

✓ **COMPARED**

INST # 614620
RECORDING FEE 80.00
AUDITOR FEE _____
RMA FEE 1.00 ECOM 1.00

Pottawattamie County, IA 2007-003709
Recorder John Sciortino
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**DECLARATION OF ESTABLISHMENT OF A HORIZONTAL PROPERTY
REGIME (CONDOMINIUM) PURSUANT TO CHAPTER 499B OF THE IOWA
CODE (HORIZONTAL PROPERTY ACT)**

Recorder's Cover Sheet

Preparer Information:

Richard C. Schenck, 711 Court Street, Harlan, IA 51537-0509

Taxpayer Information:

n/a

Return Document To:

Richard C. Schenck, 711 Court Street, Harlan, IA 51537-0509

Grantors:

James N. Reischl, Trustee
Sandra K. Reischl, Trustee

Grantees:

James N. Reischl, Trustee
Sandra K. Reischl, Trustee

BOOK AND PAGE FOR SURVEY WERE ADDED IN AUDITOR'S OFFICE 3/9/2007

Entered for Taxation MAR 7 2007
Michelle M. Blake COUNTY AUDITOR

Return to:
Title 24, LLC
4738 S. 131st Street
Omaha, NE 68138

7-103

COMPARED

DECLARATION OF ESTABLISHMENT OF A HORIZONTAL PROPERTY REGIME (CONDOMINIUM) PURSUANT TO CHAPTER 499B OF THE IOWA CODE (HORIZONTAL PROPERTY ACT)

Pursuant to Iowa Code Chapter 499B, James N. Reischl, as Trustee of the James N. Reischl Revocable Trust dated December 26, 2000, and Sandra K. Reischl, as Trustee of the Sandra K. Reischl Revocable Trust dated December 26, 2000, hereinafter referred to as DEVELOPERS, being the owners in fee simple of the following described real estate, hereby submit such real estate to the condominium form of ownership pursuant to the Iowa Horizontal Property Act, and establish a plan for individual ownership of the space contained in each of the apartments described below and co-ownership of the remaining real property as may exist and be designated by the individual owners as common elements, subject to limitations and reservations made herein.

NOW, THEREFORE, the DEVELOPERS make the following DECLARATION hereby specifying that such DECLARATION shall constitute covenants, restrictions, limitations, conditions, and uses to run with the land, and shall be binding upon the DEVELOPERS herein, all subsequent owners of all or any part of said real property and improvements thereon, and their grantees, successors, heirs, executors, administrators, devisees, and assigns.

ARTICLE I. NAME

The name of the HORIZONTAL PROPERTY REGIME shall be NORTH
CHERRY ESTATES.

ARTICLE II.
DEVELOPERS

The DEVELOPERS OF NORTH CHERRY ESTATES are James N. Reischl, as Trustee of the James N. Reischl Revocable Trust dated December 26, 2000, and Sandra K. Reischl, as Trustee of the Sandra K. Reischl Revocable Trust dated December 26, 2000, 1314 North Cherry, Avoca, IA 51521.

ARTICLE III.
LEGAL DESCRIPTION

The description of the land to be subjected to this HORIZONTAL PROPERTY REGIME pursuant to the IOWA HORIZONTAL PROPERTY ACT, is as follows:

Lot Five (5), and parcel "A" of Lot Six (6), all in R&L Subdivision, in the City of Avoca, Pottawattamie County, Iowa. As recorded in Book 107 Page 10589 in Pottawattamie County Recorder's Office.

ARTICLE IV.
GENERAL DESCRIPTION

A building has been constructed on the above-described real estate. It is a one story, wood frame building with a brick front, a walkout basement, and two double car garages. As required by Iowa Code Section 499B.6, a full and exact copy of the floor plans of the buildings shall be attached to this DECLARATION, the same to show graphically all particulars of the buildings, including, but not limited to, the dimensions, area, and location of common elements affording access to each apartment. Other common elements, both limited and general, shall be shown graphically insofar as possible, and shall be certified to by an engineer, architect, or land surveyor registered or licensed to practice that profession in this state. Such document or documents shall be attached to this DECLARATION as Exhibit "A".

