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 Scott County Iowa  
 Rita A. Vargas Recorder

File **2008-00029909**

Prepared by: Michael L. Gorsline, 101 W. 3<sup>rd</sup> St., Ste. 321, Davenport, IA 324-0441  
 Return to: \_\_\_\_\_

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DECLARATION OF CONDOMINIUM

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

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

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

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

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

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

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

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

## ARTICLE I

### DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE II

### UNITS

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

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

## ARTICLE III

### COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

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

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

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

## ARTICLE IV

### GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS

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

#### 4.02 Easements.

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

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

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

4.02d Easements Are Perpetual. All easements and rights described or authorized herein are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on any Owner, and occupants of Units and all other persons having an interest in the Property, or any part or portion thereof.

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

## ARTICLE V

### THE UNIT OWNER'S ASSOCIATION

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

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

## ARTICLE VI

### COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and shall be of metal construction.

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

## ARTICLE VII

### INSURANCE ON DAMAGE OR DESTRUCTION AND DISPOSITION OF INSURANCE PROCEEDS

#### CONDEMNATION

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

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

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

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

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

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

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

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

7.02a Condemnation of Common Elements. If any action is brought to condemn a portion of the Common Elements, the Board shall have the sole authority to determine whether to defend or resist such action, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of condemnation. After the damages or awards shall be paid to each Unit Owner in proportion to his or her ownership interest. The Board may call a meeting of the Association at which meeting the members by a majority vote may decide whether to replace or restore insofar as possible the Common Elements so taken or damaged.



7.02b Payment of Awards and Damages. Any damages or awards paid to or for the account of any Unit Owner by the Board, acting as trustee, shall be applied first to the payment of any taxes or assessments by governmental authorities past due and unpaid with respect to that Unit; secondly the amounts due under any Mortgages; thirdly, to the payment of any unpaid Common Expenses or special assessments charged to or made against the Unit; and finally to the Unit Owner.

7.02c Mortgage. If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of a Unit shall be entitled to timely written notice of any such proceedings or proposed acquisition, and no provision of this Declaration or any other document establishing the Project shall entitle the Unit Owner or other party to priority over such Mortgagee with respect to the distribution of the proceeds of any award or settlement.

## ARTICLE VIII

### SALE OR WITHDRAWAL AND TERMINATION

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

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

## ARTICLE IX

### REMEDIES FOR BREACH OF COVENANTS, RESTRICTIONS AND REGULATIONS

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

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

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

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

execute, acknowledge and deliver a deed conveying to the purchaser all his right, title and interest on said property, waiving dower and homestead therein, and such purchaser thereat shall, subject to the rights and privileges of the Association be entitled to possession of the Unit sold and may apply to the Court for a writ of possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide that the purchaser shall take the interest in the property sold subject to this Declaration, and the purchaser shall become a Member of the Association in the place and stead of the defaulting Member.

## ARTICLE X

### GENERAL PROVISIONS

10.01 Initial Board Shall Govern. Until such time as the first annual meeting of the Association held as provided in the By Laws of said Association, the Board of Directors appointed by Developer shall exercise the powers, rights, duties and functions of the Association.

10.02 Lender Notices. Upon written request to the Board, the holder of any duly recorded mortgage or trust deed against any Unit ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Owner or Owners whose Unit ownership is subject to such mortgage or trust deed.

10.03 Notices to the Board. Notices required to be given to the Board of the Association shall be delivered to the President and a copy to the Secretary of the Association either personally or by mail addressed to such officer at his Unit or other business address.

10.04 Notices to Others. Notices required to be given any devisee or personal representative of a deceased Owner may be delivered either personally or by mail to such party at his or its address appearing in the records of the Court wherein the estate of such deceased Owner is being administered.

10.05 Grantee Agrees to all Conditions. Each grantee of developer, by the acceptance of a deed of conveyance, or each purchaser under a contract for purchase of a Unit in this Condominium, accepts the same subject to all restrictions, conditions, reservations, liens and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said Unit, and shall inure to the benefit of such Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

10.06 Conditions Sustained. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of

violations or breaches which may occur.

