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DELAWARE COUNTY IOWA

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Declaration of Submission to a Horizontal Property Regime and of Easements, Restrictions and Covenants for Bailey Drive Estates Manchester, Iowa

THIS DECLARATION Made and entered into by EASTERN IOWA PUMPING, INC., and its successors or assigns, hereinafter referred to as "Developer";

WHEREAS, Developer is the owner of the following described real estate located on Bailey Drive in the City of Manchester, County of Delaware and State of Iowa, to-wit:

Lot 2 of Bailey Drive Estates, a re-subdivision of Lot 1-Lot 24, including vacated streets, and part of Lot 25 of Empire Estates Subdivision City of Manchester, Delaware County, Iowa, according to Plat recorded in Book 2005 Page 2453

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

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

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

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

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

ARTICLE I
DEFINITIONS

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

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

1.02 **Building Complex.** One building consisting of 3 Units which shall be constructed on the development parcel. Each unit shall be one story with no basement. The principle materials of the complex consist of vinyl siding with brick in the front, sheet rock walls with wood frame, and shingles.

1.03 **Future Additions.** Developer reserves the right to amend this Declaration to add all or part of that real estate described as Lots 1, 3, 4, 5, 6, and 7 of Bailey Drive Estates, a re-subdivision of Lot 1-Lot 24, including vacated streets, and part of Lot 25 of Empire Estates Subdivision City of Manchester, Delaware County, Iowa, according to Plat recorded in Book 2005 Page 2453. Developer further reserves the right to add additional proposed units, to add additional floor plans, to change floor plans of units and to dedicate reasonable and necessary easements.

1.04 **Unit.** A Unit shall be used to designate a part of the development property intended for use as a one-family dwelling, and shall consist of a Unit and one Garage, as shown on Exhibit "A". "Unit" shall have the same meaning as the term "apartment" defined in Section 499B.2 of the Iowa Code. Each Unit shall consist of the designated area shown on Exhibit "A".

1.05 **Garage Unit.** A Garage Unit shall be a part of the property designated in Exhibit "A" with the word "garage" before each number.

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

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

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

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

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

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

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

ARTICLE II
UNITS

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

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

ARTICLE III
COMMON ELEMENTS

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

3.02 **Ownership of Common Elements.**

Undivided Interest and Use. The sum of the percentage interest pertinent to the units is 100%. The percentage of ownership interest appurtenant to each unit is set forth in Exhibit "C" attached hereto. Each Owner shall own such interest in the Common Elements as a tenant in common with all the other Owners of the property, and, except as otherwise limited in this Declaration and in the By Laws of the Association, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit and such other incidental uses permitted by this Declaration, and the By Laws of the Association, which right shall be appurtenant to and run with this Unit.

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

3.04 **Limited Common Elements.** The common property which is specified and determined to constitute a Limited Common Element pertains to and which is reserved to the use of a Unit or Units, including without limitation, all of the structural and non-structural elements of the unit, and all fixtures, attachments, machines, equipment and utility and service lines which pertain to the use of the Unit.

ARTICLE IV
GENERAL PROVISIONS AS TO UNITS

AND COMMON ELEMENTS

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

4.02 **Easements.**

4.02a **Developer's Easement.** Developer reserves a valid easement for ingress and egress over the Common Elements for purpose of development and construction of any structures thereon and for sale of any Unit, said easement to continue until all Units are occupied by their Owners.

4.02b **Common Element Encroachment by Units.** In the event that, by reason of the construction, reconstruction, settlement or shifting of the building, any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Elements, or if by reason of the design or construction of any Unit, it shall be necessary or advantageous to an owner to use or occupy, for normal uses and purposes, any portion of the Common Elements, consisting of unoccupied space within the building and adjoining his Unit, valid easements for the maintenance of such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Unit and the Common Elements, as the case may be, so long as all or any part of the building containing such Unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the Owner of any Unit or in favor of the Owners of the Common Elements if such encroachment occurred due to the willful conduct of said Owner or Owners.

4.02c **Unit Antennas and Air Conditioners.** A valid exclusive easement is hereby declared and established for the benefit of each Unit and its Owner, consisting of the right to erect one or more television, radio or stereo antennas in that part of the Common Elements immediately above his Unit, but below the roof of the building. No part of any such aerial shall protrude above the roof of the building nor be visible from the exterior of said building. A valid exclusive easement is hereby declared established for the benefit of each Unit and its Owners of the right to construct and maintain upon Common Elements of the exterior cooling unit(s) as for the purpose of supplying such Unit with air conditioning in all necessary utility meters or other equipment required by the utility companies. The maintenance and repair of such units shall be the exclusive expense of the Unit Owner for whose benefit the appliance is erected. The easement hereby granted shall also extend to the right to enter such Common Element for purpose of servicing, repairing or replacing such appliances and antennas.

4.02d **Unit Utility Lines.** Each Unit is given an easement for the purpose of bringing utility wires for electric or telephone service from the poles erected or any distribution system installed by the utility companies, into the Unit. Said wires shall be located with the use of any part of another unit.

4.02e **Easements Granted by Association.** The Association may hereafter grant easements for utility purposes, including the right to install, lay, maintain, repair and

replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along and on the Common Elements for the benefit of the Development Parcel.

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

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

ARTICLE V
THE UNIT OWNER'S ASSOCIATION

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

5.02 **Percentage Interest of Each Unit in the Common Elements.** The owner of each Unit shall own as an appurtenance thereto an undivided percentage interest in the lands and other common elements of the regime, both limited and general (see Exhibit "C"). Such ownership interest shall be the same in both the limited common elements and the general common elements, notwithstanding any exclusive right of use of any limited common element which may be appurtenant to a particular Unit. The sum of the fractional interests appurtenant to the Units is one.

5.03 **Voting Rights.** The percentage interest appurtenant to each unit is also expressed and may be exercised in terms of the number of votes the owner may cast as a member of the Association. In the event of damage or destruction to all or a substantial portion of the property, an affirmative vote of at least 70% will be determinative of whether to rebuild, repair, restore, or sell the property. Further voting rights and privileges in said Association shall be determined by the By Laws of said Association and acceptance of the deed to a Unit shall constitute acceptance of such By Laws.

ARTICLE VI
COVENANTS AND RESTRICTIONS
AS TO USE AND OCCUPANCY

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

6.01a **Single Family Residences.** Except as hereinafter provided, no part of the Property shall be used for other than housing and the purposes for which the Property was

designed. Each Unit shall be used as a residence for a single family and for no other purpose. An Owner may use a portion of his Unit for an office or studio provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner or occupant; and provided further that in no event shall any part of the Property be used as a school or music studio.

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

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

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

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

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

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

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

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

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

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

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

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

6.01n **Inspection of Surrounding Area.** Each Owner shall inspect the surrounding area prior to purchase and shall hold Developer and any neighboring property owner harmless of all liability resulting from any discoverable condition.

