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DECLARATION OF SUBMISSION OF PROPERTY

TO HORIZONTAL PROPERTY REGIME

FOR

BENT TREE CONDOMINIUMS

Boardwalk Development Company, an Iowa general partnership, referred to herein as "Developer", hereby executes this instrument of Declaration of Submission of Property to a Horizontal Property Regime to be known as Bent Tree Condominiums (hereinafter referred to as "regime") all pursuant to Chapter 499B, Code of Iowa, entitled "Horizontal Property Act (Condominiums)" the same to take effect when filed for record in the office of the Dickinson County Recorder.

R E C I T A L S

A. The Developer is the owner of the land and improvements to be known as Bent Tree Condominiums in Dickinson County, Iowa. The legal description of which is as follows:

The South 10 feet of Lot 40 and the North 80 feet of Lot 41, Auditors Plat 121, Dickinson County, Iowa

B. Bent Tree Condominiums consist of one 3 story building constructed of frame and brick. The total regime consists of eight units. Developer by this declaration intends to submit the land and improvements to be known as Bent Tree Condominiums into a condominium as defined in Chapter 499B, Code of Iowa, and pursuant to this Declaration.

C. Developer's purpose, by filing this Declaration, is to submit and convey the land described above and the improvements constructed or to be constructed thereon, together with all appurtenances thereto, to the condominium form of ownership and use pursuant to the provisions of the aforesaid Horizontal Property Act, and to impose upon such property mutually beneficial restrictions under a general plan of improvement for the benefit of all condominiums and the owners thereof.

NOW, THEREFORE, the Developer does hereby declare that all of the property designated in "Exhibit A" attached hereto is held and shall be held subject to the following covenants, conditions, restrictions, uses, limitations, and obligations, all of which are declared and agreed to be in the furtherance of a plan for the improvement of the property and the division thereof into condominiums and shall run with the land and shall be a burden and a benefit to Developer, its successors and assigns, and any person owning an interest in the real property, improvements and appurtenances thereto, his grantee, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I.

DEFINITIONS AND GENERAL

1. Unit. Each unit shall consist of the area between the decorated and finished interior surfaces of its perimeter walls (including windows

and sliding glass doors, the brick facing and fireplace unit, 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. A unit shall include and be defined by the above referred to surfaces and shall also include windows, sliding glass doors, heating and air conditioning equipment, electrical and plumbing fixtures, and non-load bearing partitions or walls within such area, 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. "Unit" shall have the same meaning as "apartment" as defined in Section 499B.2(1) Code of Iowa, except as further defined in this paragraph.

2. General Common Elements. The term general common elements means and is described as all portions of the property not located within any unit except such portions of the property which are defined as limited common elements, and the term also includes but is not limited to hallways, lobbies, bridge, walkways, and balconies which provide access to each unit from elevator and stairway, internal and external stairways, the land, driveways, outside parking, sidewalks, landscaping and plantings.

All structural elements of the building, including but not limited to the foundation, slabs, exterior walls, roof and attic, interior load bearing walls, walls dividing units and walls separating units from a hallway or other common area, air conditioning sleeves, floors, ceilings, and other structural elements of the building not reserved to a unit are general common elements.

All sewer, water, electrical, gas, telephone and other utility or service lines, wiring, ducts, conduits and piping are general common elements notwithstanding the same are located in part within a unit.

3. Building. The term "building" means the 3 story apartment structure.

4. Condominium. The term "condominium" when used as a noun means a unit and appurtenances thereto.

5. Ownership Units. The term "ownership units" means the ownership units made appurtenant to each unit in Article III hereof for purposes including but not limited to determining each unit's appurtenant share of the common elements, and determining voting and assessment in accordance with the By-Laws of the Association.

6. Association. The term "Association" means Bent Tree Owners Association, and its successors and shall for purposes of this declaration, be the "Council of Co-Owners" as defined in Section 499B.2(3) Code of Iowa.

7. Condominium Documents. The term "condominium documents" means this Declaration, all exhibits attached hereto including the Articles of Incorporation and By-Laws of the Association, and supplements and amendments thereto.

8. Property. The term "property" or the term "condominium property" includes all property, real, personal or mixed submitted to the regime other than the personal property of any owner which might otherwise be considered submitted to the regime.

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

10. Successors, Grantees and Assigns. Reference to Developer, an owner, the Association, or any person or entity shall include the respective successors, grantees and assigns thereof.

11. Owner. The term "owner" means the holder of a real property interest in a unit, except when otherwise defined in the condominium documents, and excluding mortgagees not in possession, lien holders and interests merely collateral in nature.

12. Severability. The invalidity of any covenant, restriction, agreement, undertaking, or other provision of any condominium document shall not affect the validity of the remaining portions thereof.

13. Incorporation. Exhibits attached hereto and referred to herein are hereby made a part hereof with the same force and effect as other provisions of this document; provided that, wherever specifically provided, modification of certain exhibits shall not be deemed an amendment of this Declaration.