10.07 Modifications. The provisions of Section 1.03 of Article I of the By Laws of the Association, Article II, Article III, and Article IV, and this paragraph 10.07 of Article X of this Declaration, may only be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Association, all of the Owners and all mortgagees having bona fide liens of record against any Unit Ownerships. Other provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Association, the Owners having at least seventy-five (75%) percent of the total vote and containing an affidavit by an officer of the Association certifying that a copy of the change, modification or rescission has been mailed by certified mail to all mortgagees having bona fide liens of record against any Unit Ownership, not less than ten (10) days prior to the date of such affidavit. The change, modification or rescission shall be effective upon recordation of such instrument in the office of the Recorder of Scott County, Iowa.

10.08 Separate Taxation. Real property taxes, special assessments, and any other special taxes or charges or this State or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed against and levied upon real property shall assessed against and levied upon each Unit and the Owner's corresponding percentage of ownership in the Common Elements as a tract, and not upon the Property as a whole.

10.09 Invalidity. The invalidity of any covenant, restriction, condition, limitation or any other provisions of this Declaration, or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

10.10 Unlawful Provisions. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of:

- (a) the rule against perpetuities or some analogous statutory provision,
- (b) the rule restricting restraints on alienation,
- or
- (c) any other statutory or common laws rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of Jack Haberman and Marion Meginnis.


10.11 Captions. The article and paragraph headings are intended for convenience only and shall not be construed with any substantive effect in this Declaration.

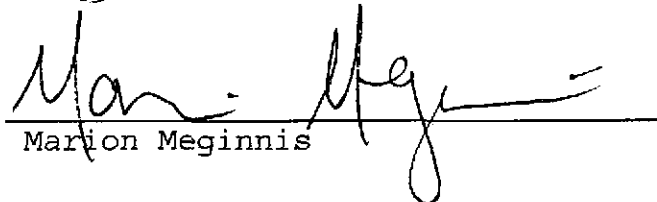
10.12 Uniform Plan. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plans for the development and operating of a first class condominium development.

10.13 Duration. This Declaration shall be effective for a period of 21 years from the date of the recordation of this Declaration and, unless sooner terminated as provided herein, shall be automatically extended for successive periods of ten (10) years each thereafter.

10.14 Enforcement. The Association or any Owner of a Unit shall have the right to enforce the provisions of this Declaration against any other Owner or occupant violating same by proceeding for injunction or for money damages, or both. All expenses in connection with any such action or proceeding, including court costs and reasonable attorney's fees, shall be charged to and assessed against such defaulting Owner or Occupant, and in favor of the prevailing party. The remedies provided for herein shall be in addition and supplementary to any other remedies herein or be law provided.

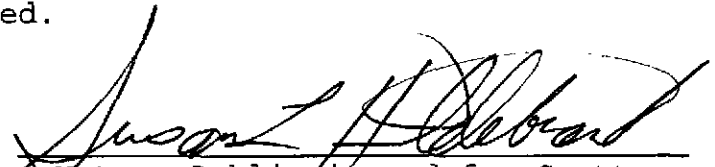
IN WITNESS WHEREOF, the said Jack Haberman and Marion Meginnis, husband and wife, has caused their names to be signed to these presents this 3rd day of November, 2008.

  
\_\_\_\_\_  
Jack Haberman

  
\_\_\_\_\_  
Marion Meginnis

STATE OF IOWA     )  
                          ) SS.  
SCOTT COUNTY     )

On this 3rd day of November, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Jack Haberman and Marion Meginnis, husband and wife, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

  
\_\_\_\_\_  
Notary Public in and for Scott  
County, Iowa

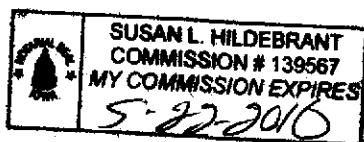


EXHIBIT "B"

Unit 1 #705  
Percentage 25%  
Type Residence

Unit 2 #707  
Percentage 25%  
Type Residence

Unit 3 #709  
Percentage 25%  
Type Residence

Unit 4 #711  
Percentage 25%  
Type Residence

BY-LAWS  
OF  
GAINES STREET CONDOMINIUM HOME OWNERS ASSOCIATION

ARTICLE I

NAME, SEAL AND OFFICE

Section 1. Name. The name of this Association is Gaines Street Condominium Home Owners Association ("Association").

