, as distinguished from assessments for "reserves" or "emergencies" as referred to in the Bylaws of the Association, and Developer shall furthermore have the option of either paying such current expenses assessment on unsold Units, or, in lieu thereof, to make up any deficiencies existing in the current operational and maintenance expenses of the regime. If Developer makes up such deficiencies, the lien of any assessments against Developer's Units shall thereby be automatically discharged, and the Association upon request shall satisfy or release such lien in writing.

2. Construction of Units. The construction of Units shall be in accordance with the terms of this Declaration and the plans and exhibits attached hereto, except Developer reserves the right on its own initiative or pursuant to agreement with the owner of a particular Unit, or at the instance of mortgagees, any insurance carrier, the architect, or the public authorities, to make or authorize variations therefrom or adjustments of any unsubstantial character which are not meaningfully prejudicial to the rights of owners and do not materially affect such rights or the value of a Unit, which variations or adjustments are permitted without necessity of consent by other owners and shall not constitute an amendment of this Declaration.

3. Designation of Association Directors. Each building shall elect a Director to serve on the Owners' Association Board of Directors. The Directors will then elect a President to serve. The ongoing election of Directors and Officers shall be done in accordance with the Bylaws.

4. Right to Add by Amendment. Notwithstanding anything else contained in this Declaration, the Developer or Developer's assigns expressly reserve the right for a period of twenty (20) years after the filing of this Declaration, to amend the Declaration, either once or more than once, for the purpose of adding additional lands and Units and buildings to the Horizontal Property Regime. The fact that the Developer has retained a right to amend this agreement shall not require the Developer to do so. The Developer, by retention of such right, does not promise that further development will occur. In the event Developer determines that this Declaration should be amended in order to permit an addition to the Declaration, then notice in writing shall be given to the Board of Directors of the Owners' Association. Developer agrees that all costs incurred for the purpose of filing Amendments to this Declaration shall be paid by the Developer or Developer's assigns. No Amendment shall be effective until it has been recorded in the office of the Recorder of Black Hawk County. Developer is hereby authorized to prepare such Amendments and file them without further consent of the Board of Directors or of any of the property owners in the Horizontal Regime. The term "Developer" herein shall include any of Developer's assigns, properly given. Nothing herein shall restrict the right of the Developer in the exercise of the Developer's right to add additional buildings and land to the regime to build buildings and condominium Units different from those depicted in the plans and exhibits attached hereto.

5. Assignment of Developer's Rights. Developer may assign its rights and powers under this Declaration, in whole or in part. No consent of owners or mortgagee shall be required.

6. Supplementary Clauses. Various provisions of this Declaration, and deeds and mortgages of the Units and common elements, contain clauses designed to accomplish shifting of the common elements as the regime is expanded by the addition

of Units. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the common elements can be accomplished.

7. Compliance With Horizontal Property Act. Each Unit owner, by acceptance of the deed conveying a Unit, agrees for such owner and all those claiming under such owner, including mortgagees, that this Declaration is in accordance with the Horizontal Property Act.

8. Right of Access. Developer and its designees, including, but not limited to contractors, shall have and enjoy a blanket and on-going easement in, out, upon, through, under and across general common elements for as long as Developer shall be engaged in the construction, development and sale of Units for the purpose of construction, installation, maintenance and repair of the condominium property, for ingress and egress to all Units and to all general and common elements and for the use of all driveways and common parking areas. In addition, Developer reserves, for itself and its designees, the irrevocable and perpetual right to enter into, upon, over or under the general and limited common elements as reasonably necessary to install, maintain and/or repair any improvements located or to be located thereon.

ARTICLE IX

APPURTENANCES TO UNIT OWNERSHIP AND TRANSFER THEREOF: SUBDIVISION

1. Appurtenances. The ownership of each Unit (whether defined and described herein or by amendment hereto) shall include all of the appurtenances thereto, including, but not limited to, the following:

(a) Fractional Interest of Ownership of Common Elements and Funds: Liabilities for Expenses. There shall be appurtenant to each Unit and the ownership thereof an undivided fractional interest of ownership in or liability for (1) the general common elements, (2) the limited common elements, (3) the funds and surplus, if any, of the Owners' Association, and (4) the common expenses and liabilities of the Association. Such undivided fractional interest of ownership or liability shall be identical as to each of the four aspects thereof above named, and the amount of such fractional interest or liability shall be the fraction fixed for the Unit pursuant to Article V according to the fractional interest of each Unit in the entire regime.

(b) Encroachment Easements. If any portion of the common elements encroaches upon any Unit or any other portion of the common elements, or if any Unit encroaches upon any other Unit or upon any portion of the common elements upon completion of construction, or if any of such encroachments shall occur thereafter as a result of shifting or settling of the Buildings or from alteration, repair or improvement to the common elements and/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 condemnation or eminent domain proceedings, then, in each 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.

