



Doc ID: 022782750081 Type: GEN
Kind: CONDOMINIUM
Recorded: 12/19/2012 at 04:19:29 PM
Fee Amt: \$407.00 Page 1 of 81
Johnson County Iowa
Kim Painter County Recorder
BK **5027** PG **6-86**

**DECLARATION
OF**

**SUBMISSION OF PROPERTY TO
HORIZONTAL PROPERTY REGIME
PURSUANT TO CHAPTER 499B OF THE CODE OF IOWA**

-6969

NAME: CARDIGAN PARK CONDOMINIUMS

DECLARANT: ARLINGTON DEVELOPMENT, INC.
Attn: Mr. John W. Moreland, Jr.
1486 South First Avenue, Unit A
Iowa City, IA 52240

DATE OF DECLARATION: December 14, 2012

LEGAL COUNSEL: Mr. Michael J. Pugh
BRADLEY & RILEY PC
One South Gilbert Street
Iowa City, Iowa 52240
(319) 466-1511

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OWNERS ASSOCIATION**

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DECLARATION
OF
SUBMISSION OF PROPERTY
TO HORIZONTAL REGIME ESTABLISHING A PLAN
FOR
CONDOMINIUM OWNERSHIP OF PREMISES

This Declaration of Submission of Property to the Horizontal Regime is made and executed in Iowa City, Iowa, the 14th day of December, 2012, by Arlington Development, Inc., an Iowa corporation, hereinafter referred to as "Declarant" pursuant to the provisions of the Horizontal Property Act, Chapter 499B, Code of Iowa (2011), as amended.

WITNESSETH:

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

**Lot 2, Windsor Ridge – Part Twenty-Two Iowa City, Iowa,
according to the plat thereof recorded in Book 55, Page 346 , Plat
Records of Johnson County, Iowa.**

and;

WHEREAS, DECLARANT is the owner of four (4) multi-family buildings and other improvements constructed, or to be constructed, upon the above-described real estate, and it is the desire and the intention of the DECLARANT to divide the Project into Condominiums and to sell and convey the same to various purchasers, pursuant to the provisions of the aforesaid Horizontal Property Act, and to impose upon said property mutually beneficial restrictions, covenants, and conditions; and

WHEREAS, DECLARANT desires and intends by filing this Declaration to submit the above-described property and buildings and other improvements constructed thereon, together with all appurtenances thereto, to the provisions of the aforesaid Act as a Condominium Project;

NOW, THEREFORE, the DECLARANT does hereby publish and declare, that all property described above is held and shall be held and conveyed subject to the following covenants, conditions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into

condominiums and shall be deemed to run with the land and shall be a burden and a benefit to DECLARANT, its successors and assigns and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I.

DEFINITIONS

1. **DECLARANT.** The term “DECLARANT” shall mean Arlington Development, Inc., an Iowa corporation which has made and executed this Declaration.

2. **DECLARATION.** The term “DECLARATION” shall mean this instrument by which Cardigan Park Condominiums is established as provided under the Horizontal Property Act.

3. **PROJECT.** The term “PROJECT” shall mean the entire parcel of real estate property referred to in this Declaration to be divided into Condominiums, including all structures thereon.

4. **UNIT.** The term “UNIT” shall mean one or more rooms occupying all or part of a floor intended for use as a residence and not owned in common with the other owners in the Regime. The boundary lines of each Unit are the interior surfaces of its perimeter walls, bearing walls, floors, ceilings, windows and window frames, doors and door frames, and trim, and includes the portions of the Building so described and the air space so encompassed. The Regime will consist of four (4) multi-family Buildings, labeled as buildings A, B, C and D on the Site Plan. Each Building contains six (6) units. The total number of Units within the Condominium Regime shall be 24. Two (2) stall garages are included within each Unit.

5. **GENERAL COMMON ELEMENTS.** The term “GENERAL COMMON ELEMENTS” shall have the meaning as defined in ARTICLE IV.

6. **LIMITED COMMON ELEMENTS.** The term “LIMITED COMMON ELEMENTS” shall have the meaning as defined in ARTICLE V.