14. Other Definitions. Definitions of the following terms are contained herein as follows:

<u>Term</u>	<u>Where Found</u>
(a) Ownership Interest	Art. III Section 3
(b) Limited Common Element	Art. IV

## ARTICLE II.

### IDENTIFICATION OF LAND, BUILDINGS AND UNITS

1. Location of Land and Improvements. The land and improvements hereby submitted to the regime are located in Dickinson County, Iowa, and legally described in Exhibit A, a duly certified plat of survey and legal description drawn to scale and attached hereto and made a part hereof. The building, which is shown on "Exhibit A" attached hereto, is hereby submitted to the regime. The units which are shown and designated by number on "Exhibit B" attached hereto, are hereby submitted to the regime. "Exhibits A and B" contain and such contents shall govern, for purposes of this Declaration and for purposes of meeting certain requirements of Section 499B.4 and 499B.6 of the Code of Iowa, the following:

- (a) The number identifying the building and each unit, the location and number of rooms in each unit and the immediate common area to which each unit has access.
- (b) The full and exact copy of the plans of the building which show graphically all particulars of the building including, but not limited to, the dimensions, area and location of the common elements affording access to each unit.

2. Driveways. The driveways shown in "Exhibit A" shall be private driveways within the regime and common elements thereof, affording access to the units and common elements from public streets, and an easement over such driveways as is necessary for ingress and egress to such units and common elements shall be appurtenant to each such unit.



ARTICLE III.

OWNERSHIP OF UNITS AND APPURTENANCES

1. Exclusive Ownership of Unit. Each owner shall be entitled to exclusive ownership and possession of his unit. An owner shall be deemed to own the windows and sliding glass doors of his unit, the brick facing and fireplace unit, and the heating and air conditioning equipment located within the unit to serve such unit exclusively. An owner shall not be deemed to own the undecorated or unfinished interior surfaces of the perimeter walls, floors, ceilings, and exterior doors bounding his unit nor shall the owner be deemed to own any elements within his unit which are included in limited or general common elements notwithstanding the fact that such elements are within the perimeter of such unit. An owner, however, shall have the exclusive right to paint, wax, paper, or otherwise refinish and decorate the interior surfaces of the perimeter walls, floors, ceilings, and exterior doors bounding his unit and also shall have such exclusive rights with respect to general or limited common elements which are within his unit, including specifically the right to penetrate such common element with nails and other fasteners for hanging customary pictures, mirrors and like wall decorations.

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

3. Ownership Units. For purposes of this Declaration and the By-Laws of the Association, appurtenant to each unit shall be the ownership units expressed in "Exhibit C" of this Declaration. The ownership units which are appurtenant to each unit are hereby created by this Declaration and shall be counted for all purposes stated herein and in the other condominium documents irrespective of any actual occupancy or use of the unit to which appurtenant.

4. Undivided Percentage Interest.

An undivided interest in the land and other common elements of the regime, regardless of whether such elements are general or limited common elements, shall be appurtenant to each unit. The percentage of such undivided interest appurtenant to each unit shall be as expressed on Exhibit C.

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

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

7. Membership and Voting Rights. Appurtenant to each unit shall be membership in Bent Tree Owners Association and as many votes in the affairs of the Association and of the regime as there are ownership units appurtenant to that unit, provided the exercise of such voting

and membership rights shall be subject to the applicable provisions of the Articles and By-Laws of the Association and of the other condominium documents including the appointment of Developer as agent for certain purposes. The action of such Association shall be deemed the action of the owners or of the Council of Co-owners whenever such action is permitted or required by Chapter 499B of the Code of Iowa; and such action when taken in accordance with the By-Laws of the Association and this Declaration shall be final and conclusive upon all unit owners.

8. Encroachment Easements. If any portion of the common elements encroaches upon any unit, or if any unit encroaches upon any other unit or upon any portion of the common elements, or if any of such encroachments shall occur hereafter as a result of shifting or settling of the buildings or from alteration, repair or improvement to the common elements or as a result of repair or restoration of the common elements or a unit after damage by fire or other casualty, or as a result of condemnation or of 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.

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

- (a) For ingress and egress through the common areas and for maintenance, repair, and replacement as authorized;
- (b) Through the units and common facilities for maintenance, repair and replacement or reconstruction of common elements, but access to units shall be only during reasonable hours except in case of emergency;
- (c) Through the units and common areas for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility or other services to the other units and the common areas.
- (d) To the extent necessary, each unit shall have an easement for structural support over the common elements and over any other unit in the building, and each unit and the common elements shall be subject to an easement for structural support in favor of every other unit in the building and the common elements.

#### ARTICLE IV.

##### LIMITED COMMON ELEMENTS

1. Definition. The term "limited common elements" shall mean a portion of the common areas set aside and allocated for the restricted use of respective units as is or as may hereafter be designated in the condominium plan. At the time of conveyance, each respective document of conveyance shall be deemed to convey the limited common elements to be used exclusively in conjunction with the respective unit without necessity of naming the same except it shall be necessary to describe the garage pursuant to paragraph 6 below.

2. Decks. The decks which are appurtenant to each unit and accessible only through units located on the upper floors of the building are reserved and shall constitute a limited common element for the exclusive use of the respective unit it serves. The maintenance and repair of

balconies shall be performed by the Association and the costs of such maintenance and repair of balconies shall be assessed against the individual unit that such balcony is appurtenant to.

3. Patios. The patios which are appurtenant to each lower level unit and accessible only through units located on the lower floor of the building are reserved and shall constitute a limited common element for the exclusive use of the respective unit it serves. The maintenance and repair of patios shall be performed by the Association and the costs of such maintenance and repair of patios shall be assessed against the individual unit that such patio is appurtenant to.