(c) Cross Easements. The appurtenances shall include, so long as the Buildings, common elements and Units exist, easements from each Unit owner to each other Unit owner and to the Owners' Association and from the Association to the respective Unit owners as required as follows:

(i) Ingress, Egress and Maintenance. Easements are reserved for ingress and egress through the common area for access to the Units and through the common areas and the Units for purposes of maintenance, repair, replacement or reconstruction of each as authorized;

(ii) Support. Every portion of a Unit contributing to the support of the Buildings is burdened with an easement of support for the benefit of all other Units and common elements in or of the Buildings;

(iii) Utility and Other Services. Easements are reserved through the Units and common elements for conduits, ducts, plumbing, wiring, piping and other facilities for the furnishing of utility or other services and facilities to the other Units and common areas, provided such easements through a Unit shall be only according to the plans and specifications for the Buildings as and if varied during construction as herein permitted unless otherwise agreed by the Unit owner.

(d) Possession and Use of Unit, Including Air Space. In addition to the fee simple ownership of a Unit, there shall be as an appurtenance thereto an exclusive easement for the possession and use of the air or room space within the Unit and to the limited common elements of that Unit as the same exists from time to time or as altered or reconstructed from time to time subject to necessary and authorized easements for maintenance, repair and the like; which appurtenance shall be terminated automatically in the event of termination of the regime.

2. Assignment or Transfer of Appurtenances: Severance. The ownership of each Unit shall include and there shall pass and be transferred in the event of any transfer of ownership of such Unit as a parcel of realty or of any owner's right, title or interest therein, whether by deed, mortgage, by other instrument, or otherwise than by an instrument, all of the appurtenances thereto whether enumerated and separately described or not; and no part of the appurtenance interest of any Unit may be sold, transferred or otherwise disposed of except in connection with the sale, transfer or other distribution of the Unit itself or all Units in the regime.

3. Subdivision. No Unit shall be subdivided.

4. Liens. Taxes, assessments, judgments and any other matter against a Unit owner which may give rise to a lien shall be a lien only against the Unit owner's Unit and not against any other Unit or the common elements.

5. Developer's Rights. In addition to the easements granted and maintained herein, if Developer exercises its rights to add to this Horizontal Regime, then the easements granted shall be expanded to include and conform to the additional properties added to the Regime in substantially the same way and manner as the easements granted in this original Horizontal Regime.

ARTICLE X

MANAGEMENT OF THE REGIME

1. Owners' Association, Membership, Vote or Other Action of Owners. The business and affairs of the regime shall be governed and managed by the Association, a non-profit membership corporation organized and existing under Chapter 504, Code of Iowa, which corporation is and shall constitute the council of the co-owners of the Buildings and common elements submitted to the regime, all as provided by Section 499 B.2(3), Code of Iowa. Copies of its Bylaws are attached hereto as Exhibits D.

All owners of Units shall automatically be members of the Association, and membership in the Association shall automatically cease upon termination of such ownership interest. Whenever a vote or other action of Unit owners as a group is required, the mechanics of conducting such a vote or taking such action shall be under the control and supervision of the Association and the Bylaws.

2. Agreements and Compliance. All owners, 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 the other

condominium documents, and all rules and regulations and all agreements and determinations lawfully made by the Association and its directors, officers, or agents shall be binding on all such owners and/or other persons. A failure to comply with the Bylaws or the provisions of the other condominium documents or any agreements 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 for mandatory or other injunctive relief, and the employment of one such remedy shall not constitute the waiver of the other.

3. Included Powers: Foreclosure of Lien, Waiver of Partition. Each owner agrees that the Association has and shall exercise all powers, rights and authority granted unto it by Chapters 504 and 499B, Code of Iowa, and such as are more particularly set forth in the condominium documents, including the making of assessments chargeable to owners and a lien on Units for any common expenses, and the right to foreclose the lien thereof and acquire a Unit at foreclosure sale and to hold, lease, mortgage or convey the same, but such acquisition shall be on behalf of all Unit owners, all of whom, however, shall be deemed to have waived all rights of partition with respect thereto.

4. No Avoidance by Waiver of Use: Right of Entry. The liability of an owner for all assessments made by the Association may not be avoided by waiver of the use or enjoyment of any common element, or by abandonment of a Unit for which an assessment is made. Except in the event of any emergency, the Association shall have the right exercisable at reasonable hours to enter a Unit as may be necessary or advisable to exercise its rights or responsibilities. In the event of an emergency the Association shall have the right to enter a Unit at any time as may be necessary or advisable to exercise its rights or responsibilities.

5. Association as Attorney-in-Fact for Owners. The Association is hereby irrevocably appointed attorney-in-fact for the Owners of each and every Unit to manage, control and deal with the interest of such Owners in the Common elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the regime upon its destruction or obsolescence as hereinafter provided, and to deal with and handle insurance and insurance proceeds and condemnation and condemnation awards as hereinafter provided. The acceptance by any person or entity of any interest in any Unit shall constitute an appointment of the Association as an attorney-in-fact as provided above.