ARTICLE VII
LEASING

7.01 **Lease by Owner.** No Owner (except Developer, or a Mortgagee who takes title in lieu of foreclosure, or who under the terms of his mortgage, or decree of Court foreclosing said mortgage takes possession or title to a unit) shall have the right to lease his Unit for a period in excess of six (6) months in any one calendar year without the prior written consent of the Association. In the event of any such renting by an Owner, the tenant shall observe all By Laws of the Association. In case of violation of any rules or By Laws, the Board may demand that such tenant surrender such possession immediately. The judgment of the Board shall be final in any such matter.

ARTICLE VIII
INSURANCE ON DAMAGE OR DESTRUCTION AND DISPOSITION OF INSURANCE PROCEEDS; CONDEMNATION

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

8.01a **Sufficient Insurance Proceeds.** In the event the improvements, or any portion thereof, including the Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage paid shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied in payment thereof, any excess of such insurance proceeds, after completion and payment of such repair, restoration or reconstruction to be paid to the Association to apply against common expenses; provided, however, that in the event, within thirty (30) days after said damages or destruction the owners elect as hereinafter provided in Article IX either to sell the Property or to withdraw the Property from this agreement, then such repair, restoration or reconstruction shall not be undertaken.

8.01b **Insufficient Coverage.** In the event the improvements, or any portion thereof, including the Units, shall suffer damage or destruction from any cause, and such damage or destruction is not insured against or the insurance proceeds are not sufficient to pay the cost of repair, restoration or reconstruction, then unless the Owners shall, within thirty (30) days or any such longer time permitted by law after said damage or destruction, elect, as hereinafter provided in Article IX either to sell or to withdraw the Property from the provisions of this agreement and terminate the same, such repair, restoration or reconstruction shall be undertaken by the Association and each Owner shall be liable for the payment the Owner's percentage interest of the cost of such repair, restoration or reconstruction in excess of the available insurance proceeds paid as a result of said damage or destruction. Should any Owner refuse or fail after reasonable notice to pay his share of such cost in excess of available insurance proceeds, the amount thereof may be advanced by the Association or by any one or more of the other Owners and the amount so advanced shall constitute a lien on the interest of the Owner so failing or refusing in favor of the Association or the Owner or Owners so making the advance which lien shall have the same force and effect and may be enforced in the same manner as provided in Article III, 3.02g of the By Laws of the Association.

8.01c **Method for Handling Insurance Proceeds.** In the event of repair, restoration or reconstruction of the improvements the available insurance proceeds shall be paid out (after disbursement of Funds, if any, required to be furnished by the Association) on architect's certificates or other proper evidence satisfactory to the Association indicating that the amount paid out from time to time does not exceed the value of the repair, restoration or reconstruction that has been or is being effected, and that the balance of the available insurance proceeds remaining in the hands of the Association are sufficient to complete the repair, restoration or reconstruction. Satisfactory waivers of lien shall also be furnished to the Association at the time of each payout.

8.01d **Decision to Withdraw Property From the Condominium.** In the event the improvements, or any portion thereof, including the Units, shall suffer damage or destruction from any cause and the Owners shall within thirty (30) days after said damage

or destruction pursuant to paragraph 8.01a of this Article or within thirty (30) days or any such longer time permitted by law after said damage or destruction pursuant to paragraph 8.01b of this Article elect as hereinafter provided in Article IX either (a) to repair, reconstruct or rebuild, or (b) to sell or to withdraw the Property from the provisions of this Declaration and terminate the same, and if the decision is to sell or terminate, then the Association shall distribute each owner's percentage interest of the available insurance proceeds to each Owner and his mortgagee, if any.

8.01e **Mortgage Beneficiary.** The insurance covenants contained in this Article VIII are covenants for the benefit of any mortgagee of a Unit and may be enforced by any such mortgagee, but nothing herein contained shall be construed so as to give any mortgagee the right to determine or participate in the determination of whether to reconstruct or repair.

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

8.02a **Condemnation of Common Elements.** If any action is brought to condemn a portion of the Common Elements, the Board shall have the sole authority to determine whether to defend or resist such action, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of condemnation. After the damages or awards shall be paid to each Unit Owner in proportion to his or her ownership interest. The Board members by a majority vote may decide whether to replace or restore insofar as possible the Common Elements so taken or damaged.

8.02b **Payment of Awards and Damages.** Any damages or awards paid to or for the account of any Unit Owner by the Board, acting as trustee, shall be applied first to the payment of any taxes or assessments by governmental authorities past due and unpaid with respect to that Unit; secondly, to amounts due under any Mortgages; thirdly, to the payment of any unpaid Common Expenses or special assessments charged to or made against the Unit; and finally to the Unit Owner.

8.02c **Mortgagee.** If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration or any other document establishing the Project shall entitle the Unit Owner or other party to priority over such Mortgagee with respect to the distribution of the proceeds of any award or settlement.

ARTICLE IX
SALE OR WITHDRAWAL AND TERMINATION

9.01 **Affirmative Action.** The Owners by affirmative vote of at least 70% of the total vote, at a meeting of voting Members duly called for such purpose, may elect to

sell the Property as a whole, or to withdraw the Property from the provisions of this Declaration, and to terminate the same. The interest of any Owner of the minority of 30% or less not voting in favor of such action may be purchased by any of the Owners voting in favor thereof, or the Association on behalf of those Owners voting in favor thereof, at its then fair market value.

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

ARTICLE X
REMEDIES FOR BREACH OF COVENANTS RESTRICTIONS AND REGULATIONS

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

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

(b) to enjoin, abate or remedy by appropriate legal proceeding, either at law or in equity, the continuance of any breach. Developer's rights under this Section 10.01 shall terminate upon conveyance by Developer of all of the Units.

10.02 **Involuntary Sale.** If any Owner (either by his own conduct or by the conduct of any other occupant of his Unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the regulations adopted by the Association and such violation shall continue for thirty (30) days after notice in writing from the Association, or shall occur repeatedly during any thirty (30) day period after written notice or request to cure such violation from Association, then the Association shall have the power, by action of a majority of its Board of Directors, to issue to the defaulting Owner a ten (10) day notice in writing to terminate the rights of the said defaulting Owner to continue as an Owner and to continue to occupy, use or control his Unit and thereupon an action in equity may be filed by the Association against the defaulting Owner for a decree of mandatory injunction against the Owner or occupant, subject to the prior

consent in writing of any mortgagee having a security interest in the Unit ownership of the defaulting owner, which consent shall not be unreasonably withheld. In the alternative a decree may be obtained declaring the termination of the defaulting Owner's right to occupy, use or control the Unit owned by him on account of the breach of covenant and ordering that all the right, title and interest of the Owner in the property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Owner from re-acquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, master's or commissioner's fees, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding, and all such items shall be taxed against the defaulting Owner in said Decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, may be paid to the Owner. Upon the confirmation of such sale, the Unit owner shall execute, acknowledge and deliver a deed conveying to the purchaser all his right, title and interest on said property, waiving dower and homestead therein, and such purchaser thereat shall, subject to the rights and privileges of the Association be entitled to possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration, and the purchaser shall become a Member of the Association in the place and stead of the defaulting Member.