4. Garage Space. The regime also consists of 2 garage structures containing 8 stalls with individual garage doors. Each unit shall be assigned one stall as a limited common element. The structures shall remain a general common element but the interior space and surfaces of each space is a limited common element of the unit to which it is assigned.

5. Exception. Notwithstanding the reservations permitted by this Article, the design and layout of the building and grounds submitted and the integrity and appearance of the regime as a whole are the common interest of all owners and shall remain a part of the general common elements.

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

#### ARTICLE V.

##### DEVELOPERS RESERVED RIGHTS AND POWERS

###### 1. Developer's Activities and Unit Ownership.

Developer is irrevocably and perpetually empowered, notwithstanding any use restriction or other provision hereof to the contrary, to sell, lease or rent units not previously sold by the developer to any person and shall have the right to transact on the condominium property any business relating to construction, sale, lease or rental of such units and any recreational facilities including, but not limited to, the right to maintain models, offices, signs, employees and equipment and materials on the premises, and to use common elements to show such units. A sale and rental office, signs and all items and equipment pertaining to sales or rentals and other facilities furnished by 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 under the same terms and conditions as other owners including membership in the Association save for this right to sell, rent, or lease.

2. Easements. Developer expressly reserves perpetual easements for ingress, egress, and utility purposes as may be required across and under the land submitted hereby and by any supplements hereto for expansion of the regime and in connection with any other development of the land described, so long as it continues to own one or more units.

3. Designation of Association Directors. Developer shall have the right to name all members of the Board of Directors of Bent Tree Owners Association until the first annual members' meeting of said



Association which shall be held the 15th day of the month of October which follows the sale of all units or the 15th day of October 1983, whichever last occurs. Thereafter the Board of Directors shall be selected in the manner specified in the By-Laws of the Association.

4. ASSESSMENT OF DEVELOPER'S UNITS. Units owned by the Developer which are held for sale to the public and which are not and have not been occupied shall not be assessed nor shall the developer by virtue of owning such units be liable for the common assessment to the Association.

ARTICLE VI.  
MANAGEMENT OF THE REGIME

1. Association; Membership; Vote or Other Action of Owners. The business and affairs of the regime shall be governed and managed by Bent Tree Owners Association, a non profit membership corporation organized and existing under Chapter 504A, Code of Iowa. Copies of its Articles of Incorporation and of its By-Laws are attached hereto as "Exhibit D" and "Exhibit E" respectively. Wherever 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. The action of the Association shall constitute the action of the owners or of the Council of Co-Owners whenever such action is permitted or required herein or by Chapter 499B of the Code of Iowa.

2. Agreements and Compliance. All owners, tenants, families, guests and other persons using or occupying the regime shall be bound by and strictly comply with the provision of the By-Laws of the Association and applicable provisions of the other condominium documents, and all agreements, regulations, and determinations lawfully made by the Association and its directors, officers or agents shall be binding on all such owners and other persons. A failure to comply with the By-Laws or the provisions of the other condominium documents or any agreement or determination thus lawfully made shall be grounds for an action to recover sums due for damages on the part of the Association or any owner as applicable and for mandatory or other injunctive relief without waiving either remedy.

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. The Council of Co-Owners and the owners as a group by Chapter 504A and 499B Code of Iowa, and such as are more particularly set forth in the condominium documents, including but not limited to the making of assessments chargeable to owners and the creation of a lien on units thereby, and the right, acting on behalf of the unit owners, to foreclose the lien thereof and acquire a unit at foreclosure sale and to hold, lease, mortgage or convey the same; all unit owners shall be deemed to have waived all rights of partition, if any, in connection with such acquisition. Each owner hereby waives any rights to delay or prevent such foreclosure by the Association which he may have by reason of a homestead exemption.

4. No Avoidance by Waiver of Use; Right of Entry. Each owner shall be liable for all assessments made by the Association against his unit for common expenses and liabilities of the Association and the condominium property and regime. The liability of a unit 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. The Association shall have the right exercisable at reasonable times to enter a unit as may be necessary or advisable to carry out its responsibilities.

5. Management Contract. Pursuant to authority granted in its By-Laws the Association has the right to enter into a contract with Developer or its assigns for professional management of its affairs for an initial term not to extend beyond October 15, 1983, and the management fee thereof shall be a common expense, and such fee shall not increase by more than the yearly rate of inflation as determined by generally accepted Economic Indicators. A new contract may be negotiated at the end of the initial term.

6. Discharge of Liability. The owner shall promptly discharge any lien which may hereafter be filed against his condominium unit.

7. Limitation of Association's Liability. The Association shall not be liable for any failure of any service to be obtained and paid for by the Association hereunder, or for injury or damage to property caused by or on the common elements or by another owner or person in the project, or resulting from electricity, water, rain, air, dust, dirt or sand which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment or from any other place unless caused by negligence of the Association. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the common area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

8. Indemnification of Management Committee Members. Each member of the Association shall be indemnified by the owners against all expenses and liabilities including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceedings to which he may be a party, or in which he may become involved, by reason of his being or having been an officer or director of the Association or any settlement thereof, whether or not he is an officer or director at the time such expenses are incurred, except in such cases wherein such cases wherein such person is adjudged guilty of or liable for willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors of the Association approves such settlement and reimbursement as being for the best interest of the Association.