6. Subordination of Assessment Liens. If any Unit subject to a lien created by any provision in this Declaration shall be subject to the lien of a first Mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (ii) the foreclosure of the lien of such Mortgage or the acceptance of a deed in lieu of the foreclosure by the

Mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the time of foreclosure or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the time of the foreclosure or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the foreclosure or deed given in lieu of foreclosure. All assessment liens as shall have come due up to foreclosure or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

ARTICLE XI

MAINTENANCE, ALTERATION AND IMPROVEMENTS

1. Terms. Although the use of one shall not be deemed to exclude the applicability of another unless specifically so stated or required by the context, certain terms not susceptible to precise delineation are employed in the Article as follows: "Maintenance" is used generally to include repair, renovation, restoration, reconstruction, rebuilding or replacement as may be necessary to maintain the condominium property in the same condition as when constructed and completed by Developer; "alteration" relates to changes from such state other than maintenance; "improvement" as distinguished from alteration relates generally to the addition of new and different structures, elements or facilities other than those referred to in this Declaration. The provisions of this Article are applicable where the work done or required is not caused by a specific casualty or event and shall also apply in the event of maintenance, alteration or improvement necessitated by a specific casualty or event unless different provision is specifically made in the condominium documents dealing with such contingencies.

2. Maintenance by Association.

(a) All common elements and facilities, limited or general, shall be maintained by the Association as a common expense unless responsibility is otherwise imposed on the Unit owner by paragraph 3 of this Article or otherwise.

(b) Incidental damage caused to a Unit through maintenance by the Association shall be repaired by the Association as common expense.

(c) If a Unit owner defaults in his or her responsibilities of maintenance, the Association shall assume the same as a common expense and levy a special assessment against the Unit collectible as other assessments.

3. Maintenance by Owner.

(a) It shall be the responsibility of each Unit owner, after the Developer has deeded the Unit to the owner, at his or her own expense, to provide all maintenance of and within his or her Unit as defined by Article IV, paragraph 3, and including maintenance of non-load bearing partitions, of the interior surfaces of the walls, ceiling, doors, windows, sliding glass doors and floors which define the Unit, and of any finished or additional surfaces or materials installed by the Developer and/or the Unit owner, such as carpets, wall papering, counter tops, painting or staining, or other floor, wall or ceiling or other covering of any kind. The owners shall also maintain all plug-in appliances and other personalty of any kind within the Unit.

(b) The Unit owner, at his or her expense, shall be responsible for maintenance of the patio or deck adjacent to that owner's Unit, if any, and the sliding glass doors thereto, all other doors or windows and all limited or general common elements within the Unit and garage for that Unit, including the garage door. The owner shall maintain and replace all equipment, machines and attachments and fixtures within the Unit, irrespective of whether the same are or might be regarded as personalty or real estate or as common elements for other purposes, such as air conditioning and heating equipment or units, ranges, fans, water heaters, dishwashers, disposals, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to the Unit. It is understood the owner shall be responsible for the maintenance of wiring, piping, conduits, ducts and other service elements within the Unit, even though situated without.

(c) The Unit owner shall likewise maintain at his or her expense any improvements or alterations subsequently added by the Unit owner and it shall be the Unit owner's duty to perform said maintenance without disturbing the rights of other Unit owners and to report promptly to the Association any defects or need for repairs which are the initial responsibility of the Association or with respect to which the Association otherwise has authority to act.

4. Responsibility of Owner; Insurance Proceeds. The owner of a Unit shall be responsible and liable for the expense of any maintenance rendered necessary by the Unit owner's act, neglect or carelessness or that of the Unit owner's family, guests, employees, agents or lessees, which liability shall include any increase in insurance rates occasioned thereby, provided this requirement shall not preclude the proceeds of

insurance maintained by the Association from being applied to discharge such expense, in whole or in part; provided further: Nothing herein stated shall be construed to modify subrogation rights of or any modification thereof by insurance companies.

5. Maintenance Involving More Than One Unit. If maintenance is required involving more than one Unit, the Association, in order to provide centralized direction, may assume responsibility therefor and provide for the same, in whole or in part, as a common expense assessable to all owners.

6. Alteration or Improvements by Unit Owner. No Unit owner shall make any alteration of or improvement to a Unit or the limited common elements appurtenant thereto or to any of the common elements or remove any portion thereof without approval of the Board of Directors of the Association as to the proper insurance of such alterations or improvements under any master insurance policy purchased by the Association or by an insurance policy purchased by the owner and as to arrangements for bearing the expense of such insurance. In addition, no such alteration or improvement shall be made unless the Board of Directors shall approve the design and safety thereof and no work by an owner is permitted which will jeopardize the soundness of the Buildings or impair any easement. Any alteration or improvement of a Unit or the limited common elements appurtenant thereto shall neither increase nor decrease the fractional interest in the common elements appurtenant to that Unit.

7. Alteration or Improvement by the Association or All Owners. Except as otherwise permitted by this Declaration, there shall be no alteration of the Buildings or other general common elements, or further improvements added to the lands or other common elements, without the approval of all owners, provided upon the question being put to a vote at a membership meeting as provided in the Bylaws any such alteration or improvement may be done if seventy-five percent (75%) of the total number of votes outstanding and entitled to be cast are voted in favor thereof and if the dissenting owners are relieved from the cost and their share of the cost is borne by the assenting owners. Bids shall be taken and the cost accurately estimated before such vote is conducted. An alteration or improvement pursuant to this paragraph shall not alter the fractional interest appurtenant to each Unit in the common elements and such interest shall remain as before, irrespective of whether the owner voted in favor of or against the alteration or improvement.