Section 2. Seal. The Association shall have no seal.

Section 3. Offices. The principal office of the Association shall be at 519 W. 8th Street, Davenport, IA 52803, or at such other place as the Board of Directors may from time to time designate.

ARTICLE II

PURPOSE

Section 1. Non-Profit Basis. To operate Property on a not-for-profit basis in accordance with the provisions set forth in the Declaration of Condominium.

ARTICLE III

PLAN OF UNIT OWNERSHIP

Section 1. Unit Ownership. The Property described as:

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

which has been submitted to the provisions of the Horizontal Property Act of the State of Iowa by the Declaration of Jack Haberman and Marion Meginnis, husband and wife, recorded in the office of the Recorder of Scott County, Iowa, ("Declaration") simultaneously herewith, and shall hereafter be known as the Gaines Street Condominium ("Condominium").

Section 2. Applicability of By-Laws. The provisions of these By-Laws are applicable to the Property of the Condominium and to the use and occupancy thereof.

Section 3. Personal Application. All present and future Unit Owners, mortgagees, lessees, and occupants of the Units and their employees, and any other person who may use the facilities of the Condominium in any manner are subject to these By-Laws, the Declaration, the Rules and Regulations established by the Board of Directors and the Articles. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a unit shall constitute an agreement that these By-Laws and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.

Section 4. Definitions. The definitions of words and terms contained in the Declaration, Article I, shall apply to those words and terms as used in the By-Laws.

#### ARTICLE IV

##### BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Condominium shall be operated by the Association, which in turn shall be governed by a Board of Directors consisting of four (4) persons, each of whom shall have one (1) vote. Until the first meeting at which the Unit Owners may vote, the Board of Directors shall consist of one (1) person who shall be designated or removed at the will of Declarant. The terms of at least one-third (1/3) of such Board shall expire annually. From and after the first meeting at which the Unit Owners may vote, the Board of Directors shall be composed of not less than four (4) and not more than six (6) persons, all of whom shall be Unit Owners, it being understood that should any Unit be owned as a tenancy in common, joint tenancy with survivorship rights, or be owned by a partnership, a corporation, in a fiduciary capacity, or otherwise, then and in such event, such Unit Owner or Owners shall designate one (1) person having an ownership interest in such Unit, and such persons shall be eligible for election to the Board of Directors; provided, however, that in the case of corporate ownership or ownership by the Declarant, any designated officer or employee of the corporation, or Declarant's organization, shall be eligible to represent the ownership interest of such Unit. Upon the first election of the Board of Directors by the Unit Owners, such Board of Directors shall be divided into three (3) classes. The Unit Owners shall elect by majority vote two (2) Directors to serve for a period of three (3) years, two (2) Directors to serve for a period of two (2) years and two (2) Directors to serve for a period of one (1) year. At the expiration of the initial term of office of each Director, his/her successor shall hold office until their successors have been elected.

Section 2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and shall do all such acts and things as are not by law or by the By-Laws directed to be exercised and done by the Unit Owners. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

(a) Operation, care, upkeep and maintenance of the Common Areas.

(b) Determination of the Common Expenses required for the affairs of the Condominium.

(c) The collection of the Common Charges and administrative penalties as provided in the Declaration from the Unit Owners.

(d) The employment and dismissal of the personnel necessary for the maintenance, repair, replacement and operation of the Common Areas.

(e) Opening of bank accounts in the name of the Association and designating the signatories required therefor.



(f) Purchasing or leasing or otherwise acquiring in the name of the Association or its designee, corporate or otherwise, on behalf of all Unit Owners, Units offered for sale or lease, or surrendered by their Unit Owners to the Board of Directors or to the Association.