ARTICLE V.
DEFINITIONS

The terms incorporated herein and in the Bylaws attached hereto as Exhibit "B", which are made a part hereof by this reference, shall have the same meanings as set out in Chapter 499B of the Iowa Code and in particular, Section 499B.2 of the Iowa Code.

ARTICLE VI.
NUMBER AND DESCRIPTION OF UNITS

This horizontal property development (condominium) shall include two apartments each consisting of approximately 1,280 square feet and seven (7) rooms on the main floor. Each apartment shall have access to all general common areas.

ARTICLE VII.
OWNERSHIP

The ownership of each apartment as described above includes the ownership of the following undivided equal proportionate interest in all general common elements and facilities:

Apartment 1	1/2
Apartment 2	1/2

ARTICLE VIII.
COMMON ELEMENTS

The general common elements and facilities of the HORIZONTAL PROPERTY REGIME described above shall be owned by all of the apartment owners as Tenants in Common as described and as defined under Section 499B.2 (5) (a), (b), (c), and (d). These general common elements shall include the surrounding lands embraced within the legal description set out above, the foundations, exterior (outside

walls and siding) walls, eaves, gutters, roof, sanitary sewer and water lines to meter, sidewalks, lawn and shrubbery and in general, all devices or installations existing for the common use of all apartment owners.

Limited common elements are those as defined under Section 499B.2 (6) of the Iowa Code and are those reserved for the use of one or more apartments to the exclusion of other apartments and shall include basements, window glass, entrance doors, interior doors, sliding doors, garage doors and open doors, individual stairways, porches, patios, furnaces, air conditioning units and hot water heaters, as well as driveways extending from the street to the garage which is part of each apartment.

The owner of each apartment unit shall be deemed to own the inner decorated and finished surfaces of the perimeter walls, floors and ceilings therein.

ARTICLE IX. EASEMENTS

The apartments described above and the common elements shall also have and be subject to each apartment having appurtenant thereto non-exclusive easements in the common elements designed for such purpose for ingress to, egress from, utility surfaces for, and support of each apartment, and in the other common elements for use according to their respective purposes. An owner shall grant the right of entry to the management agent or to any other person authorized by the council of co-owners in case of any emergency originating in or threatening the owner's apartment, whether the owner is present at the time or not. An owner shall permit other owners, or their representatives, when so required, to enter the owner's apartment for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services

provided that such requests for entry are made in advance and that such entry is at a time convenient to the owner. In the case of an emergency, such right of entry shall be immediate. Each apartment shall also have a non-exclusive easement to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other apartments and serving that owner's apartment. Each apartment shall be subject to an Easement in favor of the owners of all other apartments to use the pipes, ducts, cables, wires, conduits, public utility lines, and other common elements serving such other apartments and located in such apartment.

ARTICLE X. ASSOCIATION

The owner of each apartment unit described herein shall automatically upon becoming such an owner, be a member of the HORIZONTAL PROPERTY REGIME, hereinafter referred to as ASSOCIATION, and shall remain a member of said ASSOCIATION until such time as the ownership ceases for any reason, at which time, that owner's membership in said ASSOCIATION shall automatically cease.

The owners of each apartment unit herein agree that the administration of this HORIZONTAL PROPERTY REGIME (condominium) shall be in accordance with the provisions of the DECLARATION and the Bylaws of the ASSOCIATION.

Each owner, tenant, or occupant of an apartment unit subject to this DECLARATION shall comply with the provisions of this DECLARATION, the BYLAWS, and the decisions and resolutions of the ASSOCIATION, as hereinafter lawfully made or amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, or

damages, or for injunctive relief, and any amounts due shall constitute a lien upon the premises herein as provided by Iowa law.