ARTICLE XII

CONDITIONS OF AND RESTRICTIONS ON OWNERSHIP
USE AND ENJOYMENT

The ownership, use, occupation and enjoyment of each Unit and of its appurtenances and of the common elements of the regime shall be subject to covenants, conditions, easements, or other encumbrances of record and to the provisions of the Bylaws and Articles of Incorporation of the Association and of this Declaration, all of which provisions, irrespective of where set forth or classified as such, shall with equal status constitute such a covenant, condition, restriction, and requirement as shall be enforceable and binding as a covenant, condition, restriction or requirement running with the land and shall be binding on and enforceable against all Units and the owners thereof and their respective assigns, lessees, tenants, occupants, and successors in interest. The following particular covenants, conditions, restrictions and requirements are hereby noted and set forth:

1. No owner of a Unit shall convey, mortgage or lease such unit unless and until all sums due the Association by way of assessment of any kind or other charge and whether evidenced by recorded liens or not are currently paid and not delinquent and in the event of delinquency the grantee, mortgagee or lessee, if notified thereof before paying or disbursing to the owner, shall apply the proceeds of such transaction first to payment of the delinquent amounts before payment of any of same to the owner. The Association shall in any event issue a written statement under signature of an officer or management contractor to such grantee, mortgagee or lessee verifying the status of all assessments or charges affecting the Unit, which statement, if to the effect that there are no delinquencies or payment of delinquencies as shown thereon, shall constitute conclusive evidence of compliance with this paragraph.

2. No Unit owner may paint or in any manner decorate the exterior facade of the walls or add or connect equipment, structures or facilities thereto or erect any For Sale or other sign or otherwise disturb or affect the same. No exterior transmission devices of any kind, including towers, antennas, and television and/or microwave transmission dishes, shall be constructed, installed, modified or permitted on the general common elements, including the buildings containing the Units, the ground and other areas used or otherwise designated as common areas. Notwithstanding the foregoing, exterior transmission devices (1) which are used to receive direct broadcast satellite service, including direct-to-home satellite service or to receive or transmit fixed wireless signals via satellite, and have a diameter of one (1) meter or less, or (2) which are used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television

fixed services and local multipoint distribution services or to receive or transmit fixed wireless signals other than via satellite, and are one meter or less in diameter or diagonal measurement, or (3) which are used to receive television broadcast signals, shall be permitted on limited common elements, including patios and decks. No wires shall be permitted to run through any common elements. Any damage to the general common elements occasioned by the installation or use of any allowed transmission device shall be the responsibility of the individual unit owner installing and/or using such device.

A transmission device serving a particular Unit must be located on the limited common elements appurtenant to that Unit unless otherwise permitted by the Board of Directors.

3. The owner of each Unit covenants and agrees not to engage in or permit any activity or condition as would cause a termination of or increase the premium for insurance carried by the Association.

4. In accordance with the right of entry reserved in Article VIII, paragraph 4, each Unit owner shall deposit with the Association, if required by it, a key to the Unit and consents that, in the case of any emergency originating in or threatening a Unit, the Board of Directors of the Association or any person authorized by it may enter the Unit for the purpose of remedying or abating such emergency whether the owner is present or not.

5. No animal pens, sheds, fences or other outbuilding or structure of any kind shall be erected by a Unit owner on any common area. No activity is allowed which unduly interferes with the peaceful possession and the proper use of the property by its owners. No fire hazard or unsightly accumulation of refuse is allowed. All laws, ordinances and the regulations of governmental bodies shall be observed by the owners and the Association.

6. No boat, trailer, motor home, or recreational vehicle shall be parked upon the common elements for more than twenty-four (24) hours during any consecutive seven (7) day period. No mechanical repairs to any vehicle shall be performed upon the common elements (such activities shall be confined to garages). Each Unit owner covenants and agrees with all other Unit owners to repair and maintain, rebuild and reconstruct his or her own Unit and keep the same in good repair for the benefit of all such other owners, as may be required and applicable, and to pay his or her separately metered utility expenses.

7. A Unit owner shall give notice to the Association of every lien against his or her Unit other than permitted mortgages, taxes and Association assessments, and of any suit or other proceeding which may affect the title to his

or her Unit, within ten (10) days after the lien attaches or the owner receives notice of such suit.

8. The Association, acting through its Board of Directors, shall have power to adopt and enforce all reasonable rules, restrictions and regulations relating to the use, occupancy and enjoyment of the condominium property, and without limiting the scope of the Board's authority, the following in particular shall govern: The Board (a) may approve temporary structures, the same being otherwise prohibited, (b) may regulate or prohibit the ownership and use of pets, motorcycles or other power driven equipment, (c) may prohibit the use of flags, banners and grills on a patio or balcony and (d) may permit the enclosure of a balcony or patio area, the same being an alteration or improvement otherwise not permissible without approval by the Board of Directors. In order to enhance the exterior appearance of the Buildings, all window coverings having an exterior exposure shall be lined in white unless the Board otherwise permits.

9. Units shall be used and occupied for dwelling purposes only. An owner shall be liable to the Association and other owners, as the case may be, for damage to common elements or property of other owners.

