



Doc ID: 034629960027 Type: GEN  
Kind: RESTRICTIVE COVENANT  
Recorded: 12/05/2019 at 02:12:04 PM  
Fee Amt: \$137.00 Page 1 of 27  
Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2019-00050674

BK **17616** PG **773-799**

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**REVISED AND RESTATED  
DECLARATION OF RECIPROCAL EASEMENTS,  
RESTRICTIONS AND COVENANTS FOR  
ALBAUGH INDUSTRIAL PARK PLAT 10**

**THIS REVISED AND RESTATED DECLARATION OF RECIPROCAL EASEMENTS, RESTRICTIONS AND COVENANTS FOR D & M DEVELOPMENT PLAT 1** is made this 20 day of Nov., 2019, by **D.R.A. PROPERTIES, L.C.**, an Iowa limited liability company ("Declarant"), on behalf of itself and its successors and assigns forever.

**WHEREAS**, a prior set Declaration of Covenants for the subject property as recorded and filed of record in Book 8609 Page 430 in the Office of the Polk County Recorder are deemed null and void and hereby terminated; and,

**WHEREAS**, the Declarant desires to make changes and alterations by filing these Revised and Restated Declaration of Covenants as set forth herein; and,

**WHEREAS**, Declarant is the owner of the following described real property (the "Property"), which Property is locally known as ALBAUGH INDUSTRIAL PARK, PLAT 10:

**LOTS 1 THROUGH 11 AND OUTLOT X, in Albaugh Industrial Park, Plat 10, an Official Plat now included in and forming a part of Polk County, Iowa; and,**

**WHEREAS**, Declarant desires to grant certain easements and establish certain rights, duties, obligations and responsibilities with respect to the construction, conduct, operation and maintenance of the Property for the mutual and reciprocal benefit of the owners of the lots located within the Property, except any owner/lot as may be specifically excluded by agreement of the Declarant and any future owner, and any future lots established by the subdivision of the Property. Declarant further desires to establish certain covenants, conditions, restrictions and assessments governing common area and common amenities for the benefit of the Property and each owner thereof, and to provide for an Association to own, govern and maintain common area and common amenities.

**NOW, THEREFORE**, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any rights, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I  
DEFINITIONS**

**1. DEFINITIONS.** For the purpose of this Declaration, the following terms shall have the following definitions, except as otherwise specifically provided:

(a) "**Association**" shall mean and refer to Albaugh 10 Industrial Park Owners Association, its successors and assigns, a nonprofit corporation organized pursuant to Chapter 504 of the Code of Iowa.

(b) "**Board of Directors**" shall mean and refer to the members of the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.

(d) "**Building**" or "**Buildings**" shall mean and refer to the building and other structural elements of any building constructed on any Lot. Canopies, together with any columns or posts supporting the same, front entrances and stoops, loading docks, trash compactors and enclosures, bottle storage areas, exterior coolers, electrical and refrigeration facilities, drive-up or drive-through customer facilities, storage buildings, and other similar accessory structures are deemed to be a part of the Building. Decks, patios and any decorative fencing exclusive to the Building shall be deemed to be a part of the Building to which they are attached.

(e) "**Common Elements**" shall mean and refer to: storm water detention areas as needed for the storm water system as more particularly defined in the Storm Water Management Agreement and any common monument signage. Nothing herein shall be deemed to alter the specific language or duties established in a separate recorded storm water management agreement but rather to supplement and clarify.

(f) "**Common Area**" shall mean and refer to any real property within the Property to which the Association holds title, together with any improvements thereon, for the common use, enjoyment and benefit of the Owners.

(g) "**Declarant**" shall mean and refer to D.R.A. Properties, L.C., its successors and assigns.

(h) "**Declaration**" shall mean and refer to this Declaration of Reciprocal Easements, Covenants, Conditions and Restrictions for Albaugh Industrial Park, Plat 10 to which the Property is subject.

(i) "**Lot**" shall mean and refer to any lot, tract, or portion thereof, or two or more contiguous lots, tracts, or portions thereof in the Property including any Building or Buildings and appurtenant structures erected on said lot.

(j) "**Member**" shall mean and refer to those persons or entities entitled to membership in the Association as provided in this Declaration.

(k) "**Occupant**" shall mean and refer to an Owner and any person or entity from time to time entitled to the use and occupancy of a Lot, or any part of a Lot, under any lease, deed, license or other instrument or arrangement by which such person or entity has acquired rights with respect to the use and occupancy of a Lot.

(l) "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot.

(m) "**Permittee**" shall mean and refer to the Owner and all Occupants of any Lot, and their respective partners, officers, directors, employees, agents, contractors, licensees, concessionaires, subtenants, customers, visitors, and business invitees.