(g) Purchasing of Units at foreclosure or other judicial sales or in the name of the Association, or its designee, corporate or otherwise, on behalf of all Unit Owners.

(h) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board of Directors) or otherwise dealing with Units acquired by, and subleasing Units leased by the Association or its designee, corporate or otherwise, on behalf of all Unit Owners.

(i) Organizing corporations to act as designees of the Association in acquiring title to or leasing apartments on behalf of all Unit Owners.

(j) Granting of licenses over the Common Areas.

(k) Obtaining insurance on the Condominium, including Units.

(l) Making of repairs, additions and improvements to or alterations to and restoration of the property.

(m) Leasing or otherwise acquiring the right to use, either exclusively or in common with others, recreational and other facilities for the benefit of Unit Owners.

(n) Adopting and amending reasonable Rules and Regulations governing the conduct of all people on the Property and the operation and use of the Condominium. The Board of Directors shall have the power to levy fines against the Unit Owners for violation thereof, for which they are responsible, provided that no fine may be levied for more than \$10.00 for any one violation; but for each day a violation continues after notice, it shall be considered a separate violation. Collection of fines may be enforced against the Unit Owner or Owners responsible as if the fines were a common charge owed by the particular Unit Owner or Owners.

(o) The Board of Directors, on behalf of the Association, may also enforce, by any legal means, the provisions of the Horizontal Property Act, the Declaration, the By-Laws, and the Rules and Regulations.

Section 3. Management. The Board of Directors may employ or enter into a contract or agreement with a Manager to perform management duties and services. The Board of directors may authorize such Manager to perform the duties listed in subsections (a), (c), (d), (e), (j), (k), (l), (m), and (n) of Section 2 and other duties consistent therewith, but may not delegate to the Manager the powers of the Board of Directors set forth in subsections (b), (f), (g), (h), (i) and (o) of Section 2.

Section 4. Removal of Directors. At any time after the first meeting of Unit Owners at which they may vote as hereafter provided, at any regular or special meeting of the Unit Owner, any one or more of the members of the Board of Directors may be

removed, either with or without cause, by a majority of the Unit Owners following notice thereof in the call of the meeting and a successor may then and there or thereafter be elected to fill the vacancy thus created.

Section 5. Vacancies. Vacancies on the Board of Directors caused by any reason other than the removal of a member thereof by a vote of the Unit Owners, shall be filled by a vote of a majority of the remaining members at a regular or special meeting of the Board of Directors held promptly after the occurrence of any such vacancy, even though the members present at such meeting shall constitute less than a quorum and each person so elected shall be a member of the Board of Directors for the remainder of the term of the member so replaced, and until his successor shall be duly elected.

Section 6. Organization Meeting. The first regular meeting of the members of the Board of Directors following a meeting of the Unit Owners at which Directors are elected, shall be held within ten (10) days thereafter such time and place as shall be fixed by the Unit Owners at such meeting. No notice shall be necessary to the members of the Board of Directors in order legally to constitute such a meeting, providing a quorum shall be present at such first regular meeting.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given by the Secretary to each Director personally or by mail or telegraph at least three (3) days prior to the day named for the meeting.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each Director, given personally or by mail, or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) members of the Board of Directors.

Section 9. Waiver of Notice. Any member of the Board of Directors may at any time waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all members of the Board are present at any meeting of the Board, no notice shall be required and any business may be transacted at such a meeting.

Section 10. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At

such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 11. Fidelity Bonds. The Board of Directors shall obtain adequate fidelity bonds for all officers, employees and agents of the Association handling or responsible for Association funds. The premiums on such bonds shall constitute a common expense.

Section 12. Compensation. No member of the Board of Directors shall receive any compensation from the Association for acting as a Director.