10. No more than a total of two (2) cats and/or dogs may be kept in each Unit.

Specially trained guidance dogs, signal dogs or other assistance dogs are permitted as required regardless of their weight. No wild animal, reptile or bird may be trapped, transported, kept, or maintained anywhere on the property. All allowable pets shall be kept and housed inside the owner's Unit, and no pet may be kept which abnormally interferes with the rights, comforts or convenience of other owners. Breeding of any animals on the property is specifically prohibited.

All pets must be kept on a leash in the presence of an owner when outside the owner's Unit. Each owner shall have the individual responsibility for any clean up required as a result of the ownership of such pet. If the owner fails to clean up after his or her pet, the Board of Directors may arrange for the required clean up and assess the charges for such services to the owner as a special assessment.

11. The design and layout of the Buildings and grounds submitted to the condominium regime and the integrity and appearance of the regime as a whole are the common interest of all Owners. No work of any kind is to be done upon the exterior building walls or upon interior boundary walls or doors without obtaining the approval of the Association. The Association shall have the right to prohibit the alteration of the Buildings, garages or other interior or exterior facades, including, but not limited to, decks, vertical and horizontal

surfaces and roofs, in order to maintain a consistent and uniform appearance throughout the regime.

12. No person who is required to register under Iowa Code Chapter 692A, as amended, or any successor statute ("Sex Offender Registrant") may reside in a Unit.

Any owner who resides in a Unit who is or becomes a Sex Offender Registrant must vacate the Unit. In addition to all other remedies available to the Association, if the owner does not vacate the Unit within 90 days after receiving notice from the Association, the Association may purchase the owner's Unit. The purchase price for the Unit will be equal to the average of two independent appraisals obtained by the Association, less the Association's anticipated costs of selling the Unit, including, without limitation, brokerage fees of not more than 7% of the appraisal value, the cost of the appraisal, the real estate transfer tax (based on the appraisal value), and other customary and incidental selling costs.

An owner of any Unit in which a Sex Offender Registrant resides, whether as a tenant or visitor, shall immediately cause the Sex Offender Registrant to vacate the Unit. The Association may, at any time, acting as attorney-in-fact for the owner, evict the Sex Offender Registrant at the owner's cost, the expense of which shall be a special assessment against the owner's Unit. If any action seeking eviction of a Sex Offender Registrant fails, the Association may, but will not be obligated to, appeal the judgment. If the Association prevails on appeal, the owner will be responsible for all reasonable fees and costs of the Association's appeal, which fees and costs shall be a special assessment against the owner's Unit.

Each owner appoints the Association as the owner's attorney-in-fact for pursuing eviction proceedings, executing any and all documents pertaining to the proceedings, and performing any or all responsibilities as may be required or necessary to be performed under this paragraph 12, including conveying title to the Unit. This power of attorney is coupled with an interest, will run with the title of any and all Units and will be binding upon the heirs, personal representatives, successors and assigns of each owner.

As used in this paragraph 12, "reside" means:

- (i) living in a Unit for more than 120 cumulative hours during any 60 consecutive-day period, or
- (ii) claiming the address of the Unit:

- (a) as the individual's place of residence for purposes of registration for voting;
- (b) on the individual's driver's license or motor vehicle registration;
- (c) for receipt of general mail,
- (d) on financial institution records; or (e) on any utility or communication service.

Neither the Developer nor the Association is responsible for failing to identify a person as a Sex Offender Registrant.

13. No provisions of this Declaration or the Association's Bylaws shall restrict or otherwise abridge a Unit owner's right of action against the Association or other Unit owners for a violation of or failure to enforce any provisions of the Declaration, Bylaws or other applicable condominium documents.

ARTICLE XIII

PROCEDURE IN THE EVENT OF DAMAGE OR DESTRUCTION

1. Damage to or destruction of all or any part of the Buildings and/or condominium property shall be repaired or the same restored, rebuilt or reconstructed, as the case may be, if two-thirds (2/3) of the total number of votes outstanding and entitled to be cast are voted in favor of such repair, restoration, rebuilding or reconstruction, and at least two-thirds (2/3) of the Eligible Holders consent to such repair, restoration, rebuilding or reconstruction. If less than two-thirds (2/3) of such votes are cast in favor of any such actions, the outcome of the vote taken shall automatically constitute a determination that the legal status of the project be terminated and the entire condominium property be deemed owned in common by the Unit owners and subject to partition and sale, it being understood that no separate part of the property may be thus deemed owned in common and partitioned without an amendment to this Declaration expressly so providing, which amendment must comply with the provisions of Chapter 499B of the Iowa Code as now provided or hereafter amended and in effect at such time. That percentage of all the owners of the Units submitted to the regime who together cast the necessary percentage of the total number of votes outstanding entitled to be cast in favor of or against any of such action shall be the number and percentage of such owners whose votes shall be determinative of whether to rebuild, repair, restore or reconstruct all or any portion of the property or whether to deem the property to be owned in common.