7. **BUILDING.** The term “BUILDING” shall mean and include the dwelling structures constructed on the real estate described herein, constituting the four (4) multi-family Buildings which are included in this Condominium Regime.

8. **CONDOMINIUM.** The term “CONDOMINIUM” means the entire estate in the real property owned by any Owner, consisting of an undivided interest in the Common Elements and ownership of a separate interest in a Unit.

9. **OWNER.** The term “OWNER” means any person with an ownership interest in a Unit in the Project.

10. **ASSOCIATION.** The term “ASSOCIATION” means Cardigan Park Condominiums Owners Association and its successors.

11. **CONDOMINIUM DOCUMENTS.** The term “CONDOMINIUM DOCUMENTS” means this Declaration, as may be amended, and all Exhibits attached hereto including the Articles and Bylaws of the Association.

12. **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.

13. **SEVERABILITY.** The invalidity of any covenant, restriction, agreement, undertaking, or other provisions of any Condominium Document shall not affect the validity of the remaining portions thereof.

14. **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.

ARTICLE II.

DESCRIPTION OF LAND, BUILDING AND UNITS

1. **Description of Land.** The land submitted to the Regime is located in Iowa City, Johnson County, Iowa, and is legally described as follows:

**Lot 2, Windsor Ridge – Part Twenty-Two Iowa City, Iowa,
according to the plat thereof recorded in Book 55, Page 346, Plat
Records of Johnson County, Iowa.**

The condominium regime is subject to easements and other restrictions of record and as shown on the Site Plan attached hereto as Exhibit “F”.

2. **Description of Buildings.** The Condominium Regime will consist of four (4) multi-family Buildings, labeled and shown on the Site Plan, Exhibit “F” attached hereto, as Buildings A through D. Each Building contains six (6) units. The plans and specifications for the Buildings are attached hereto as Exhibits “D” and “E”.

3. **Description of the Units.** The Condominium Regime consists of a total of 24 Units, designated as Units 1 through 6, inclusive, for each Building as set forth on the Site Plan and Building Plans, Exhibits “D” and “F” attached hereto. Each Unit contains a two (2) stall

garage. The Units are described by Unit number and are numbered 1 through 6 for each Building. Each Unit is an owner of 1/24th (or 4.1667%) of the Common Elements, each Unit shall pay 1/24th (or 4.1667%) of the Common Expenses, and each Unit shall be entitled to one vote in the Association.

ARTICLE III.

OWNERSHIP INTERESTS

1. **Exclusive Ownership and Possession by Owner.** Each Owner shall be entitled to exclusive ownership and possession of his or her Unit. Each Owner shall be entitled to an undivided 1/24th interest in the Common Elements. Said percentage of the undivided interest of each Owner in the Common Elements shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners.

An Owner shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, ceiling, windows and doors bounding his or her Unit, nor shall the Owner be deemed to own the utilities running through his or her Unit which are utilized for, or serve, more than one Unit, except as a percentage of an undivided interest in the Common Elements. An Owner, however, shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the interior surfaces of the walls, floors, ceilings, windows and doors bounding his or her Unit.

2. **Appurtenances.** There shall pass with the ownership of each Unit as a part thereof, whether or not separately described, all appurtenances to such Unit. 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. **Undivided Fractional Interest.** An undivided interest in the land and other Common Elements of the Regime, regardless of whether such elements are General or Limited Common Elements, shall be appurtenant to each Unit. The amount of such undivided interest appurtenant to each Unit is 4.1667% upon completion of all Buildings in the Regime. Each Unit will bear a fractional share of the obligation for payment of assessment, taxes and insurance and other expenses assessed by the Owners' Association. Each Unit Owner will bear a 1/24th share of said expenses and assessments.

4. **General Common Elements.** Appurtenant to each Unit shall be a right to use and enjoy the General Common Elements.