9. Association as Attorney-in-fact for Owners. The Association is hereby irrevocably appointed attorney-in-fact for the Owners of each and every Condominium to manage, control and deal with the interest of such Owners in the Common Areas so as to permit the Association to fulfill all of its duties and obligation hereunder and to exercise all of its rights hereunder, to deal with Bent Tree Condominiums 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 condominium shall constitute an appointment of the Association as an attorney-in-fact as provided above.

10. 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 expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings 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 expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings 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 VII.

##### MAINTENANCE, ALTERATION AND IMPROVEMENT.

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

- a. "Maintenance" or "repair" shall mean the act of maintaining, restoration, renovation, reconstruction, replacement, rebuilding and similar work necessary to preserve a unit, the building, the common elements, or the property in its condition as of the time of the filing of this declaration or if improved or restored after the time of such filing its condition as of the date of the completion of such improvements or restoration.
- b. "Improvement" shall mean the addition of a new structure, element or facility, other than a structure, element or facility, otherwise provided for by this Declaration or any Supplementary Declaration

2. Maintenance by Association.

- (a) The Association shall maintain all common elements, whether limited or general, and shall make assessments therefor as a common expense except where the cost of maintenance has been specifically made the responsibility of each unit in which case, each such unit shall be assessed on an individual basis.

- (b) The Association shall repair incidental damage caused to a unit through maintenance by the Association and shall assess the cost thereof as a common expense.
- (c) If a unit owner defaults on his responsibilities of maintenance, the Association shall assume such responsibilities and shall assess the cost thereof against the owner of such unit and such assessment shall be collectible from the unit owner as if it were an assessment for common expenses.
- (d) The Association may, in its discretion, assume responsibility for any maintenance project which requires reconstruction, repair, rebuilding, renovation, restoration or similar work to more than one unit and the cost thereof may in the discretion of the Association, either be assessed against each unit on which such costs were incurred or be assessed against all units as a common expense according to the circumstances.
- (e) The Association shall maintain the common plumbing lines in the building.

3. Maintenance by Owner.

- (a) Each unit owner at his own expense shall maintain the interior, including the boundary surfaces, of such unit and its equipment, shall keep such interior in a clean and sanitary condition, shall do all redecorating, painting and other finishing which may at any time be necessary to maintain his unit, and shall be responsible for the maintenance of all personality including carpets, furnishings, and appliances within such unit.
- (b) The owner of each unit shall be responsible for maintenance of any plumbing fixture, lighting fixtures, heating and air conditioning equipment (except that part reserved as limited common elements), refrigerators, dishwashers, disposals or ranges in or connected with such unit and for its exclusive use. The owner shall also, at his own expense, keep in a clean condition any limited common area which is for the exclusive use of his unit; and neither the Association nor the regime shall be liable or responsible for any loss or damage caused by theft or otherwise of articles which may be stored by the owner in a limited common area or in a unit except for the repair specifically made the responsibility of the Association for damage caused to a unit through its maintenance as provided in Section 2(b) of this Article.
- (c) The unit owner shall maintain, at his expense, any improvement or other alteration made by him.
- (d) The owner of each unit shall promptly report to the Association any defects or other maintenance needs which are the responsibil-



ity of the Association.

4. Alterations or Improvements by Owner. No unit owner shall make or permit to be made any structural alteration to a unit or to the building or any of the common elements, limited or general, without first obtaining written consent of the Board of Directors of the Association which shall determine the proper insurance of such improvement or other alteration, and the effect of such improvement or alteration on insurance of other property of the regime, and which shall arrange with such unit owner for the payment of the cost of any additional insurance thereby required. In the case of alterations within a unit the consent required by the preceding sentence shall be immediately granted upon agreement of the unit owner to pay the cost of such additional insurance, and a determination that such alteration will not impair the structural soundness of the building or safety of the property. Alterations to the exterior of the building or common element shall not be made, if, in the opinion of the Board of Directors of the Association, such alteration would not become the integrity and appearance of the regime as a whole. Such owner shall do no act or work which will impair the structural soundness or integrity of the building or safety of the property or impair any easement. The improvement or alteration of a unit shall cause no increase or decrease in the number of ownership units appurtenant to such unit.

5. Alterations or Improvements by the Association. Whenever in the judgment of the Board of Directors the common elements shall require addition, alterations or improvements during the fiscal year costing in the aggregate in excess of \$4,000.00, and the making of such additions, alterations or improvements shall have been approved by a majority of the ownership units, the Board of Directors shall proceed with such additions, alterations or improvements and shall assess all unit owners for the cost thereof as a common charge. Any additions, alterations, or improvements during the fiscal year costing in the aggregate \$4,000.00 or less may be made by the Board of Directors without approval of unit owners, and the cost thereof shall constitute part of the common expenses.

#### ARTICLE VIII.

##### CONDITIONS OF AND RESTRICTIONS ON OWNERSHIP USE, AND ENJOYMENT

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

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

- a. A unit shall be used or occupied for single family dwelling purposes only.
- b. An owner has the right to decorate windows bounding his unit, however, nothing shall be hung between the interior surface of the window and the drapes, curtains, sheers or shutters used.