2. A vote and determination to repair, rebuild, restore or reconstruct made pursuant to paragraph 1 of this Article (but not a presumed determination pursuant to paragraph 3 next following) may be recalled and superseded as follows: After the bids for the necessary work have been taken and the amount of insurance proceeds or other funds available for the work are known, and if the total amount of the resulting assessment as will be required to finance the work exceeds ten percent (10%) of the precasualty value of the entire condominium property at the time of the casualty, then the Board of Directors shall call a special meeting of the members of the Association to consider under such circumstances whether or not the property in question shall be restored, rebuilt, repaired or reconstructed; the work shall in such event be done only if seventy-five percent (75%) rather than two-thirds (2/3) of the total number of votes outstanding and entitled to be cast are cast in favor of the proposed action, and if the work is not thus authorized, the original determination shall stand rescinded and superseded, and the entire condominium property shall be deemed to be owned in common by the Unit owners with the same effect as in the case of a negative vote pursuant to paragraph 1 of this Article.

3. All damage or destruction of a minor character shall be repaired, rebuilt, reconstructed or restored by the Board of Directors of the Association or a Unit owner, as applicable, without necessity of formal vote or determination. Minor damage or destruction shall include, but not be limited to, such as can be reasonably repaired, restored, rebuilt or reconstructed within thirty (30) days after the applicable occurrence (exclusive of delays or interruptions resulting from lack of available contractors, labor, materials, or funds). In the event of doubt whether damage or destruction is minor, or in any case, one-third (1/3) of the Board of Directors or owners who are entitled collectively to cast at least twenty-five percent (25%) of the total number of votes outstanding and entitled to be cast may call for a special meeting for a vote and determination of whether to repair and the like pursuant to paragraph I of this Article and the determination thus made shall control irrespective of whether the damage or destruction might have otherwise been treated as minor, provided in all cases that if no formal vote and determination has been taken and made within thirty days of the date of the damage or destruction in question, it shall be conclusively presumed and in particular for purposes of Section 499B.16 of the Code of Iowa that the Association and Unit owners have in fact determined to rebuild, repair, restore or reconstruct, as the case may be.

4. Unless this Declaration is amended to provide otherwise, all repair, rebuilding, restoration, or reconstruction of the property shall contain the same number of Units, and be substantially in accordance with the plans and specifications of original construction, as available from the exhibits hereto and plans on file with the office of the County Recorder, Black Hawk County, Iowa, and the fractional interest and other appurtenances to each Unit after such repair, rebuilding, restoration, or reconstruction shall be the same as before. An amendment of the plans and specifications as

contemplated above, must be adopted by unanimous consent, pursuant to paragraph 6 of Article XII.

5. The provisions of this Article are intended to govern in the event of damage or destruction resulting from an occurrence or casualty which although to be broadly construed may be distinguishable from maintenance in the sense of remedying ordinary wear and tear, as referred to in Article IX, and in any event paragraph 4 and the other provisions of this Article shall not govern in the event of reconstruction, rebuilding or restoration necessitated on account of long term obsolescence or condemnation of any Unit within the regime.

6. Except as provided herein, in the case of damage or destruction of other than a minor character, unless at least two-thirds (2/3) of the owners of Units (other than Developer) have given their written consent, the Association shall not be entitled to:

(a) by act or omission, seek to abandon or terminate the condominium project;

(b) change the pro rata interest or obligations of any Unit for the purpose of: (i) levying assessments or changes or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the common elements;

(c) use hazard insurance proceeds for losses to any condominium property for other than the repair, replacement or reconstruction of such condominium property.

This paragraph shall not prevent Developer from exercising its votes against the actions described in this paragraph. Further, the provisions of this Declaration which call for a larger percentage of votes of Unit owners to take any action described in this paragraph shall control over the provisions of this paragraph.

Unless the condominium project is no longer owned in the form of a condominium, the common elements may not be abandoned, partitioned, subdivided, renumbered, sold or transferred. However, the granting of easements by the Association for utilities or for other public purposes consistent with the use of the common elements for condominium purposes shall be permitted.

ARTICLE XIV

RESTRICTIONS AND COVENANTS

The condominium owner and every Unit owner by the acceptance of a Unit deed, and their heirs, successors and assigns, covenant that they will faithfully observe all of the terms, covenants and conditions wherever imposed in the condominium documents.

ARTICLE XV

AMENDMENT

Amendment of this Declaration and the necessity therefor shall be governed by the following:

1. Minor Amendments. Developer may make minor amendments to this Declaration without the consent or approval of the Unit Owners or their mortgagees. Such amendments shall be for the purpose of clarification or correction of errors in the Declaration and shall not affect the substantive rights of a Unit Owner. In addition, the Developer shall have the authority, from time to time, to adopt amendments to this Declaration or exhibits hereto as may be required by the FHA, VA, FNMA or any other mortgage insurance or assistance organizations or agencies without approval from Unit Owners or their mortgagees.