ARTICLE XI.
COMMON EXPENSES

The owners of each apartment unit shall be responsible and pay for their proportionate share of charges, costs and expenses incurred, including but not necessarily limited to the following expenses relating and connected to the building and the lot: administration expenses, risk and fire insurance for the building, liability insurance for common elements, exterior painting and exterior repairs of said building, garbage pick-up, mowing, yard care, snow removal, utilities for common outside areas and general maintenance of the building. The same shall be paid in such a manner and at such time as may be fixed by the ASSOCIATION of apartment owners in accordance with the BYLAWS. The COUNCIL OF CO-OWNERS of the ASSOCIATION of apartment owners shall obtain and continue in effect fire insurance and extended coverage upon the building or shall designate a person or persons to obtain such coverage, with the coverage to be in an amount not less than 80% of the replacement cost of the building, and the owners of each apartment unit shall pay their proportionate share of the premiums for such insurance in a manner as may be specified by the BYLAWS of the ASSOCIATION. Proceeds of any such insurance policy shall be made payable to NORTH CHERRY ESTATES ASSOCIATION.

As to expenses incurred, the payments shall be apportioned 50% to each of the two apartments.

No owner of an apartment unit may exempt himself or herself from liability for his or her contribution towards the common expenses by waiver of the use of enjoyment of the common areas and facilities or by the abandonment of that person's apartment.

All sums assessed by the ASSOCIATION, but unpaid, for a share of the common expenses, are chargeable to any apartment and shall constitute a lien upon such apartment unit prior to all other liens, except tax liens and sums unpaid on a first mortgage of record, for the apartment unit in favor of any assessing unit. Such a lien may be foreclosed by a suit by the ASSOCIATION, acting upon behalf of the owners of the apartment units, in a manner as in the foreclosure of a mortgage on real estate.

In a voluntary conveyance, the grantee of an apartment unit shall be jointly and severally liable with a grantor for all unpaid assessments against the grantor for that grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor, the amounts paid by the grantee therefor.

ARTICLE XII. USES

All apartment units shall be used in compliance with Iowa law, particularly Chapter 499B of the Iowa Code, any applicable Zoning Ordinances, Covenants and Restrictions, and any rules as established by the Council of Co-Owners. Each owner shall maintain the interior of his or her unit at the owner's expense and shall do nothing which will interfere with the peaceful enjoyment of other units by their legal occupants. No owner shall paint or otherwise change the appearance of any portion of the building not within the walls of that owner's apartment unit.

ARTICLE XIII.
CASUALTY

In the event that the building is damaged by fire, wind storm or other casualty, only to the extent that repairs can be reasonably effected within 30 days thereafter, then such repair shall be immediately made by the Council of Co-Owners and the insurance proceeds used in payment thereof. In the event that any or all of the building is damaged or destroyed to such extent that repairs cannot be reasonably effected within thirty (30) days after the damage is sustained, a special meeting of the Council of Co-Owners shall be called, in the manner provided in the Bylaws, immediately following such damage, for the purpose of determining by majority vote whether such repairs, rebuilding or restoration should be effected. If the Association fails to approve said repair or reconstruction, the destroyed or damaged property shall be disposed of as provided in 2003 Iowa Code §499B.16 and any amendments thereto.

ARTICLE XIV.
TRANSFER

No owner shall be entitled to sever the interest which comprises his or her condominium, nor the items appurtenant thereto, including the common elements or facilities. Any transfer or conveyance of the apartment unit shall be presumed to transfer and convey the entire ownership interest of said owner in the apartment unit and his or her share of the common elements and all of his or her rights therein. This does not prohibit the owners from transferring an undivided fractional interest to another, under those terms.

ARTICLE XV.
AMENDMENTS

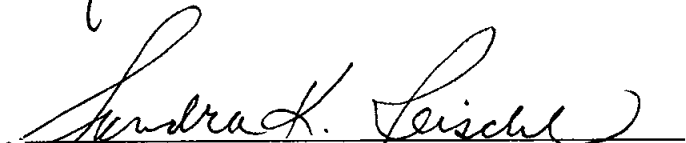
This DECLARATION may be amended only by the written consent of all owners apartment units described above.