- c. Dogs, cats and other pets, animals and birds are prohibited, unless board of directors give prior written approval.
- d. The Association shall adopt rules and regulations for the reservation of all recreation facilities.
- e. A unit may be rented or leased by the owner or his lessee provided the entire unit is rented, the occupancy is only by the lessee and his family or sublessee and his family and the period of rental is at least 30 days unless some other period is established in the regulations or By-Laws of the Association. No lease shall relieve the owner as against the Association and other owners from any responsibility or liability imposed by the condominium documents.
- f. The right to sell, lease or otherwise transfer or convey any condominium unit may be subject to such uniform objective standards relating to financial responsibility and/or character as may now or hereafter be set forth in the By-Laws. No such restriction shall be based upon race, religion, sex or place of national origin.
- g. No noxious or offensive activity shall be carried on in any condominium unit, nor shall anything be done or be permitted to remain in any condominium unit which may be or become a nuisance or annoyance to owner or tenants. Unit owners and/or other tenants, shall exercise reasonable care not to disturb other owners or tenants with excessive noise.
- h. There shall be no obstruction of any general common elements. Nothing shall be stored upon any common elements without the approval of the Association. Vehicular parking upon general common elements may be regulated or assigned by the Association.
- i. Except for such signs as may be posted by the developer for promotional or marketing purposes, no signs of any character which are visible from the outside of a condominium unit shall be erected, posted or displayed upon, from or about any condominium unit, unless first reviewed and approved by the Association, and further provided that any holder of a first mortgage which acquires possession of a unit by foreclosure or by deed in lieu of foreclosure shall have the right to post signs for the sale or rental of such unit until such unit is sold or a rental is entered into.
- j. The halls and passageways of all buildings shall be used only for ingress and egress.
- k. No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or used materials, or trash of any other kind shall be permitted within any condominium unit or be permitted to remain in public view, but shall be deposited in the receptacles provided for that purpose.

- l. No structures of a temporary character, trailer, tent, shack, barn or other outbuilding shall be maintained upon any common elements at any time. No recreational vehicles, boats and similar types of equipment shall be stored on the common areas except within the garages.
- m. No owner or other person shall install any electrical or telephone wire, television antenna, or other antenna, air-conditioning unit or other machine or device on the exterior of the building, except as now in place or as approved by the Association.
- n. Nothing shall be altered in, constructed in, or removed from the common elements, except upon written consent of the Board of Directors of the Association which may be given through regulations of the Association.
- o. No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the unit owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.
- p. Nothing shall be done or kept in any unit or in the common area which will increase the rate of insurance on the common area, 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 area which will result in the cancellation of insurance on any unit or any part of the common area, or which would be in violation of any law.
- q. Agents of or contractors hired by the Association may enter any unit when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the owners as practicable.
- r. A unit owner shall give notice to the Association of every lien against his unit other than permitted mortgages, taxes, and Association assessments, and of any suit or other proceeding which may affect the title to his unit, within ten days after the lien attaches or the owner receives notice of such suit.
- s. A unit owner shall be liable to the Association or to another unit owner as the case may be, for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness, or by that of his family, guests, employees, agents, or lessees, which liability shall include any increase in insurance rates resulting therefrom.
- t. Unit owners are reminded that alteration and repair of the building is the responsibility of the Association, except for the interior of the units. No work of any kind is to be done upon the exterior building walls or upon interior boundary walls or doors without first obtaining the approval of the Association. Work inside a unit will be coordinated with the Association before proceedings.
- u. No public hall or stairway of the buildings shall be decorated or furnished by any person in any manner unless approved by the Board of the Association.

- v. Each unit occupant shall keep his unit and balcony to which he has sole access in a good state of presentation and cleanliness, and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors, windows or balcony thereof, any dirt or other substance.
- w. No vehicle belonging to a unit occupant or to a member of his family or guest, tenant or employee of a unit occupant shall be parked in such a manner as to impede or prevent ready access to any entrance to or exist from the building by another vehicle. Nor shall anyone perform any maintenance, repair or service on any automobile upon any of the general common elements.
- x. Complaints regarding the services of the building shall be made in writing to the Board of Directors or to the managing agent or to the manager.
- y. The Association shall have the authority to amend and adopt reasonable rules and regulations governing the use of the property and such rules shall be observed and obeyed by the owners, their guests, and licensees.
- z. No unit owner shall have in the unit a waterbed.

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

#### ARTICLE IX.

##### DESTRUCTION, CASUALTY AND REPAIRS

1. In the event of damage or destruction to the regime by fire or other peril the same shall be promptly repaired or reconstructed in substantial conformity with the original plans and specifications with the proceeds of insurance available for that purpose, if any.

2. In the event the proceeds of insurance are not sufficient to repair damage or if destruction is caused by any peril not herein required to be insured against, then the repair or reconstruction of the damaged common elements shall be accomplished promptly by the Association at its Common Expense and the repair or reconstruction of any condominium unit shall be accomplished promptly by the Association at the expense of the owner of the affected condominium unit. The ratable share of the expense of such repairs or reconstruction may be assessed and the lien for the same shall have all the priorities heretofore provided for in this Declaration and by the By-Laws of the Association.