5. **Limited Common Elements.** The exclusive use by Owners of the Limited Common Elements shall be deemed an appurtenance of the Unit 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. **Association Membership and Voting Rights.** Appurtenant to each Unit shall be membership in Cardigan Park Condominiums Owners Association and one (1) vote in the affairs of the Association and of the Regime; provided, however, that the exercise of such voting and membership rights shall be subject to the applicable provisions of the Articles and Bylaws of the Association and of the other Condominium Documents. The action of such Association shall be deemed the action of the Owners; and such action, when taken in accordance with the Bylaws of the Association and this Declaration shall be final and conclusive upon all Unit Owners.

7. **Cross-Easements.** Appurtenant to each Unit shall be easements from each Unit Owner to each other Unit Owner and to the Association, and from the Association to the respective Unit Owners as follows:

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

ARTICLE IV.

GENERAL COMMON ELEMENTS

1. **Definition.** General Common Elements shall include all portions of the Project (land and improvements thereon) not included within any Unit except such portions of the Project which are defined as Limited Common Elements in the following Article. The General Common Elements also include, but are not limited to, the following:

- (a) The land on which the Buildings are erected.
- (b) The foundations, floors, exterior walls of each Unit and of the Buildings, ceilings and roofs, and entrances and exits or communication ways, and in general all devices or installations existing for common use, except as limited in the next Article.

(c) Installations for public utilities, including electric, cable TV, gas and cold water for common use.

(d) Front, side, and rear yards; plantings, driveways, walks, and open parking spaces, except as otherwise provided or stipulated.

ARTICLE V.

LIMITED COMMON ELEMENTS

1. **Definition.** The term ‘Limited Common Elements’ shall mean, and such elements shall consist of, those Common Elements which are reserved for the use of one or more Unit(s) by this Article and amendments hereto and such reservation shall be to the exclusion of any other Unit.

2. **Reservation.** The following Common Elements are reserved and shall constitute the Limited Common Elements:

(a) All exterior walls of a Building, all walls and partitions separating Units from other Units, interior load bearing walls and all other elements which are structural to a Unit are reserved for that Unit (or Units where partitions separate two Units contained in a Building).

(b) The immediate entrances leading to each Unit are reserved for those Units.

(c) Mailboxes and storage areas, if any, designated to a particular Unit.

(d) Driveways and walkways leading to each Unit are reserved for those Units.

(e) That part of all sewer, water, electrical, gas, telephone and other utility or service lines, wiring, ducts, conduits, piping, facilities, systems, fixtures and attachments serving just one Unit and located entirely within the Unit. Furnace and/or water heater rooms shall be appurtenant to the Units they serve.

(f) The air conditioner pads, compressors and equipment appurtenant to each Unit.

(g) Any deck, balcony or porch adjacent to an individual Unit.

(h) The garage space included with each Unit.

- (i) Any Central Antenna System serving a Building or particular Units are reserved for those Units.

3. **Exception.** Notwithstanding the reservations made by this Article, the design of the Buildings, grounds to be submitted and the integrity and appearance of the Regime as a whole are the common interests of all Owners and, as such, shall remain a part of the General Common Elements.

4. **Right of Association.** The reservation of the Limited Common Elements herein shall not limit any right the Association and its agents may otherwise have to alter such Limited Common Elements or enter upon such Limited Common Elements.

ARTICLE VI.

DECLARANT'S RESERVED RIGHTS AND POWERS

1. **Declarant's Activities.** Declarant is irrevocably and perpetually empowered, notwithstanding any use, restriction or other provision hereof to the contrary, to sell, lease or rent Units to any person and shall have the right to transact on the Condominium property any business relating to construction, repair, remodeling, sale, lease or rental of Units, including but not limited to, the right to maintain signs, employees, independent contractors and equipment and materials on the premises, and to use Common Elements (General and Limited) to show Units. All signs and all items and equipment pertaining to sales or rentals or construction and any Unit furnished by the Declarant for sales purposes shall not be considered Common Elements and shall remain its separate property. Declarant retains the right to be and remain the Owner of completed but unsold Units under the same terms and conditions as other Owners, including membership in the Association save for its right to sell, rent or lease.