ARTICLE XI
GENERAL PROVISIONS

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

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

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

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

11.05 **Grantee Agrees to all Conditions.** Each grantee of Developer, by the acceptance of a deed of conveyance, or each purchaser under a contract for purchase of a Unit in this Condominium, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants

running with the land, and shall bind any person having at any time any interest or estate in said Unit, and shall inure to the benefit of such Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

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

11.07 **Modifications.** The provisions of Section 1.03 of Article I of the By Laws of the Association, Article II, Article III, and Article IV, and this paragraph 11.07 of Article XI of this Declaration, may only be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by all of the Owners and all mortgagees having bona fide liens of record against any Unit Ownerships. Other provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the President and Secretary of the Association in the name of the Association and stating that at it was executed by authorization of the owners having at 70% of the total vote and containing an affidavit by an officer of the Association certifying that a copy of the change, modification or rescission has been mailed by certified mail to all mortgagees having bona fide liens of record against any Unit Ownership, not less than ten (10) days prior to the date of such affidavit. The change, modification or rescission shall be effective upon recordation of such instrument in the Office of the Recorder of Delaware County, Iowa.

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

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

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

(a) the rule against perpetuities or some analogous statutory provision,

(b) the rule restricting restraints on alienation, or

(c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of Joe Hildebrand.

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

11.12 **Uniform Plan.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium development.

11.13 **Duration.** This Declaration shall be effective from the date of the recordation of this Declaration.

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

IN WITNESS WHEREOF, the said EASTERN IOWA PUMPING, INC., has caused its name to be signed to these presents by its President and Secretary this 18th day of October, 2005.

EASTERN IOWA PUMPING, INC.

By: _____
Joe Hildebrand, President and Secretary

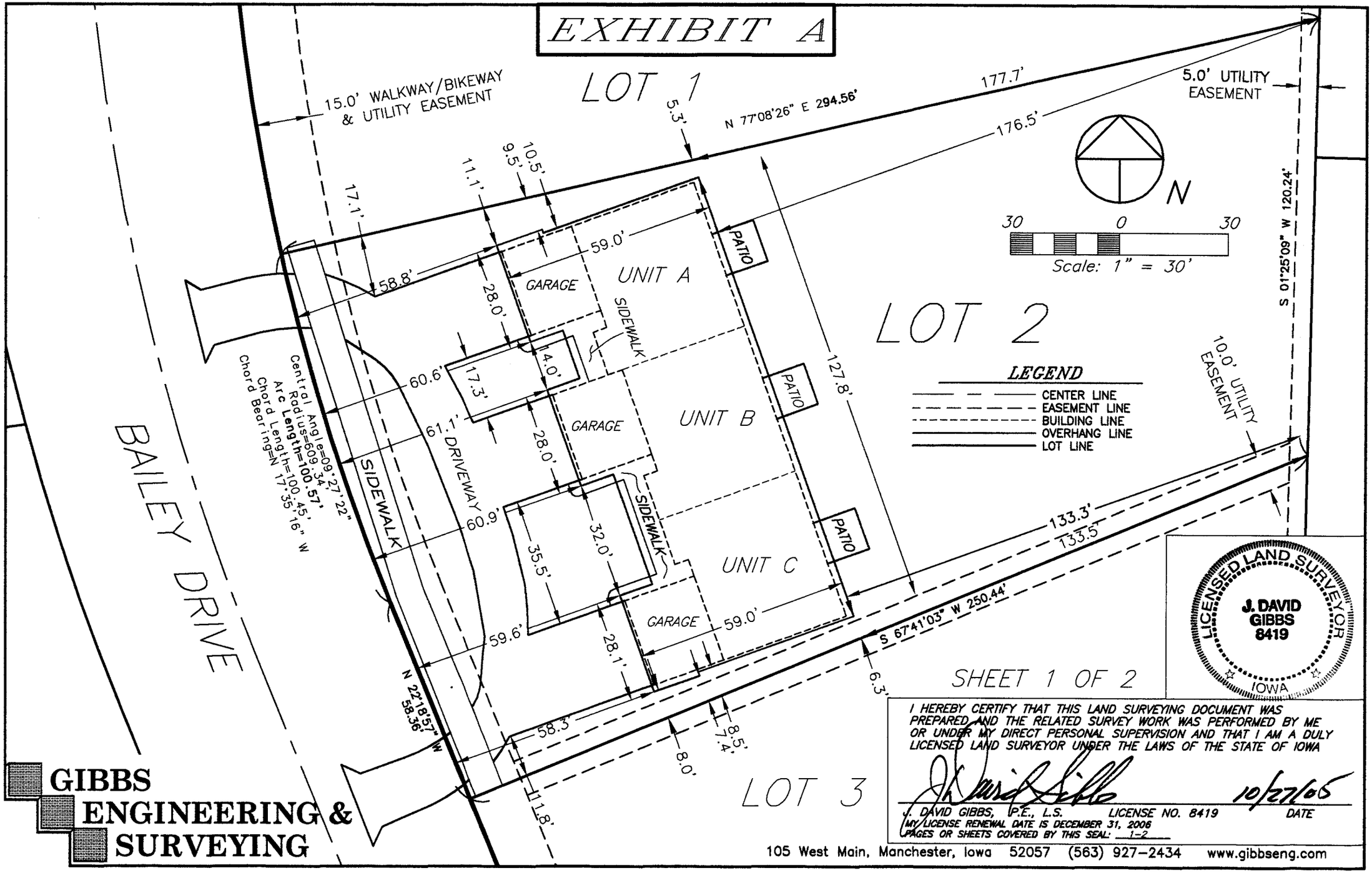
STATE OF IOWA)
WRIGHT COUNTY) ss.

This instrument was acknowledged before me on the 18th day of October, 2005 by Joseph G. Hildebrand a/k/a Joe Hildebrand as President and Secretary of Eastern Iowa Pumping, Inc.