3. In the event that three-fourths (3/4) or more of the entire project is substantially damaged or destroyed by fire or other casualty and sixty-six (66) or more of the ownership units do not within thirty (30) days resolve to proceed with repair or reconstruction, then and in that event the project shall be deemed to be owned in common by the owners of all of the condominium units in the same proportions

as that previously established for ownership of appurtenant undivided interests in the common elements, and the project shall be subject to an action for partition at the suit of the owner of any condominium unit or the holder of any lien thereon, in which event the net proceeds of sale, together with the net proceeds of any insurance paid to the Association or its members in common, shall be considered as one fund and shall be divided among the owners of all the condominium units as herein provided, after first paying out of the share of the owner of any condominium unit, to the extent such share is sufficient for the purpose, all liens upon such condominium unit.

ARTICLE X.

INSURANCE

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

- a. Insurance on the Condominium Project in an amount equal to full replacement value of the Condominium Project (as determined annually by the Association) and with a replacement cost endorsement which provides for the payment of all losses without deduction or allowance for depreciation, provided that such policy may contain a deductible amount not to exceed \$500.00. Such coverage shall afford protection against, at least, the following:
  - (i) loss or damage by fire or other hazards covered by the standard extended coverage endorsement and additional extended coverage endorsement;
  - (ii) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, machinery explosion or damage, and such other insurance as the Association may from time to time determine; and
- b. Public liability insurance in such amounts and in such forms as may be considered appropriate by the Association including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile and any and all other liability incident to the ownership and/or use of the Condominium Project or any portion thereof; and
- c. Workmen's compensation insurance to the extent necessary to comply with any applicable law; and
- d. Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Association.

2. The premiums for the insurance coverage shall be a common expense to be paid by monthly assessments levied by the Association against owners of each of the units. The premiums attributable to coverage on the condominium units and the Common Elements shall be apportioned among the units.



3. The Association, or its designee, shall have the exclusive authority to adjust losses under the insurance policies.

4. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by owners of units or their mortgagees.

5. Each unit owner may obtain additional insurance at his own expense upon his condominium unit provided that no owner shall maintain insurance coverage which will tend to decrease the amount which the Association owners may realize under any insurance policy which it may have in force on the regime.

6. All policies shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to any and all insured named thereon, including any and all mortgagees of the condominium units.

7. The Association shall from time to time designate an Insurance Trustee. The Association shall be responsible for fees and expenses of the Insurance Trustee which shall constitute a common expense of Bent Tree Owners Association.

8. Except as hereinafter provided, the Insurance Trustee named on the condominium property endorsement shall receive and hold the amount payable under the Condominium Project Insurance and apply the same to the cost of reconstruction or repair of a damaged or destroyed condominium unit. The work of repairing or reconstruction of the damaged or destroyed condominium unit shall be commenced within thirty (30) days from the date of the damage or destruction. The work shall be accomplished in accordance with the same plans and specifications by which the condominium units was originally constructed, subject, however, to the prior written approval of the Association. The Insurance Trustee shall make available and pay to the owner the amount of insurance proceeds received by the Insurance Trustee for the reconstruction and repair of the condominium unit. The payment of the proceeds of insurance shall be made as the work progresses at such time and upon compliance by the owner with such conditions as the Insurance Trustee shall impose, in order to assure full restoration or repair of the damaged portions of the condominium unit in a workmanlike manner, free and clear of any mechanic's and materialmen's liens and any encumbrances, liens, claims or charges other than a first mortgage lien. If the cost of the reconstruction or repair exceeds the amount paid to the Insurance Trustee, the excess shall be paid by the owner; provided, however, that in the event a decision to reconstruct is not made according to the terms of Article IX(3) hereof, Bent Tree Owners Association shall be considered terminated. In the event of such termination, the Board of Directors shall have the responsibility of closing out the affairs of the Condominium Project in an orderly manner. All damaged or destroyed condominium units must be repaired or restored if:

- a. less than three-fourths of the project is damaged or destroyed; or
- b. More than three-fourths of the project is damaged or destroyed and a decision to reconstruct or rebuild damaged or destroyed condominium units is made as provided for hereinabove.

9. Any insurance obtained pursuant to the requirements of this article, except under section h. hereof, shall be subject to the following provisions:

- a. All policies shall be written with a company or companies licensed to do business in the State of Iowa and holding a rating of "A-XI" or better, by Best's Insurance Reports and a policy holder's rating of "A" or better.
- b. Exclusive authority to negotiate losses under said policies shall be vested in the Board of Directors or its authorized representative, including any trustee with which the Association may enter into any Insurance Trust Agreement, or any successor trustee, each of which shall herein elsewhere be referred to as the "Insurance Trustee" and all proceeds covering any loss shall be payable to the Insurance Trustee, or to his successor. All proceeds from an insured loss under such policy shall be held for the use and benefit of the Association and the owners of all units and their respective mortgagees as interest may appear. Such insurance proceeds shall be applied and distributed in accordance with the articles relating to insurance in the Declaration and By-Laws.
- c. In no event shall the insurance coverage obtained and maintained pursuant to the requirements of this Article be brought into contribution with insurance issued in the name of any individual unit owner purchased as herein permitted by such owner of a condominium unit or their mortgagee. Any "no other insurance" or similar clause in any policy obtained by the Association pursuant to the requirements of this Article shall exclude such policies from consideration.
- d. All policies shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to any and all insureds named thereon, including any and all mortgagees of the condominium units.
- e. All fire and other hazard insurance policies shall provide that, notwithstanding any provisions thereof which give the carrier the right to erect or restore damage in lieu of making a cash settlement, such option shall not be exercisable when in conflict with the provisions of the Declaration and the By-Laws.
- f. All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Board of Directors, their agents and employees, the respective condominium unit owners, their residence employees and agents. Independent contractors shall not be considered agents, employees or servants of the Association or of the respective condominium unit owners within the meaning of said waiver.
- g. The insurance policy shall contain a provision that the insurance shall not be prejudiced.
  - (i) By any act or neglect of any occupants or owners of the building when such act or neglect is not within the control of the condominium unit owners collectively; or
  - (ii) By failure of the condominium unit owners collectively to comply with any warranty or condition with regard to any portion of the premises over which the condominium unit owners collectively have no control.