ARTICLE XVI.
PROVISIONS BINDING

All provisions of this DECLARATION shall be fully binding upon the grantors herein, their successors and assigns, and upon all subsequent owners of all or any part of the real property and improvements described above, together with their grantees, successors, heirs, executors, administrators, devisees, or assigns.

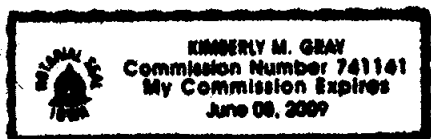
IN WITNESS WHEREOF, we have subscribed our names hereto on this 10th day of December, 2006, at Avoca, Pottawattamie County, Iowa.

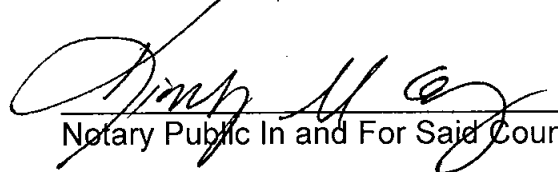

James N. Reischl, Trustee


Sandra K. Reischl, Trustee

STATE OF IOWA, COUNTY OF POTTAWATTAMIE: ss

This instrument was acknowledged before me on this 10th day of December, 2006, by James N. Reischl, as Trustee of the James N. Reischl Revocable Trust dated December 26, 2000, and Sandra K. Reischl, as Trustee of the Sandra K. Reischl Revocable Trust dated December 26, 2000.




Notary Public In and For Said County and State

80'

APARTMENT 1

DECK

12'0" x 12'0"

Dining Room
12'0" x 12'0"

Kitchen
8'4" x 12'3"

Master Bedroom
12'0" x 14'6"

Bath 1

Bath 2

Living Room
16'3" x 17'7"

Study
10'1" x 12'1"

Garage
21'8" x 20'8"

UP

19'8"

20'8"

APARTMENT 2

DECK
12' x 12'

Kitchen
12' x 12'

Bedroom #2
11'1" x 8'4"

Master Bedroom
12' x 12'1"

Bath 1

Bath 2

Dining room
15'9" x 12'4"

Living Room
15'8" x 15'9"

Garage
21'8" x 20'8"

UP

19'4"

20'4"

EXHIBIT "A"

EXHIBIT "B"

BYLAWS OF THE ASSOCIATION OF THE HORIZONTAL PROPERTY
REGIME (CONDOMINIUM) KNOWN AS NORTH CHERRY ESTATES

ARTICLE I.
CONDOMINIUM OF APARTMENT OWNERSHIP

1. The property described in the Declaration of Establishment of a horizontal property regime (condominium) known as North Cherry Estates is submitted to and subject to the provisions of Chapter 499B of the Iowa Code.
2. The provisions of these Bylaws are applicable to the property. The term "property" as used herein shall include both the land and the building located thereon.
3. All present or future owners, tenants, future tenants, or their employees, or any other person that uses the facilities of the condominium units in any manner, subject to the regulations set forth in the Bylaws.

ARTICLE II.
VOTING, QUORUM, AND PROXIES

1. The owner or owners of an apartment unit shall have one vote, meaning that each apartment unit shall have one vote. If there is more than one owner of an apartment, the owners shall determine which owner shall exercise the voting privilege and cast the one vote allocated to that apartment unit.
2. Except as otherwise provided in these Bylaws, the presence in person or by proxy of a majority of owners shall constitute a quorum.
3. Votes may be cast in person or by proxies. Such proxies must be filed with the Secretary before the appointed time of each meeting and are not effective for a period longer than six (6) months.

ARTICLE III.
ADMINISTRATION

1. All of the owners of the apartments will constitute the Council of Co-Owners of North Cherry Estates, hereinafter referred to as "Council" who will have the responsibility of administering the property, establishing and collecting monthly assessments and arranging for any management necessary of the property. Except as otherwise provided, decisions and resolutions of the Council shall require approval by a majority of those voting, provided, however, that in the event the Council reaches an impasse, encounters continual inability to obtain a quorum, or is deadlocked on any issue concerning the administration of the condominium, the President of North Cherry Estates will act as arbitrator thereof and that person's decision on the issue shall be final and binding on all of the members of the Council.