BONNIE K. SAXTON
Commission Number 179862
My Comm. Exp. 9/14/07

_____
Bonnie K. Saxton

EXHIBIT A



SHEET 1 OF 2

LICENSED LAND SURVEYOR
J. DAVID GIBBS
8419
IOWA

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA

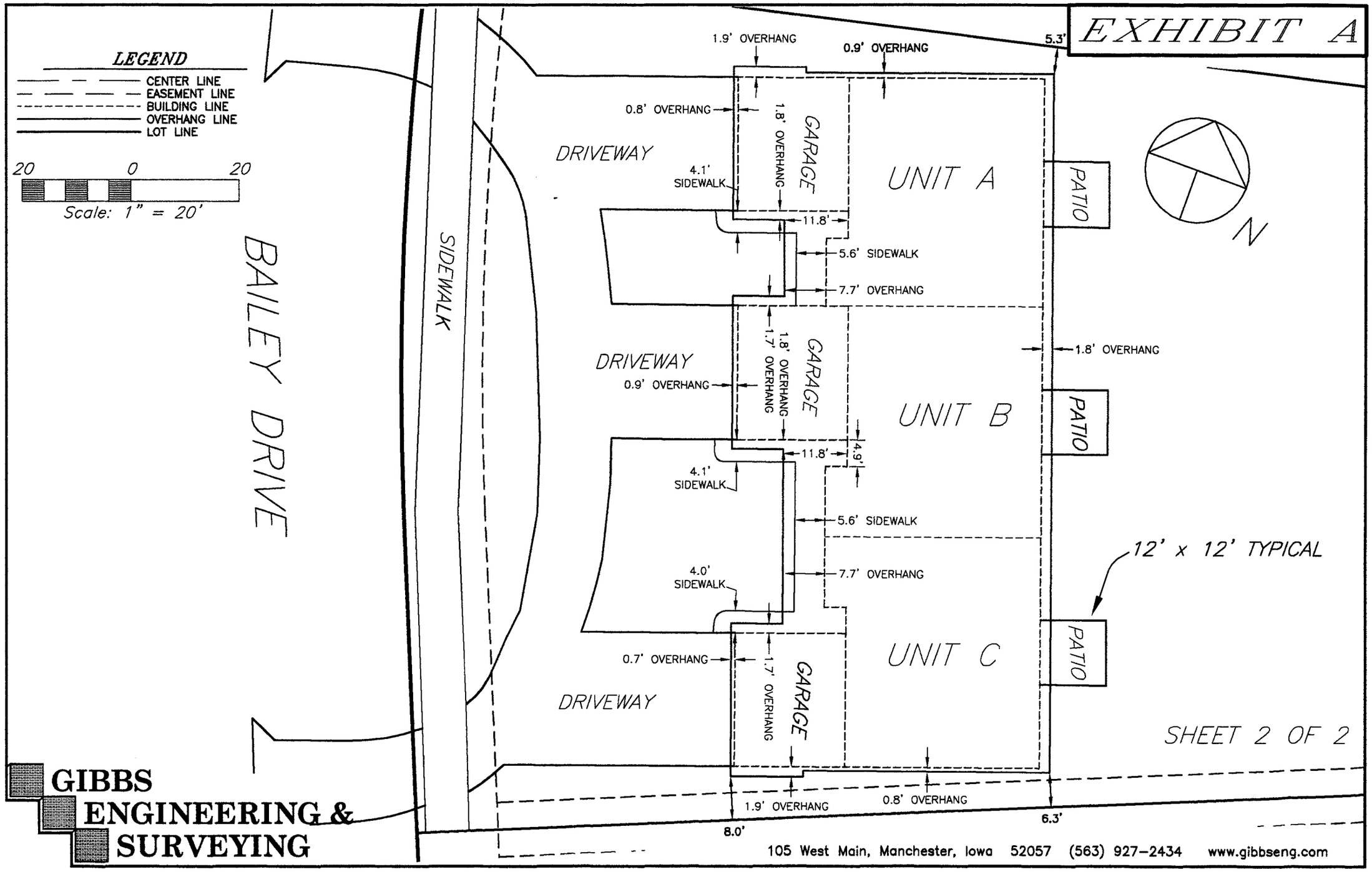
J. DAVID GIBBS, P.E., L.S. LICENSE NO. 8419 DATE 10/27/06

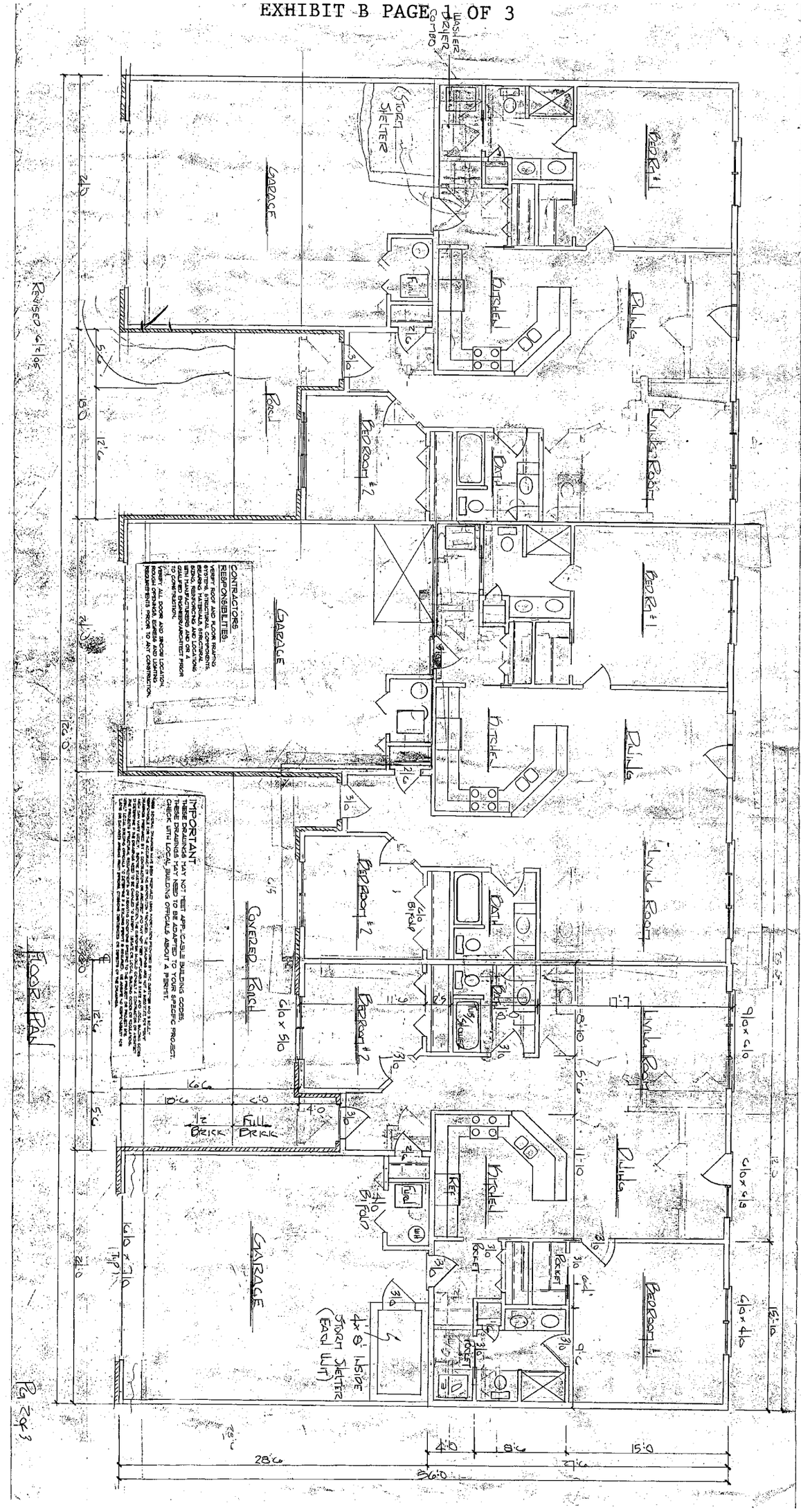
MY LICENSE RENEWAL DATE IS DECEMBER 31, 2006