Section 13. Liability of Board of Directors. The members of the Board of Directors shall not be liable to the Association or to the Unit Owners for any mistake or judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless, to the extent permitted by law, each of the members of the Board of Directors against all liability arising out of their conduct on behalf of the Association, unless such conduct shall have been in bad faith. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association (except as Unit Owners). It is also intended that the liability of any Unit Owner arising out of any contract made by the Association or out of the aforesaid indemnity in favor of the Board of Directors shall be limited to such proportion of the total liability thereunder as his interest in the Common Areas bears to the interest of all Unit Owners in the Common Areas.

Section 14. Fiscal Year. The fiscal year of the Association shall be January 1 to December 31.

## ARTICLE V

### UNIT OWNERS AS MEMBERS

Section 1. Eligibility. Any person who acquires title to a Unit in the Condominium property shall be a member of the Association. There shall be one (1) membership for each Unit owned within the Condominium. Such membership shall be automatically transferred upon the conveyance of any such Condominium Unit. Until the first meeting at which Unit Owners may vote, the Association shall act without vote of the Unit Owners and the Declarant shall be deemed to possess all the voting rights in the Association.

Section 2. Voting. After the first meeting at which Unit Owners may vote, voting shall be on a percentage basis and the percentage vote to which each membership is entitled is a percentage of undivided ownership assigned to its Unit in the Declaration. After the first meeting at which Unit Owners may vote, a majority of the total votes cast at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except when a higher percentage is required by these By-Laws, the Declaration or by law.

Section 3. Votes in the Event of Multiple Ownership of an Apartment. In the event a Unit is owned by more than one (1) person, if such persons cannot agree upon the exercise of their right to vote pursuant to these By-Laws, each person shall have fractional vote based upon his fractional share of ownership of the Unit. A co-owner of a Unit may permit the other co-owner of the Unit to vote his interest by furnishing the other co-owner with a proxy. A vote for a whole Unit cast by a co-owner shall be held to be by valid proxy of the other co-owners, unless challenged at the time the vote is cast.

Section 4. First Meeting at Which Unit Owners May Vote. The first meeting at which members may vote shall be the first to occur of the following:

- (a) After December 31, 2012.
- (b) Within thirty (30) days after declared by the Declarant.

Section 5. Annual Meetings. Annual shall be held on the second Monday of January. At such meetings, there shall be elected by ballot, a Board of Directors in accordance with the provisions of Article IV, Section 1, of these By-Laws. There may also be transacted such business at such meeting as may properly come before it.

Section 6. Place of Meeting. Meetings of the Unit Owners shall be held at the principal office of the Association or such other suitable place convenient to the Unit Owners as may be designated by the President.

Section 7. Special Meetings. After the first meeting at which such Unit Owners may vote, it shall be the duty of the President to call a special meeting of the Unit Owners when so directed by resolution of the Board of Directors or upon petition signed by not less than 25 percent in common interest in the aggregate of Unit Owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 8. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting of the Unit Owners, at least ten (10) days, but not more than twenty (20) days, prior to such meeting, stating the purpose thereof, as well as the time and place where it is to be held, to each Unit Owner as recorded on the records of the Association, at the Unit address or at such other address as such Unit Owner shall have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this section shall be considered service of notice.

Section 9. Waiver of Notice. Any Unit Owner may at any time waive notice of any meetings of the Unit Owners in writing, and such waiver shall be deemed equivalent to the giving of such notice.

Section 10. Adjourned Meetings. If any meeting of Unit Owners cannot be held because a quorum has not attended, a majority

in common interest of the Unit Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 11. Order of Business. The order of Business at all meetings of the Unit Owners shall be as follows, to the extent required:

- (a) Roll call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Report of Board of Directors.
- (f) Report of Committees.
- (g) Election of members of the Board of Directors.
- (h) Unfinished Business.
- (i) New Business.
- (j) Adjournment.

Section 12. Parliamentary Procedure. At all meetings of the Unit Owners or of the Board of Directors, Robert's Rules of Order, as to such date amended, shall be followed, except in the event of conflict, these By-Laws or declaration, as the case may be, shall prevail.

Section 13. Quorum. Except as otherwise provided in these By-Laws, the presence, in person or by proxy, of persons having one-third (1/3) of the total authorized votes shall constitute a quorum at any meeting.