2. **Easements.** Declarant expressly reserves perpetual easements for ingress, egress and utility purposes as may be required across and under the land submitted hereby. Declarant also reserves for itself the exclusive right and power to grant and record such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of property described in Article II, Section 1. The Association shall join in such easement agreement if requested to do so by Declarant. The Declarant may assign this right to the Association.

3. **Designation of Association Directors.** Declarant shall have the right to name all members of the Board of Directors of Cardigan Park Condominiums Owners Association until the earlier of three years after the first Unit in the Condominium Regime has been conveyed to Unit purchasers or four months after seventy-five percent (75%) of the Units in the Condominium Regime have been conveyed to Unit purchasers, or until the Declarant waives this right, at which time members of the Association shall select the Board of Directors as

provided by the Bylaws. Thereafter the Board of Directors shall be selected in the manner specified by the Bylaws of the Association.

4. **Declarant's Right to Amend.** The Declarant reserves the following rights to amend the Declaration without the consent of any Unit Owner for the following purposes and in the following manner:

(a) As each Building is completed, the Declarant shall cause an Engineer's Certificate to be filed indicating that said Building has been completed and constructed according to the Site Plan and Plans and Specifications which are a part of this Declaration (with any exceptions or modifications thereof duly noted) and the documents filed in support thereof with the office of the Recorder of Johnson County, Iowa. To the extent there are any modifications to the plan and specifications, as-built Plans and Specifications may be filed with such Engineer's Certificates.

(b) An amendment to this Declaration as provided in the preceding subparagraph (a) will be made at any time prior to the original sale of the affected Unit and may be made without consent of other Unit Owners.

(c) To revise the legal description, Site Plan, building plans or specifications or any other portion of this Declaration in order to correct scrivener's or other non-material errors that do not affect any Owner's interest in his or her Unit or any appurtenance thereto.

(d) So long as Declarant has the right to name all members of the Board of Directors of Cardigan Park Condominiums Owners Association as provided in Section 3 above, Declarant may, in its sole discretion, amend the Articles of Incorporation, Bylaws or Rules and Regulations of the Association.

5. **Adjustments in Plans and Specifications.** Declarant will have the authority to make adjustments to the building plans and specifications set forth in this Declaration until such time as title to the first Unit in the Building that contains said Unit has been conveyed.

ARTICLE VII.

MANAGEMENT OF THE REGIME

1. **Association; Council of Co-owners.** The operation of the Condominium shall be by a nonprofit membership corporation organized and existing under Chapter 504, Code of Iowa. The name of the Association shall be "Cardigan Park Condominiums Owners Association". Copies of its Articles of Incorporation and of its Bylaws are attached hereto as Exhibit "A" and Exhibit "B", respectively. Whenever a vote or other action of Unit Owners as a group is required, the mechanics of conducting such a vote or taking such action shall be under the control and supervision of the Association. The action of the Association shall constitute the

action of the Owners or the Council of Co-owners whenever such action is permitted or required herein or by Chapter 499B of the Code of Iowa.

2. **Compliance.** All Owners, tenants, families, guests and other persons using or occupying the Regime shall be bound by and strictly comply with the provisions of the Bylaws of the Association and applicable provisions of other Condominium Documents, and all agreements, regulations and determinations lawfully made by the Association and its directors, officers or agents shall be binding on all such Owners and other persons. A failure to comply with the Bylaws or the provisions of the other Condominium Documents or any agreement or determination thus lawfully made shall be grounds for an action to recover sums due for damages on the part of the Association or any Owner, as applicable, or for injunctive relief or for any other relief authorized by law or in the Condominium Documents, without waiving any other remedy.

3. **Powers of Association.** 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 Chapters 504 and 499B of the Code of Iowa as amended, and such as are more particularly set forth in the Condominium Documents, including but not limited to the making of assessments chargeable to Owners and the creation of a lien on Units thereof, and to acquire a Unit at foreclosure sale and to hold, lease, mortgage or convey the same. Each Owner hereby waives any rights to delay or prevent such foreclosure by the Association which he or she may have by reason of a homestead exemption.