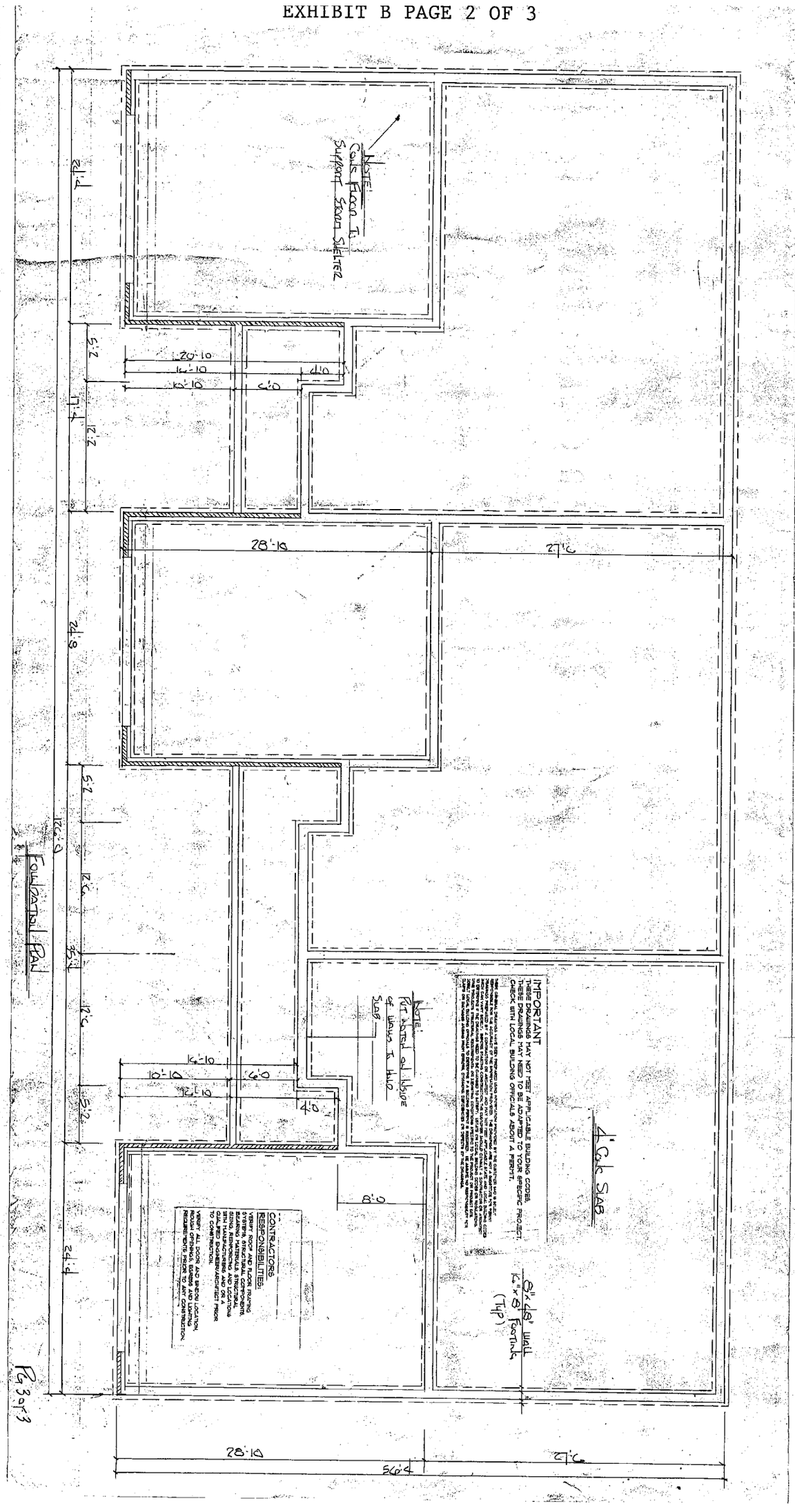
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GIBBS ENGINEERING & SURVEYING