Section 14. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary at or before the time of each meeting. A Unit Owner may designate any person, who need not be an owner, to act as proxy. The designation of any such proxy shall be made in writing, signed by the Unit Owner, and shall be revocable at any time by written notice to the Secretary by the Unit Owner designating the proxy.

## ARTICLE VI

### OFFICES

Section 1. Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. Any officer or employee of a corporate, partnership or fiduciary Unit Owner or of the Declarant when he or she is a Unit Owner, shall be eligible for such election. The President and Vice President shall be elected from among the members of the Board of Directors. The Board of Directors may

appoint an Assistant Treasurer, an Assistant Secretary and such other officers as in its judgment may be necessary, who need not be a Unit Owner.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors and shall hold office at the pleasure of the Board.

Section 3. Removal of Officers. Upon the affirmative vote of a majority of members of the Board of Directors, any officer may be removed, either with or without cause, and his or her successor elected at any regular meeting of the Board of Directors. or at any special meeting of the Board called for such purposes.

Section 4. President. The President shall be the Chief Executive Officer of the Association. He or she shall preside at all meetings of the Unit Owners and of the Board of Directors. The President shall have all the general powers and duties which are usually vested in the office of president of a corporation, organized under the laws of the State of Iowa, including, but not limited to, the power to appoint committees from time to time as he or she may decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. Vice President. The Vice President shall take the place of the President and perform the President's duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall, from time to time, be assigned to him or her by the Board of Directors or by the President.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Unit Owners and of the Board of Directors; the Secretary shall have charge of such books and papers as the Board of Directors and these By-Laws may direct, shall give all notices required by the By-Laws, unless otherwise provided; and shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Iowa.

Section 7. Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall keep the financial records and books of account in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association, in such depositories as may from time to time be designated by the Board of Directors; and shall, in general, perform all the duties incident to the office of treasurer of a corporation organized under the laws of the State of Iowa.

Section 8. Signatories to Documents. All agreements, contracts, deeds, leases, checks and other documents of the Association shall be executed by an officer of the Association or by such other person or persons as may be designated by the Board of Directors. Vouchers for the payment of Association funds shall be approved by the Treasurer before payment.

Section 9. Compensation of Offices. No officer shall receive any compensation from the Association for acting as such.

## ARTICLE VII

### OPERATION OF THE CONDOMINIUM

Section 1. Determination of Common Expenses and Fixing of Common Charges. The Board of Directors shall, from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of the Common Charges payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such Common Charges among the Unit Owners according to their percentage of undivided ownership, and established by the Declaration. The Board of Directors shall advise all Unit Owners promptly, in writing, of the amount of common charges payable by each of them, respectively, as determined by the Board of Directors, as aforesaid, and shall furnish copies of each budget on which such common charges are based to all Unit Owners and to their mortgagees upon request. The common expenses shall include, among other things:

(a) the cost of repairs and maintenance of the Common Areas and of the Limited Common Areas;

(b) the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Directors pursuant to the Declaration;

(c) such amounts as the Board of Directors may deem proper for the operation of the Condominium, including, without limitation, an amount for its working capital, a general operating reserve, a reserve fund for replacements, and sums necessary to make up any deficit in the Common Expenses for any prior year;

(d) Expenses incurred in leasing or otherwise acquiring the right to use either exclusively or in common;

(e) such other Expenses as set forth in the Declaration.

Section 2. Payment of Common Charges. All Unit Owners shall be obligated to pay the Common Charges assessed by the Board of Directors monthly or at such time or times as the Board of Directors shall determine. The Board may authorize Common Charges to be collected by the Manager. Mortgagees who acquire title to a Unit by reason of default of the Mortgage obligation shall not be required to pay more than six (6) months of common charges.

Section 3. No Waiver of Liability for Common Expenses. No Unit Owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Unit.

Section 4. Non-Liability After Conveyance. No Unit Owner shall be liable for the payment of any part of the Common Charges assessed against his Unit subsequent to a sale, transfer or other conveyance made pursuant to the provisions of these By-Laws.