(n) "**Property**" shall have the meaning set forth on Page 1 hercof and such additions by Declarant thereto as may hereinafter be brought within the jurisdiction of the Association.

Words defined elsewhere in this Declaration shall have that meaning throughout the Declaration and not just in the Section in which such word is defined, unless the definition expressly states otherwise.

## ARTICLE II INTENT

**INTENT.** It is the intent of this Declaration to provide easements, covenants, restrictions and standards for high quality design and distinctive construction to ensure that the Property shall be developed, improved, operated and maintained in an attractive setting reflecting the unique character, style and special features consistent with common amenities that function as an integrated and unified community district to accommodate pedestrian and vehicular connections between the Lots within the business park as identified within the Property.

## ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

1. **MEMBERSHIP.** Every Owner of a Lot shall be a Member of the Association.

Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership.

**2. VOTING.** Notwithstanding any other provision of this Declaration, Declarant shall be the sole voting Member of the Association so long as Declarant owns at least one (1) Lot in the Property, or until Declarant waives, in writing, its right to be the sole voting Member, which entitlement shall not exceed a period of five (5) years from the date of filing of this Declaration. Thereafter, the allocation of voting rights among the Owners shall be determined by a fraction in which the numerator is the total number of square feet of land contained within the Owner's Lot(s) and the denominator is the total square feet of land contained within all of the Lots in the Property multiplied by one hundred (100) total votes. For example, if an Owner's Lot contains 50,000 square feet of land and the total square feet of land contained within all of the Lots in the Property is 500,000 square feet, then that Owner would have 10 votes ( $50,000/500,000 = 10\% \times 100 \text{ votes} = 10 \text{ votes}$  rounded up or down to receive a set number of votes; ex:  $35,725/472,560 = 7.56\% \times 100 \text{ votes} = 7.56 \text{ votes}$  which would be rounded up to 8 votes).

**3. AUTHORITY AND OBLIGATIONS.** The Association, through its Board of Directors, shall have the right, power and authority to provide for the enforcement of this Declaration; to provide for any operation, maintenance, repair, reconstruction, restoration, replacement, or improvement of the Common Area and Common Elements for the benefit of the Property; to levy, collect, and have jurisdiction, control and possession of assessments as hereinafter provided; to enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration; and to otherwise establish such procedures and policies necessary or deemed desirable in accordance with the spirit and letter of this Declaration.

#### **ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS**

**1. ASSESSMENT.** Declarant hereby covenants, and each Owner by acceptance of a Deed therefore, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree, to pay to the Association assessments as provided in this Declaration. The assessments levied by the Association and any other charges against the Owner set forth elsewhere in this Declaration, together with interest, costs and reasonable attorney's fees shall be a charge on the Lot of each Owner and shall be a continuing lien upon the Lot against which each such assessment or charge is made senior to all liens except the first mortgage of record and any ad valorem taxes. Such assessment or charge, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person, persons or entity who was the Owner of the Lot at the time when the assessment or charge fell due. The personal obligation for delinquent assessment or charge shall not pass to the Owner's successor in title unless expressly assumed by such successor. Any lots owned by the Declarant are not exempt from monthly or special assessments and this requirement is not subject to amendment.

**2. PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used exclusively for the purpose of carrying out the general duties and powers of the Association,

including, but not limited to operation, maintenance, repair, reconstruction, restoration, replacement, or improvement of the Common Area and Common Elements of the Property, and any legal or other costs of enforcement of this Declaration, and for such reasonable reserves as the Board of Directors deems necessary. In making such assessments, the amount to be levied shall be equal and limited to the actual cost to the Association of providing those functions and services set forth in this Declaration.

**3. RATE OF ASSESSMENT.** The assessments levied upon and against the Lots and the Owners thereof, shall be a share of the total amount of each assessment prorated to each Lot and the Owner thereof on the basis of the ratio of the number of square feet of any Lot to the total number of square feet of all Lots within the Property.

**4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS AND OPERATING DEFICITS.** In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, replacement, removal or demolition of a capital improvement that the Association is required to maintain or for operating deficits that the Association may from time to time incur, provided that any such special assessment shall have the assent of a majority of the Owners who are voting in person or by proxy at a meeting duly called for this purpose. During the first five (5) years or while the Declarant is the sole voting owner, whichever period is less, there shall be no special assessments levied unless agreed in writing by the majority of Owners.

**5. PAYMENT OF ASSESSMENT.** Each Owner shall pay to the Association on the first day of each month, in advance, such amount as the Board of Directors of the Association shall estimate to be equal to one-twelfth (1/12th) of the Owner's anticipated assessment for the ensuing year. In the event the total of the monthly assessments paid by an Owner exceeds the expenses incurred by the Association for that year, the excess shall be carried over and credited to the monthly assessments the following year. In the event the assessments paid by the Owners are insufficient to pay the actual costs incurred by the Association, then the Board of Directors of the Association shall levy a special assessment against each Lot for its share of the deficit. The Owners shall pay to the Association the special assessment due within ten (10) days after the reconciliation is delivered.