105 West Main, Manchester, Iowa 52057 (563) 927-2434 www.gibbseng.com

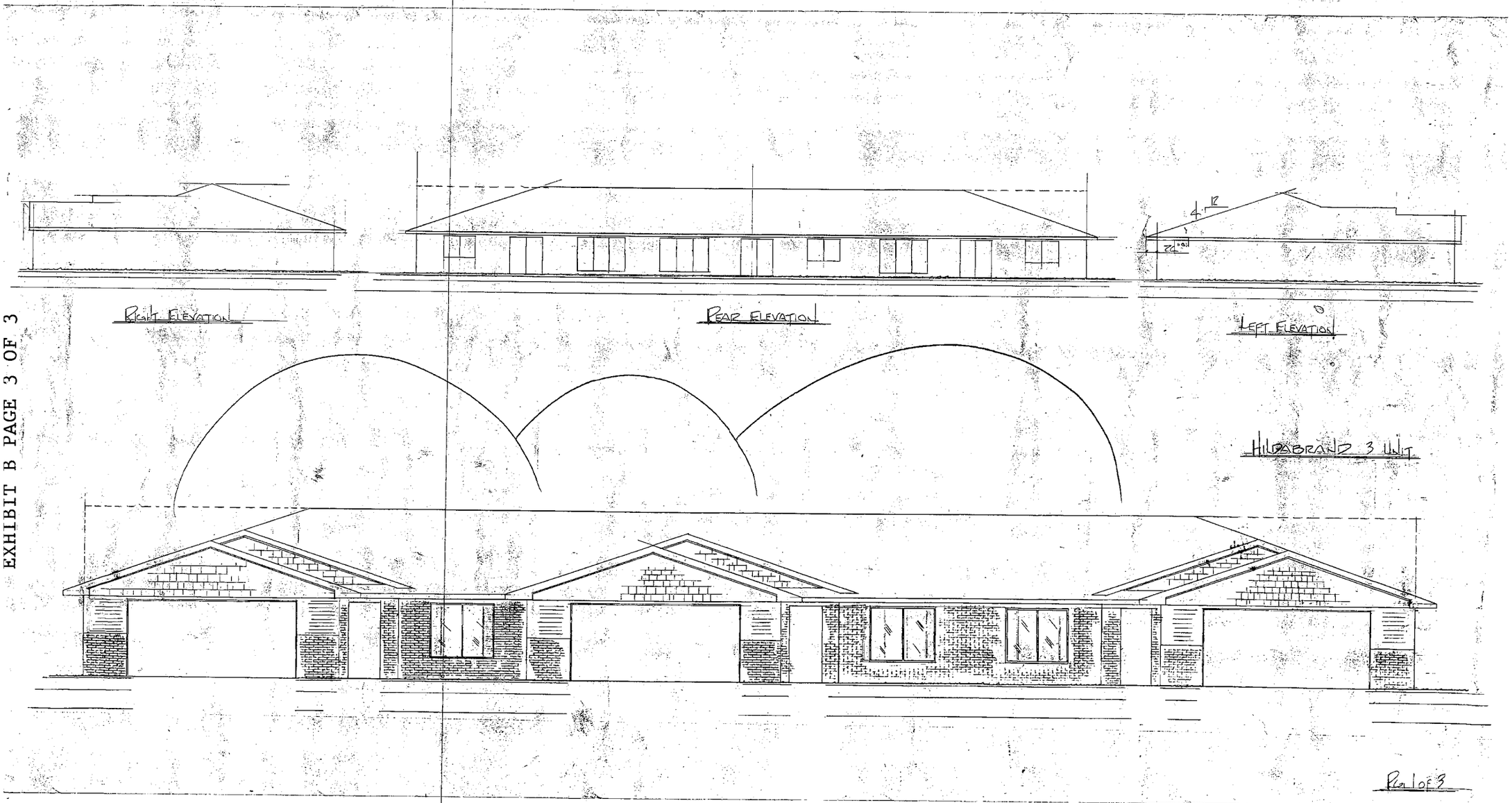

EXHIBIT A
LEGEND
CENTER LINE
EASEMENT LINE
BUILDING LINE
OVERHANG LINE
LOT LINE
20 0 20
Scale: 1" = 20'
BAILEY DRIVE
SIDEWALK
1.9' OVERHANG
0.9' OVERHANG
5.3'
0.8' OVERHANG
1.8' OVERHANG
GARAGE
DRIVEWAY
4.1' SIDEWALK
UNIT A
PATIO
11.8'
5.6' SIDEWALK
7.7' OVERHANG
1.7' OVERHANG
UNIT B
0.9' OVERHANG
4.9'
4.1' SIDEWALK
4.0' SIDEWALK
12' x 12' TYPICAL
0.7' OVERHANG
UNIT C
1.9' OVERHANG
0.8' OVERHANG
8.0'
6.3'
N
SHEET 2 OF 2
GIBBS ENGINEERING & SURVEYING
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WASHER DRYER COMBO
STORM SHELTER
BEDROOM #1
GARAGE
KITCHEN
DINING
LIVING ROOM
BEDROOM #2
BATH
COVERED PORCH
6'10 x 6'10
9'10 x 6'10
6'10 x 4'10
4'10 BI-FOLD
3'10 POCKET
4'8 INSIDE STORM SHELTER (EACH UNIT)
FULL BRICK
1/2 BRICK
28'0
36'0
FLOOR PLAN
REVISED 4-19-96
PG 2 OF 3


NOTE:
Coils Floor To
Support Storm Shelter
20'-10"
16'-10"
12'-10"
5'-0"
4'-0"
28'-10"
27'-6"
24'-8"
5'-2"
12'-2"
12'-0"
Foundation Pad
15'-10"
10'-10"
8'-10"
5'-0"
4'-0"
NOTE:
Put Notch on Inside
of Wing & Thin
Slab
IMPORTANT
THESE DRAWINGS MAY NOT MEET APPLICABLE BUILDING CODES.
THESE DRAWINGS MAY NEED TO BE ADAPTED TO YOUR SPECIFIC PROJECT.
CHECK WITH LOCAL BUILDING OFFICIALS ABOUT A PERMIT.
4" Conc SLAB
8"x 16" Wall
16"x 8" Footing
(Typ)
CONTRACTORS
RESPONSIBILITIES:
VERIFY ROOF AND FLOOR FRAMING
LUMBER SIZES & COMPONENTS
BEARING MATERIALS & COMPONENTS
SIZING, REINFORCING AND LOCATIONS
SEISMIC REQUIREMENTS AND OR A
QUALIFIED ENGINEER AND OR A
TO CONSTRUCTION.
VERIFY ALL DOOR AND BREEZE LOCATION,
ROUGH OPENINGS, BEAMS AND LINTELS
REQUIREMENTS PRIOR TO ANY CONSTRUCTION.
28'-10"
27'-6"
56'-4"

Pg 3 of 3

EXHIBIT B PAGE 3 OF 3



Lot Number	Unit	Percentage Interest
Lot 2	Unit A	33.33
	Unit B	33.33
	Unit C	33.33
	TOTAL	100.00

"EXHIBIT C"

Bylaws of Bailey Drive Estates

ARTICLE I
ORGANIZATION

1.01 **Existence.** Bailey Drive Estates consists of the Unit Owners in Bailey Drive Estates, as defined by the Articles of the Declaration of Submission to a Horizontal Property Regime for Bailey Drive Estates, (hereinafter referred to as the Declaration).

1.01a **One Owner.** The Owner of each Unit shall be defined as one Owner. The voting rights of such Owner shall be as set forth below.

1.02 **Principal Office.** Until all Units have been conveyed by Eastern Iowa Pumping, Inc., hereinafter called "Developer", or until Developer relinquishes control of the Board, the principal office of the Association shall be 1625 220th Street, Manchester, Iowa. Thereafter the president of the Association shall be the person designated to receive service of process for the Association and the principal office of the Association shall be at such suitable place convenient to the Owners as may be designated by the Board. All meetings of the Association shall be held in its principal office unless some other place is stated in the call.

1.03 **Voting Rights.** Upon conveyance by Developer of all of the Units in the Development to the purchasers thereof, or upon Developer relinquishing control of the Board, whichever occurs first, each Unit shall have one vote and there shall be one voting Member for each Unit Ownership. Such voting Member may be the Owner or the group composed of all the Owners of a Unit Ownership, or may be some person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner. Such designation shall be made in writing to the Board of Directors (herein after sometimes referred to as the "Board") of the Association, and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Owner or Owners so designating. Any or all of such Owners may be present at any meeting of the voting Members and (those constituting a group acting unanimously) may vote or take any other action as a voting Member either in person or by proxy.

1.04 **Meetings.**

1.04a **Quorum.** The presence in person or by proxy at any meeting of the voting Members having a majority of the total votes shall constitute a quorum.

1.04b **Action.** Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting Members upon the affirmative vote of the voting Members having a majority of the total votes present at such meeting.

1.04c **Annual Meeting.** The first annual meeting of the Association shall be held upon ten (10) days written notice given by the Association that all Units have been conveyed by Developer to the purchasers thereof, or by ten (10) days notice by Developer of its desire to relinquish control of the Board, whichever date occurs first. Thereafter, there shall be an annual meeting of the Members on the first Wednesday of October of each succeeding year at 7:30 P.M. at such reasonable place, or other time (not more than thirty (30) days before or after such date) and place, as may be designated by written notice of the Board delivered to the voting Members not less than ten (10) days prior to the date fixed for said meeting.