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

ARTICLE XI.

AMENDMENTS

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

- a. In the case of an amendment to this Declaration by reason of an amendment to the By-Laws of the Association, in the manner specified in such By-Laws, such amendment shall be effective upon its execution and recordation by the President or other officer of the Association, authorized therefor by Resolution.
- b. In the case of all other amendments to this Declaration, by written agreement of two-thirds of the unit owners, provided holders of a first mortgage of record which have notified the Association of such interest shall receive notice of such amendment 30 days prior to its effective date.
- c. Developer may, until October 15, 1983, make minor amendments to this Declaration without the approval of the unit owners. Such amendment 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.

2. Effectiveness. Upon its recordation at the Polk County Courthouse by the President or other officer appointed for that purpose, an amendment adopted in the manner specified in Section 1 of this Article shall be effective against any persons having an interest in a unit or the regime

regardless of whether said person had such interest at the time said amendment was adopted in accordance with Section 1 of this Article.

3. Ownership Units. No amendment shall change the number of ownership units appurtenant to a unit, nor the share of the common elements appurtenant to it, nor increase the owner's share of the common expense, unless the record owner of the unit concerned and all record owners of mortgages thereon shall affirmatively join in the adoption of such amendment.

IN WITNESS WHEREOF, we have hereunto set our hands this 27 day of February, 1980.

BOARDWALK DEVELOPMENT COMPANY, an Iowa Partnership

By Stephen R. Grubb  
Stephen R. Grubb, Partner

By John W. Grubb  
John W. Grubb, Partner

State of Iowa  
:SS:  
County of Polk

On this 27 day of February, 1980, before me, the undersigned, a Notary Public in and for the State of Iowa personally appeared Stephen R. Grubb and John W. Grubb, to me personally known, who, being by me duly sworn, did say that they are members of the Partnership, Boardwalk Development Company, executing the within and foregoing instrument and acknowledged that they executed the same as the voluntary act and deed of said co-partners by them and by said partnership voluntarily executed.

Gerard D. Nugent  
Gerard D. Nugent Notary Public in and for the  
State of Iowa



DECLARATION OF SUBMISSION OF PROPERTY  
TO HORIZONTAL PROPERTY REGIME

FOR

BENT TREE CONDOMINIUMS

AND TO THE BY LAWS

OF

BENT TREE OWNERS ASSOCIATION

Amendment No. 1

The Bent Tree Owners Association is a Corporation pursuant to the provision of the Iowa Non-Profit Corporation Act under Chapter 504A of the Code of Iowa. The Corporation does hereby amend the Declaration of Submission of Property to Horizontal Property Regime as originally executed 27 February 1980 to change Article X sub-paragraph 9(a) to read as follows:

All policies shall be written with a company or companies licensed to do business in the State of Iowa and holding a rating of "BX1" or better, by Best's Insurance Reports and a policy holder's rating of "A" or better.

Such Amendment was approved by a 100% vote in favor at the Annual meeting held May 23, 1987.

Amendment No. 2

The Corporation does hereby amend the By-Laws of Bent Tree Owners Association by the addition of the following sub-paragraph to Section 4, Powers and Duties of the Board of Directors:

13. To make and establish House Rules regarding use of the common areas.

Amendment No. 2 was approved by a 100% vote in favor following the action taken at the Annual meeting held May 28, 1988.

In Witness Whereof, we have hereunto set our hands this 17 day of July, 1989.

Bent Tree Owners Association,  
an Iowa Corporation

By Lloyd R. Sharp  
Lloyd R. Sharp, President

By Marvin Dvorak  
Marvin Dvorak, Secretary

State of Iowa

County of Dickinson

On this 17 day of July, 1989, before me, the undersigned, a Notary Public in and for the State of Iowa personally appeared Lloyd R. Sharp and Marvin Dvorak, to me personally known, who, being duly sworn, did say that they are Officers of the Corporation and executed the same as their voluntary act and deed.

Conrad W. Springer  
Notary Public in and  
for the State of Iowa

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JAN. M. SCHMIDT  
REGISTERED  
DICKINSON COUNTY, IOWA  
FEE \$ 11.00

AMENDMENT TO THE  
DECLARATION OF SUBMISSION OF PROPERTY  
TO HORIZONTAL PROPERTY REGIME

FOR  
BENT TREE CONDOMINIUMS

Amendment No. 4

The Bent Tree Owners Association is a corporation organized and existing pursuant to Chapter 504A, Code of Iowa.