**6. NONPAYMENT OF ASSESSMENT.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of said assessment all cost and expenses incurred by the Association in collecting said assessments, including reasonable attorney's fees, whether or not legal action is required in connection therewith. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or Common Elements or abandonment of the Owner's Lot.

**7. ASSESSMENT CERTIFICATE.** The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

**ARTICLE V  
MAINTENANCE BY ASSOCIATION**

**1. MAINTENANCE.** The Association shall provide maintenance, repair, replacement, restoration, removal, demolition and decoration of the Common Elements and the Common Area, as defined herein.

The Association shall perform all such maintenance in a good and workmanlike manner, with first class materials, and in accordance with all applicable laws, rules, ordinances, codes and regulations.

No Owner or Occupant shall obstruct or interfere whatever with the duties and responsibilities of the Association to perform its maintenance obligations relating to the Common Area and Common Elements. Nothing shall be altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors. An Owner shall be liable to the Association for the expense of any maintenance, repair, or replacement rendered necessary by any intentional, negligent or careless act by such Owner. Any such expense shall become a special assessment and lien upon the Lot of such Owner and shall become due and payable upon demand.

**2. PUBLIC STREETS, SIDEWALKS, TRAILS AND PARKING LOTS.** The Association shall have the right, power and authority to maintain snow and ice removal for any public street, sidewalk or trail which provides ingress and egress access to the Lots within the Property as the Board of Directors shall deem necessary from time to time when such public streets, sidewalks, trails and parking lots have not been cleared of snow or ice in a timely manner, which expense shall become a part of the monthly assessment.

**3. COMMON AREA.** The Association shall be the owner of the Common Area and shall timely pay all utility charges, and real estate taxes and assessments levied against the Common Area. Declarant hereby covenants for itself, its successors and assigns that it shall convey to the Association the fee title to the Common Area free and clear of all mechanic's liens or any liens or encumbrances whatsoever, except covenants, easements, conditions and restrictions whether or not of record or created by this Declaration or granted to any public authority.

**4. MANAGEMENT CONTRACT.** Pursuant to authority granted in its Bylaws, the Association may enter into a contract with Declarant, or its assigns, for professional management of its affairs, and the management fee thereof shall become a part of the monthly assessment.

**5. ACCESS FOR MAINTENANCE.** The Association and its agents, employees or contractors shall have the right of reasonable access for ingress and egress over, across or through each Lot for the purpose of performing its maintenance obligations of the Common Area and Common Elements.

**6. INSURANCE.** The Association shall purchase and maintain a comprehensive public liability insurance policy against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Common Area and Common Elements with coverage limits of not less than \$2,000,000 combined single limit per occurrence. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to, worker's compensation insurance, and such other insurance as the Association shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf to the Association. Each Owner shall be deemed to have delegated to the Association the Owner's right to adjust with the insurance companies all losses under policies purchased by the Association. The Association shall pay the premiums for all such insurance hereinabove described and the cost thereof shall become a part of the monthly assessment.

**7. INDEMNIFICATION BY ASSOCIATION.** The Association hereby indemnifies and saves the Owners harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death or property damage and occurring on or from the maintenance of the Common Area or Common Elements, except if caused by the act or negligence of the Owner or Occupant or their respective Permittees.

**8. INDEMNIFICATION BY OWNERS.** The Owner of each Lot hereby agrees to indemnify, defend and hold harmless the Declarant, the other Owners, Occupants and the Association from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person, or damage to or destruction of any property arising in connection with incidents or accidents in the Property or out of the performance of any of the obligations set forth in this Agreement, except to the extent caused by the negligent or willful act or omission of the indemnified parties hereto or their respective Permittees.

## **ARTICLE VI BUILDINGS**

**1. CONSTRUCTION OF BUILDINGS.** No Owner shall construct any improvements or make any material modifications to the shape, height or exterior appearance of any Building on any Lot, without the prior approval of the Association; provided, nothing in this Section shall prohibit any Owner from maintaining, repairing, restoring or replacing any improvements substantially in conformance to previously approved plans. Each Owner shall construct its

improvements in a good and workmanlike manner, using first class materials, substantially in accordance with the plans that have been approved by the Association in conformance with all applicable laws, rules, ordinances, codes and regulations. The approval of any construction, alteration or repair work undertaken by an Owner, or the plans and specifications therefore shall not constitute the assumption of responsibility for the accuracy, sufficiency or propriety thereof, nor constitute a representation or warranty that such work or plans and specifications comply with governmental requirements.