1.04d **Special Meeting.** Special meetings of the voting Members may be called at any time after all of the Units have been conveyed by Developer to the purchasers thereof, for the purpose of considering matters which by the terms of the Declaration or the By Laws of the Association, require the approval of all or some of the voting Members, or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by a majority of the Board, or by the voting Members having one third (1/3) of the total votes, and delivered not less than five (5) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

1.05 **Notices of Meetings.** Notices of meetings required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Unit of the Owner with respect to which such voting right appertains, if no address has been given to the Board.

1.06 **Board of Directors.**

1.06a **Election.** Except as hereinafter noted in Section 1.06e at each annual meeting, the voting members shall, by a majority of the total votes present at such meeting elect a Board of Directors for the forthcoming year, consisting of not less than two owners, both of whom must reside on the property.

1.06b **Quorum, Term and Compensation.** A quorum shall consist of two-thirds (2/3) of the members of the Board. Members of the Board shall serve for a term of one (1) year or until their successors are elected and shall be paid such compensation if any as may be voted by the Members of the Association.

1.06c **Vacancies and Order.** Vacancies in the Board may be filled by unanimous vote of the remaining members thereof. Except as otherwise provided the Board shall act by majority vote of those present at its meetings when a quorum exists.

1.06d **Call.** Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt.

1.06e **First Board.** Until all the Units are conveyed by Developer to the purchasers thereof or the Developer shall relinquish control the Board of Directors shall be selected by Developer, except as provided in Paragraph 1.04c of this Article, and Members so selected need not be Unit Owners or residents of the Property. Said Directors shall serve until the first annual meeting of the Members. Provided, however, Developer may in its sole discretion remove any Director so appointed by it and replace such Director with another appointee.

1.06f **Officers and Duties.** The Board shall elect from among its members a President who shall preside over both its meetings and those of the voting Members, and shall also elect a Secretary and a Treasurer, either of whom may or may not be a member of the Board or qualified to be a Member. The Secretary shall keep the Association records, including the minute book wherein the resolutions shall be recorded. The Treasurer shall keep the financial records.

1.06g **Fidelity Bonds.** The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

1.06h **Removal of Board Members.** Any Board member may be removed from office by affirmative vote of the voting Members having at least 70% of the total votes, at

any special meeting called for that purpose and a successor to fill the unexpired term of a Board member removed may be elected by majority vote of the voting Members at the same meeting or any subsequent meeting called for that purpose.

1.06i **Board Liability.** The Directors from time to time constituting the Board shall not be liable to the Members for any mistake of judgment or for any acts made in good faith, or omissions to act omitted in good faith as such Directors.

1.06j **Voting Rights Suspended.** The Board may suspend the voting rights and right to use of the Common Elements and facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing for a period not to exceed sixty (60) days for infraction of published rules and regulations. Such suspension shall not prohibit the ingress and egress of a Member to his Unit.

1.06k **Action Taken Without a Meeting.** The Board Members shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Board members. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

ARTICLE II
GENERAL POWERS

2.01 **General Powers of Association.** The Association for the benefit of all the Owners, through its Board of Directors, shall have the power to acquire, and shall pay for out of the maintenance fund hereinafter provided, the following:

2.01a **Maintenance.** Waste removal, yard maintenance, water, electricity, gas and other necessary utility services for the Common Elements.

2.01b **Insurance – Property.** A policy or policies of fire insurance, with extended coverage, vandalism and malicious mischief endorsements, for the full insurable replacement cost of all improvements on the Property, including the Units and all personal property included within the Property, except such personal property as may be owned by the Owners, and such other insurance policies as shall afford coverage against such other risks as from time to time customarily shall be covered with respect to buildings similar in construction and use. Such insurance shall be in a form and amount satisfactory to the first mortgagee of each Unit. Such insurance shall be written for the benefit of the then Association, the Owners, and the respective mortgagees as their interest may appear and shall provide for the issuance of certificates and mortgage endorsements to the holders of mortgages on the Units. Such insurance policies shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association and shall be held and disbursed by the Association as defined in Article VIII of the Declaration. Each owner may obtain insurance, at his own expense, affording coverage against loss of his personal property and against personal liability. All original policies of casualty insurance purchased by the Association shall be delivered into the possession of the Association. The Association shall upon request certify to any Owner, to any prospective purchaser of a Unit and to any mortgagee or prospective mortgagee of a Unit, a complete statement as to the insurance policies held by it showing the identity of the policies, the expiration dates thereof, and the amount and type of insurance. A uniform fee approved by the Association may be charged by the Association for each such certificate furnished.

2.01c **Insurance – Liability.** A policy or polices insuring the Association, the members of the Board and the Owners against any liability to the public or to the Owners (of Units and of the Common Elements, and their invitees or tenants) incident to the ownership and/or use of the Common Elements and Units, the liability under which insurance shall be not less than Three Hundred Thousand ($300,000.) Dollars for any one person or One Million (1,000,000.) Dollars for any one accident.

2.01d **Insurance – Compensation.** Workman's compensation insurance to the extent necessary to comply with any applicable laws.

2.01e **Services of Employees.** The services of any person or firm employed by the Association.

2.01f **Buildings and Grounds.** Landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement of the Common Elements (but not including the interior surfaces of any of the Units, which the Owner shall paint, clean, decorate, maintain and repair and may remodel or alter) and such furnishings and equipment for the Common Elements as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the Common Elements.

2.01g **Window Maintenance.** Cleaning and washing the exterior of the windows in the Units. For that purpose each Unit owner gives to the Association or its agents an easement to enter any Patio area and/or any balcony used by him for the purpose of cleaning or maintaining the exterior of windows facing on such Patio or balcony. The interior of all windows shall be cleaned and maintained by Unit owner. Each Unit owner shall be liable for all breakage of windows not covered by insurance maintained by the Association. Unit owners shall be liable for any breakage of storm or screen doors resulting from wind or storm damage or other cause.

2.01h **Miscellaneous.** Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Association is required to secure or pay for pursuant to the terms of these restrictions or by law or which in its opinion shall be necessary or proper for the maintenance and operation of the Property as a first class residential area or for the enforcement of these restrictions and the restrictions in the Declaration. The Association shall have full authority to designate and/or remove personnel necessary for the maintenance, repair and replacement of the commentaries and facilities.

2.01i **Satisfaction of Liens.** Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire Property or any part thereof which may in the opinion of the Association constitute a lien against the Property or against the Common Elements, rather than merely against the interests therein of particular owners may be satisfied by the association. Where one or more Owners are responsible for the existence of such lien, they shall be liable for the cost of discharging it and any costs incurred whatsoever by the Association by reason of said lien or liens shall be allocated fairly among such Owners upon the sole judgment of the Board of Directors and shall be specially assessed to such Owners.