2. Other Amendments. Except as otherwise provided in the Declaration, the Bylaws, the Declaration and the Declaration plans may be amended in the following manner:

A. Notice of the subject matter of the proposed amendment in reasonably detailed form shall be included in the notice of any meeting of the Unit owners held in accordance with the provisions of the Bylaws at which a proposed amendment is to be considered;

B. A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by a majority of the Unit owners at a meeting called for that purpose. Such amendment must be approved by not less than three-fourths (3/4) of the Unit owners voting in accordance with the procedures established by the Bylaws and the holders of first mortgages of the Units of such Unit owners; and

C. All amendments made as hereinabove provided shall be evidenced by a written instrument, executed and acknowledged by the members of the Association, which shall contain a certification that the amendments were approved in accordance with this Article XII. Such instrument shall be recorded and shall become effective on the date upon which such instrument shall have been recorded. Copies of such instrument shall be sent to each Unit owner in the manner provided in the Bylaws for the giving of notices to Unit owners, but the same shall not constitute a condition precedent to the effectiveness of such amendment.

3. Developer's Right of Amendment. Notwithstanding paragraph 2 above, the Developer shall be permitted to amend this Declaration for twenty (20) years after the filing of the original Declaration for the purpose of adding additional property and condominium or housing Units to this Horizontal Property Regime. Developer shall notify the Board of Directors of the Association of its intention to amend the Declaration and Bylaws, and shall set forth in writing the proposed amendment. Any amendment shall be effective after filing with the Recorder of Black Hawk County. Thereafter, a copy of such amendment shall be published and mailed to each owner of a condominium Unit, as shown on the books of the Whispering Pines Condominiums Owners' Association. No amendment to this Declaration or the Bylaws, without the express written permission of the Developer, will be permitted which would void the right of the Developer to cause the Declaration and Bylaws to be amended, as set forth in this paragraph and elsewhere in this Declaration.

4. Fractional Interest. The fractional interest in the common elements appurtenant to a Unit, except as provided in Section VI(3), or rights to their use, may be amended or reallocated only by unanimous consent of all Unit owners and their mortgagees, provided, in the event of condemnation of any Unit or of long-term obsolescence, the same may be adjusted and may be amended as provided in paragraph 6 of this Article.

5. Contracts Excepted. No lawful agreement entered into by the Association shall require an amendment of this Declaration, provided the same is not in conflict herewith.

6. Developer's Rights. Neither Article VI nor any other provisions of this Declaration affecting the rights of the Developer shall be subject to amendment without the written consent of Developer and any attempt to so amend this Declaration without such prior written consent shall be null and void.

7. General Procedure. Except as otherwise provided in this Article, this Declaration may be amended other than pursuant to an amendment to the Bylaws:

(a) By the unanimous written agreement of all owners of all Units.

(b) By the owners acting through the Association and in accordance with the procedures of its Bylaws at a regular or special membership meeting as to which notice of the proposed amendment has been given and upon the favorable vote of seventy-five percent (75%) of the total number of votes outstanding and entitled to be cast. No amendment shall be adopted at variance with that proposed in the notice, but the notice may contain more than one proposed amendment. Approval of the Board of Directors is not required of an amendment thus adopted.

(c) In addition to requirements set forth in paragraphs (a) and (b) of this paragraph 4, amendments of a "material nature" shall require the consent of fifty-one percent (51%) of Eligible Holders of First Mortgages. Amendments of a material nature include, and are expressly limited to, amendments which establish, provide for, govern or regulate any of the following: voting rights; increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of such liens; reductions in reserves for maintenance, repair, and replacement of common elements; responsibility for maintenance and repair of common elements; reallocation of interests in the general or limited common elements, or rights to their use; re-definition of any Unit boundaries; convertibility of Units into common elements or vice-versa; expansion or contraction of the condominium regime other than is provided for in Section VI(3), or the addition or annexation of property to the regime; hazard or fidelity insurance requirements; imposition of any restrictions on the leasing of Units; imposition of any restriction on a Unit owner's right to transfer his or her Unit; a decision by the Association to establish self-management if professional management had been required previously by the condominium documents or by an Eligible Holder; restoration or repair to any part of the Buildings and/or condominium property after damage or partial condemnation in a manner other than that specified in this Declaration; or any provisions that expressly benefit mortgage holders, insurers or guarantors.

8. Termination of Condominium Regime. All of the Unit owners may remove a property from the provisions of this Declaration and from the Horizontal Property Act (for reasons other than substantial destruction or condemnation of the property) by an instrument to that effect, duly recorded, provided that the Eligible Holders of First Mortgages affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens and/or mortgages be transferred to the percentage of undivided interest of the unit owner in the property after removal. Upon removal of a property from the provisions of the Declaration or the Horizontal Property Act, the property so removed shall be deemed to be owned in common by the Unit owners. The undivided percentage 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 Unit owner in the common areas and facilities prior to removal.

9. Execution and Recording. An amendment pursuant to paragraphs 2, 3 or 6(a) of this Article shall be effective when executed and acknowledged by all owners and mortgagees, as the case may be, with the formalities of a deed and recorded in the Recorder's Office, Black Hawk County, Iowa. An amendment adopted pursuant to paragraph 6(b) shall be effective when a certificate of its due and proper adoption containing the provisions of the amendment is executed in the name of the Corporation by its President or a Vice-President and Secretary or an Assistant Secretary with the formalities of a deed and acknowledged as having been thus executed by authorization of the owners as herein provided, and is recorded in the Recorder's Office, Black Hawk County, Iowa.