2. Meetings of the Council shall be held at the apartment of the President of the Council or at such other suitable place as agreed upon by the Council. The President shall preside over the meeting and the Secretary/Treasurer shall keep the minute book wherein the resolutions shall be recorded.

3. Within thirty (30) days after such time as two or more apartments in North Cherry Estates are owned by different parties, an organizational meeting of the Council shall be held for the purpose of electing officers to act until the first Annual Meeting. Notice of said meeting, if not waived, shall be given to the owners by the developers. At the organizational meeting, officers shall be elected and such other business as may be necessary shall be transacted.

4. The first annual meeting of the Council shall be held on the first Monday in June following the organizational meeting. Thereafter, the annual meeting of the Council shall be held on the first Monday of June of each succeeding year. At such meetings, there shall be elected by ballot or other means of election, officers of the Council of Co-Owners as designated in these Bylaws, and the owners may at the annual meeting also transact such other business of the Council as may properly come before them. Notice of the annual meeting (other than the organizational meeting) shall be given by the President of the Council providing written notice to the apartment owners at least seven (7) days prior to the meeting.

5. The President may call a special meeting of the Council and shall do so upon a petition signed by fifty percent (50%) or more of those apartment owners entitled to a vote as provided for above. The President shall provide notice of, at least seven (7) days prior to each such special meeting, to each apartment owner entitled to a vote, as provided for above. Before or at any annual meeting or special meeting of the Council, an owner entitled to a vote and thereby entitled to notice of the meeting may waive notice of such a meeting and attendance by any such owner entitled to a vote at any meeting shall constitute waiver of notice to that owner.

6. The Council shall have the powers and duties necessary for the administration of all of the affairs of North Cherry Estates and may do such acts and things as are not by law or by the Declaration or by the Bylaws prohibited. In addition to any duties imposed by the Bylaws, the Council shall be responsible for the upkeep and inspection of the property, and the general common elements; the collection of monthly

assessments from the owners and the hiring and the dismissal as may be necessary of any personnel that the Council hires or otherwise retains for the maintenance and operation of the property. Expenses incurred by the Council shall be paid through payment vouchers signed by the President and Secretary/Treasurer.

ARTICLE IV. OFFICERS

The officers of the Council shall be elected annually by the Council of Co-Owners at the annual meeting and each shall hold office until a successor is elected. The principal officers of the Council shall be a President and a Secretary/Treasurer, both of whom shall be elected by and themselves be members of the Council and shall serve as such officers without compensation.

ARTICLE V. OBLIGATIONS OF THE OWNERS

All owners are obligated to pay monthly assessments imposed by the Council to meet common expenses, which will include a liability insurance policy premium if one is deemed necessary and an insurance premium for a policy to cover repair and construction work in the case of fire or other hazard, unless other arrangements for the providing of such insurance are made with the approval of the Council. The Council shall designate the amount of the monthly assessment to be paid by the owner(s) of each apartment unit.

The Council shall designate when each monthly assessment is due and when it becomes delinquent. Failure to pay the monthly assessments shall be subject to the provisions of Section 499B.17 of the Iowa Code, which deals with the collection of

common expenses assessed by the Council. All owners shall pay before they become delinquent, the real estate taxes and any special assessments which will be levied on their respective apartment units under Section 499B.11 of the Iowa Code. All electricity used in each apartment unit shall be metered separately and the expense shall be paid by the owner of the apartment directly, as shall any other separately metered or otherwise determined utility expense or other expense.

Every owner must perform promptly, all maintenance and repair work to facilities or installations serving that owner's apartment, which, if omitted, would affect the property in its entirety or in part belonging to other owners. All the repairs of internal installations of each apartment such as water, electricity, sewerage, telephones, air conditioners, sanitary installations, doors, windows, and all other accessories serving or belonging to the apartment shall be at the owner's expense.

ARTICLE VI. AMENDMENTS

The Bylaws may be amended only at an annual meeting or properly called special meeting of the Council and only upon an affirmative vote of a majority of the Council members who are entitled to vote at such a meeting.