1. The corporation does hereby amend the Declaration of Submission of Property to Horizontal Property Regime as originally executed February 27, 1980, by amending subparagraph 2(a) of Article VIII to read as follows:

"a. A unit shall be used or occupied for single family residential dwelling purposes by one single family unit (related by blood or marriage) only. The requirement that users or occupants be related by blood or marriage may be waived with the written consent of not less than two directors. Except for a single family residential dwelling use lease as provided in subparagraph "e" below, a unit shall not be used for any business purpose."

2. The corporation does hereby amend the Declaration of Submission of Property to Horizontal Property Regime as originally executed February 27, 1980, by adding the following new paragraph to Article VIII to read as follows:

"4. Ownership of Property. Unless otherwise approved by the Association, a unit shall only be owned by a single family unit (related by blood or marriage). Subdivision of the ownership interest in a unit, except within a single family unit (related by blood or marriage), is prohibited. This paragraph shall not apply to owners of record as of May 24, 1997, of unit number seven."

IN WITNESS WHEREOF, we have hereunto set our hands this 10 day of June, 1997.

BENT TREE OWNERS ASSOCIATION,  
an Iowa Corporation

By [Signature]  
Keith Luchtel, President

By [Signature]  
Peter Dickinson, Secretary

11 37A 111  
June 13, 1997

**BENT TREE OWNERS ASSOCIATION  
HOUSE RULES – REVISED MAY 2006**

**FRONT LAWN:** Residents may use the lakeside lawn area for recreational purposes, however consideration must be given to occupants of the three lower units. Children's activities must be supervised by the owner of, or an adult residing in, the unit in which the children are residing.

**GARBAGE:** Place trash and garbage in the dumpster located at the west end of our parking area. It is recommended that fishermen have their catch cleaned at Shucks, which is located five miles south on highway 86. Fish and game **MAY NOT** be cleaned on the dock or common areas. Debris from animals or fish must be put into a sealed plastic bag before being placed in the dumpster. Please do not park in front of the dumpster on pick up days.

**BOATS:** Use hoists for boat parking and storage for extended periods of time. A boat may be tied to the dock for a short period of time, preferably on the north or south side of the 4' walkway, so that the main dock platform may be used by swimmers. Overnight boat parking is not permitted at the dock.

**ANCHOR BUOY:** Boats may be tied to the anchor buoy for extended periods, including overnight periods. However, boats moored at the buoy must comply with all Iowa boating laws for moored vessels including appropriate lighting.

**SWIM FLOATS:** When used they must be taken up when the swimmers leave the dock, to prevent interference with boats.

**PETS:** Dogs, cats and other pets, animals and birds are prohibited.

**NOISE:** Radios, TV's, etc., should be kept at a volume that will not disturb others. Please walk quietly when using the stairs at night, to avoid disturbing residents who may be sleeping. Children in upper units should not run and jump because the noise carries through the floors. Vacuum cleaners and washing machines should not be operated between 11:00 p.m. and 7:00 a.m.

**PARKING:** Please do not leave a vehicle unattended in front of the garage doors, except for short periods while loading or unloading. Vehicles on the west easement should be parked diagonally to make optimum use of this space.

**VEHICLE WASHING:** Vehicles may be washed in front of the faucet by the elevator shaft. Please do not leave your vehicle unattended, and hose down the drive after you finish.

**ELEVATOR:** Please do not permit children to play with the elevator. The elevator is shut down during winter months.

**HEAT AND WATER:** During winter months the heat is to be left on in each unit. The main water valve should be closed when a unit is going to be unoccupied. Heating units should be serviced annually to insure proper cold weather operation.

**SALE OF UNITS:** It is requested that when an owner contemplates selling, they notify the other owners prior to listing with a real estate agent. It is the unit owners responsibility to convey the house rules and the bylaws to the prospective purchaser, either directly or through their real estate agent.

**CONVEYING HOUSE RULES:** It will be the unit owner's responsibility to insure that guests are aware of, and abide by the house rules. The purpose of these rules is to help guarantee the enjoyment of Bent Tree by both the owners and their guests.



**TO: Bent Tree Owners**  
**FROM: Marv Dvorak**  
**DATE: August 6, 2007**  
**RE: Update**

**Plumbing Issues:** We have experienced some minor problems with drain backups in one of the ground floor units this summer. This has occurred occasionally in the past, and has been theorized by our plumbing and drain cleaning people to possibly be due to a probable design flaw in the plumbing infrastructure in our building. The problem occurs when all or most of the units are occupied, and it would appear that the drain system capacity is not adequate to handle the waste water flow at that time. To minimize the problem, the drain people have made some recommendations in the past which I am going to list again as a reminder to long time owners and as a matter of information to newer owners:

1. Use only All laundry detergent due to its very low suds property.
2. Place as little possible of food and cooking scraps into the garbage disposal. This is especially true of very fibrous vegetables, and greasy meat scraps and of course never place coffee grounds or grease into the sink or disposal.
3. Toilet Tissue—Only use Northern. The drain cleaning people state they have made a small fortune as a result of people using Cottonelle, Soft and Gentle, Angel Soft, and Charmin. These tissues do not break down adequately and are notorious for causing blockage.
4. The following preventive maintenance is recommended:
  - A. When leaving your unit for an extended period of time (a week or more) flush each stool in your unit at least twice.
  - B. Fill the kitchen sink with water and drain it out all at once at least weekly or when leaving your unit for an extended period.

These measures are not difficult things to do and will insure that our waste system functions properly and will not require what would be extremely expensive and invasive renovation.