ARTICLE XVI

PROCEDURE IN THE EVENT OF DAMAGE OR DESTRUCTION

13.1 Damage to or destruction of all or any part of the condominium property shall be repaired or the same restored, rebuilt or reconstructed as the case may be if three-quarters (3/4) of the total number of votes outstanding and entitled to be cast are voted in favor of such repair, restoration, rebuilding or reconstruction. If less than three-quarters (3/4) of such votes are cast in favor of such actions, the outcome of the vote taken shall automatically constitute a determination that the entire condominium property be deemed owned in common by the Unit owners and subject to partition and sale, it being understood that no separate part of the property may otherwise be thus deemed owned in common and partitioned without an amendment to this Declaration expressly so providing. That percentage of all the owners of the Units submitted to the regime who together cast the necessary percentage of the total number of votes outstanding and entitled to be cast in favor of or against any of such actions shall be the number and percentage of such owners whose votes shall be determinative of whether

to rebuild, repair, restore or reconstruct all or any portion of the property or whether to deem the property to be owned in common.

13.2 A vote and determination to repair, rebuild, restore or reconstruct made pursuant to paragraph 13.1 of this Article (but not a presumed determination pursuant to paragraph 13.3 next following) may be recalled and superseded as follows: After the bids for the necessary work have been taken and the amount of insurance proceeds or other funds available for the work are known and if the total amount of the resulting assessment as will be required to finance the work exceeds 10% of the pre-casualty value of the entire condominium property at the time of the casualty, then the Board of Directors shall call a special meeting of the members of the Association to consider under such circumstances whether or not the property in question shall be restored, rebuilt, repaired or reconstructed; the work shall in such event be done only if three-fourths (3/4) of the total number of votes outstanding and entitled to be cast are cast in favor of the proposed action, and if the work is not thus authorized, the original determination shall stand rescinded and superseded, and the entire condominium property shall be deemed to be owned in common by the Unit owners with the same effect as in the case of a negative vote pursuant to paragraph 13.1 of this Article.

13.3 All damage or destruction of a minor character shall be repaired, rebuilt, reconstructed or restored by the Board of Directors of the Association or a Unit owner, as applicable, without necessity of formal vote or determination. Minor damage or destruction shall include but not be limited to such as can be reasonably repaired, restored, rebuilt or reconstructed within thirty days after the applicable occurrence (exclusive of delays or interruptions resulting from lack of available contractors, labor, materials, or funds). In the event of doubt whether damage or destruction is minor, or in any case, one-half (1/2) of the Board of Directors or owners who are entitled collectively to cast at least one-half (1/2) of the total number of votes outstanding and entitled to be cast may call for a special meeting or referendum for a vote and determination of whether to repair and the like pursuant to paragraph 13.1 of this Article, and the determination thus made shall control irrespective of whether the damage or destruction might have otherwise been treated as minor, provided in all cases that if no formal vote and determination has been taken and made within thirty (30) days of the date of the damage or destruction in question, it shall be conclusively presumed and in particular for purposes of Section 499B.16, Code of Iowa, that the Association and Unit owners have in fact determined to rebuild, repair, restore or reconstruct, as the case may be.

13.4 Unless this Declaration is amended to provide otherwise, all repair, rebuilding, restoration, or reconstruction of the property shall contain the same number and mix of Units and be substantially in accordance with the plans and specifications of original construction, as available from the Exhibits hereto and the fractional interest and other appurtenances to each Unit after such repair, rebuilding, restoration, or reconstruction shall be the same as before. An amendment, as contemplated above, of

the plans and specifications and affecting the appurtenances to and mix of the Unit must be adopted by three-fourths (3/4) of those persons entitled to vote pursuant to the Bylaws.

13.5 The provisions of this Article are intended to govern in the event of damage or destruction resulting from an occurrence or casualty which, although to be broadly construed, may be distinguishable from maintenance in the sense of remedying ordinary wear and tear, and in any event paragraph 13.4 and the other provisions of this Article shall not govern in the event of repair, rebuilding, restoration, or reconstruction necessitated on account of long-term obsolescence or condemnation of any Unit within the regime.

ARTICLE XVII

INSURANCE

The Association shall maintain the insurance specified in the Bylaws. Premiums for such insurance shall be deemed a common expense.

ARTICLE XVIII

MISCELLANEOUS

1. Effective Date of Fractional Interest. The fractions of ownership interest in the common elements referred to in this Declaration shall come into being and take effect at such time as this Declaration has been recorded and thereafter exist for all purposes irrespective of any actual occupancy or use and whether the Units are sold or not.

2. Possession of Common Elements. Each Unit owner, the Developer, and the Association may use the common elements other than the limited common elements for the purposes for which they are maintained, but without hindering or encroaching upon the lawful rights of other users.

3. Condemnation and Obsolescence. The contingencies of condemnation and long-term obsolescence have not been provided for in this Declaration and may be governed by appropriate amendments to this Declaration and/or by Bylaws as the case may be.

4. Partition. The common elements shall remain undivided and neither a Unit owner, nor any other person or organization may bring an action for the partition