2.01j **Expenses Due to Owner's Neglect.** Maintenance and repair, of any Unit if such maintenance or repair is necessary, in the discretion of the Association, to protect the Common Elements, or any other portion of the complex, and the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable

time after written notice of the necessity of said maintenance or repair delivered by the Association to said Owner or Owners, provided that the Association shall levy a special assessment against such Unit Owner for the cost of said maintenance or repair.

2.02 **Entry Within Units.** The Association or its agents may enter any Unit when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association at the expense of the maintenance fund.

2.03 **Capital Additions or Improvements Limited.** The Association shall have no authority to acquire and pay for out of the maintenance fund any capital addition or improvement (other than for purposes of replacing or restoring portions of the Common Elements and the Units, subject to all the provisions of the Declaration) having a total cost in excess of One Thousand ($1,000) Dollars, nor shall the Association authorized any structural alterations, capital additions to, or capital improvements of the Common Elements requiring an expenditure in excess of One Thousand ($1,000) Dollars, not covered by insurance, without in each case obtaining the prior approval of the voting Members holding at least 70% of the total votes.

2.04 **Adoption of Rules and Regulations.** The Association, by vote of the voting Members having a majority of the total votes, may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Property, and for the health, comfort, safety and general notice of welfare of the Owners and occupants of said Property. Written notice of such rules and regulations shall be given to all Owners and occupants and the entire property shall at all times be maintained subject to such rules and regulations.

2.05 **Limitations on Powers of the Association.** Nothing hereinabove contained shall be construed to give the Association authority to conduct any business for profit on behalf of all the Owners or any of them, nor shall the Association have any power to enter in any dispute between a Unit Owner or Owners and the Developer.

ARTICLE III
ASSESSMENTS-ESTIMATED CASH REQUIREMENT

3.01 **Assessments.**

3.01a **Proration of Common Expense.** So long as Developer shall own one or more Units the cost of maintaining the Common Elements shall be equitably prorated between the Owners of completed Units. Units which are substantially completed but still owned by Developer shall bear the pro rated share of such costs and the Board of Directors, whether or not selected by Developer, shall prorate such charges.

3.01b **Proportionate Share by Unit Buyer.** Each Unit buyer shall be liable for a proportionate share of the cost of maintaining the Common Elements from the date of the conveyance of a Unit to him which shall be payable monthly. Such cost shall be a proportionate share of the actual costs as determined by the Board of the association and shall continue until a permanent budget is arranged as hereinafter provided.

3.01c **First Mortgagee Excluded.** The provisions of this Article III relating to assessments, payment of assessments and liens arising therefrom shall be inapplicable as to any party who or which by reason of foreclosure of a first mortgage or voluntary

conveyance in lieu of foreclosure of a first mortgage shall become a unit owner (or unit buyer within the purview of the said Article III).

3.02 **First Annual Meeting.** After the holding of the first annual meeting as provided for in paragraph 1.04 of Article I of these By Laws the following procedures shall govern:

3.02a **Annual Budget.** Each year on or before December 1st, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and capital replacements, and shall on or before December 15th notify each Owner in writing as to the amount of such estimate, with reasonable itemization thereof. On or before January 1st of the ensuing year, and the 1st of each and every month of said year, each Owner shall be obligated to pay to the Association or as it may direct the Owner's percentage interest of the assessment made pursuant to this paragraph. The portion of each such monthly assessment payment attributable to reserves shall be deemed a contribution by the Owner to the capital of the Association. A reasonable late charge (not exceeding $1.00 per day) may be added to such assessments by action of the Board after the fifth (5th) day of each month in which said assessment is due. On or before January 31st of each calendar year, the Association shall supply to all Owners an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to the next monthly installments due from each Unit Owner under the current year's estimate in proportion to his assessment for the preceding year, until exhausted, and any net shortage shall be added in like proportion to the installments due from each Unit Owner I the succeeding six months after rendering of the accounting.

3.02b **Reserve Funds.** The Association shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year, shall be changed first against such reserve. If said "estimated cash requirement" proves inadequate for any reason, including non-payment of any Owner's assessment, the Association may at any time levy a further assessment, which shall be assessed to the Owners according to the formula set forth in preceding paragraph 3.02a. The Association shall serve notice of such further assessment on all owners by a statement in writing giving the amount and reasons therefore, and such further assessment shall become effective with the monthly maintenance payment which is due not more than then (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted monthly assessment. The reserve fund shall be the property of the Association and no part thereof shall be refunded to any Member.

3.02c **Revised Yearly Assessments.** When the first Board takes office hereunder, the Association shall determine the "estimated cash requirement", as hereinabove defined, for the period commencing thirty (30) days thereafter and ending on December 31 of the same calendar year. Assessments shall be levied against the Owners during said period as provided in paragraph 3.02a of this Article.

3.02d **Delays in Establishing Revised Assessments.** The failure or delay of the Board or the Association to prepare or serve the annual or adjusted estimate on the Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the assessment as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the assessment at the then existing monthly rate established for the previous period until the assessment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

3.02e **Accounting.** The Association shall keep full and correct books of account and the same shall be open for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owner.

3.02f **Funds Collected.** All funds collected hereunder shall be held and expended by the Association for the purposes designated herein.

3.02g **Owner in Default.** In an Owner is in default in the payment of any assessment for thirty (30) days, the Association may at its option accelerate all monthly payments for the balance of the budget period and may bring suit for and on behalf of itself and as representative of all Owners, to enforce collection thereof or to foreclose the lien therefore as hereinafter provided; and there shall be added to the amount due the costs of said suit, together with legal interest at the rate provided by law on open accounts and reasonable attorneys' fees to be fixed by the Court. The amount of any delinquent and unpaid charges or assessments, interest, costs and fees as above provided shall be and become a lien or charge against the Unit Ownership of the Owner involved when payable and may be foreclosed as in the case of foreclosure of liens against real estate. Said lien shall take effect and be in force from and after the time of filing a notice of such lien of record in the office of the Recorder of Delaware County, Iowa, and not before, as to all creditors and subsequent purchasers without actual notice. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment for any Unit. Amendments to this paragraph 3.02g shall only be effective upon written consent of members having at least 70% of the votes and their mortgagees.

3.02h **Same-Notice to First Mortgagee.** If an owner is in default in the payment of any assessment for thirty (30) days, the Association shall thereupon post written notice of such default to the first mortgagee, if any, of such defaulting owner.

ARTICLE IV
AMENDMENTS AND MISCELLANEOUS

4.01 **Amendments to Bylaws.** Except as otherwise provided herein any of these By Laws except Section 1.03 of Article I hereof may be amended only upon the affirmative vote of at least 70% of the Members entitled to vote at any regular or special meeting of the Members, provided that notice of the proposed amendment is given to all Members in writing at least ten (10) days prior to such meeting. Section 1.03 of Article I hereof may not be amended except by unanimous consent of all Unit Owners.

4.02 **Terms.** All terms used in these Bylaws shall have the same meaning as those defined in the Declaration.