4. **Partition.** All Unit Owners shall be deemed to have waived all rights of partition, if any, in connection with such acquisition;

5. **Membership, Voting Rights.** The members of the Association shall consist of all of the record Owners of Units. After receiving the approval of the Association elsewhere required, change of membership in the Association shall be established by recording in the public records of Johnson County, Iowa, a deed or other instrument establishing a record title to a Unit in the Condominium and the membership of the prior Owner shall be thereby terminated. The members of the Association shall be entitled to cast one (1) vote for each Unit owned by such member.

6. **Restraint upon Assignment.** The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his or her Unit.

7. **Board of Directors.** The affairs of the Association shall be conducted by an initial Board of three (3) Directors, and after the first annual member's meeting, a Board of five (5) Directors, who shall be designated in the manner provided in the Bylaws.

8. **Discharge of Liability.** All Owners shall promptly discharge any lien which may hereafter be filed against his or her Condominium.

9. **Limitation on Association's Liability.** The Association shall not be liable for any injury or damage to property caused by or on the Common Elements or by another Owner or person in the Project or by any other means unless caused by the gross negligence of the Association. No diminution or abatement of common expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements of the Common Elements or from any action taken to comply with any law, ordinance or orders of a governmental authority.

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

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

<u>NAME</u>	<u>ADDRESS</u>
Michael J. Pugh	Bradley & Riley PC One South Gilbert Street Iowa City, IA 52240

ARTICLE VIII.

MAINTENANCE, ALTERATION AND IMPROVEMENT

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

(a) "Maintenance" or "repair" shall mean the act of maintaining, restoration, renovation, reconstruction, replacement, rebuilding and similar work necessary to preserve a Unit or the property in its original condition as completed.

(b) "Improvement" shall mean the addition of a new structure, element or facility, other than a structure, element or facility otherwise provided for by this Declaration or any Supplementary Declaration.

2. Maintenance by Association.

(a) The Association shall maintain all Common Elements, whether Limited or General, and shall make assessments therefor as a common expense except where maintenance has been specifically made the responsibility of each Unit or any particular Unit or Units.

(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 or her responsibilities of maintenance, the Association shall assume such responsibilities and shall assess the cost thereof against the Unit of such Owner and such assessment shall be collectible as if it were an assessment for common expenses.

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

3. Maintenance by Owner.

(a) Each Unit Owner at his or her 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 or her Unit, and shall be responsible for the maintenance of all personalty including carpets, furnishings, and appliances within such Unit.

(b) The Owner of each Unit shall be responsible for maintaining the plumbing fixtures within the Unit and heating and air conditioning unit serving such Unit and all other utilities or portions thereof located within the boundaries of his or her Unit. The

Owner shall also, at his or her own expense, keep his or her Unit in a clean and sanitary condition.

(c) The Unit Owner shall maintain, at his or her expense, any improvement or other alteration made by him or her.

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

4. **Alterations or Improvements by Owner.** No Unit Owner shall make or permit to be made any structural alteration to a Unit or to a Building without first obtaining written consent of the Board of Directors of the Association (which consent may be given by a general rule or regulation) which shall determine the proper insurance of such improvement or other alteration, and the effect of such improvement or alteration on insurance of other property of the Regime. The Board of Directors of the Association shall arrange with such Unit Owner for the payment of the cost of any additional insurance thereby required. Alterations to the exterior of any Building or Common Element shall not be made if, in the opinion of the Board of Directors of the Association, such alteration would be detrimental to the integrity or 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 interests appurtenant to such Unit.

5. **Alterations or Improvements by the Association.** Whenever in the judgment of the Board of Directors the Common Elements shall require additions, alterations or improvements, 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.

ARTICLE IX.

CONDITIONS OF AND RESTRICTIONS ON OWNERSHIP, USE, AND ENJOYMENT

1. **Subjection of the Property to Certain Provisions.** The ownership, use, occupation, and enjoyment of each Unit and of the Common Elements of the Regime shall be subject to the provisions of the Bylaws and the 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.