Each Owner shall confine all of its construction activities, including equipment staging and stockpiling of construction materials and supplies, solely to its Lot and shall use its best efforts to prevent and, if damaged, repair any damage to any of the Common Area or the Common Elements maintained by the Association pursuant to this Declaration. Notwithstanding the foregoing, equipment staging and stockpiling of construction materials and supplies shall be permitted on an adjoining Lot with express written permission from the Owner of such Lot. Such construction activities shall not (i) interfere with, disrupt or inconvenience the business operations conducted by the other Owners or Occupants in the Property; (ii) encroach into the parking areas of any other Lot; (iii) block or impede ingress or egress from public streets; (iv) adversely affect pedestrian access or the circulation of traffic in the Property; or (v) adversely affect the operation and supply of common utility facilities to or in the Property. Each Owner agrees to use due care so that any construction, maintenance, repair and replacement of any Building or improvement shall not result in damage or injury to the Buildings or other improvements of the other Owners in the Property.

Prior to the commencement of any construction, alteration or repair work which requires a temporary staging or stockpiling area, the Owner shall give at least thirty (30) days prior notice to Declarant of the proposed location for its approval or for removal of the staging or stockpiling area to another more appropriate location. If substantial work is to be performed, the Owner may be required to fence or screen the staging and stockpiling area from public view. To the extent reasonably possible, all laborers, suppliers, contractors, materialmen and others connected with such construction activities shall access only to the driveways located upon the Owner's Lot and park their vehicles within the Lot.

All construction, alteration or repair work undertaken by an Owner shall be accomplished in an expeditious, diligent and speedy manner. During the maintenance, construction, alteration or repair work performed on any Lot, the Owner shall be responsible to (i) pay all costs and expenses associated with such work; (ii) take necessary measures to minimize disruption and inconvenience caused by such work; (iii) make adequate provisions for the safety and convenience of the other Owners and their Occupants; (iv) control dust, noise and other effects of such work using methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area; (v) repair any and all damage which may be caused by or result from such work; (vi) restore all affected portions of any Lot to a condition equal to or better than the condition existing prior to beginning such work; (vii) promptly clean the work area of construction debris and maintain erosion control measures; and (viii) indemnify and hold harmless the Association and all other Owners and Occupants in the Property against any mechanics liens for such work, particularly as to the Common Elements and



Common Area.

**3. BUILDING SCHEDULE.** When any Building is constructed upon a Lot, any Common Elements to be located within such Lot pursuant to the approved site plan for the Building shall be installed concurrently at the expense of the Owner of the Lot. Each Owner shall, at its sole cost and expense, secure all necessary approvals, licensing and building permits required for the construction of any Building upon a Lot and shall provide Declarant with written notice thereof when all such approvals, licensing and building permits have been secured. Declarant shall be provided with a written schedule of the construction work and the Owner shall coordinate with Declarant to keep Declarant informed during all phases of the construction. The Owner shall be diligent in its efforts to complete all Buildings, structures or improvements of any kind within one (1) year of the commencement date of construction of the Building, subject to force majeure causes beyond the control of an Owner, unless an extended construction schedule for the work to be performed is otherwise approved by Declarant. Within ninety (90) days of completion of a Building upon a Lot, all paving and landscaping shall be finished and all portions of the Lot shall be fully seeded or sodded. If weather conditions make this requirement impossible to meet, Declarant shall establish a reasonable period of time for compliance.

**4. CONDITION OF BUILDINGS.** The Owners or Occupants of each Lot shall maintain, repair, restore and replace, at their sole cost and expense, all property and Buildings of whatever nature thereon in a safe and clean manner and in a good condition and state of repair in compliance with all governmental regulations at all times, including, but not limited to, keeping the inside and outside of all glass in the doors and windows clean; maintaining a clean, orderly and sanitary environment free of insects, rodents, vermin and other pests. Each Owner shall, at its sole cost and expense, arrange for the regular removal of refuse and garbage from its Lot.

**5. INSURANCE.** Each Owner shall procure and maintain in full force and effect general public liability insurance and property damage insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about each Owner's respective Lot (excluding any Common Elements located thereon) with coverage limits of not less than \$2,000,000 combined single limit per occurrence. Each Owner shall provide the Association with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any blanket policy of insurance carried by the Owner which may cover other property in addition to the Owner's Lot.

**6. TAXES AND ASSESSMENTS.** Each Owner shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Lot, the Building and other improvements located thereon, and any personal property owned or leased by such Owner or Occupant in the Property. Nothing contained herein shall prevent any Owner from contesting at its cost and expense any taxes and assessments with respect to its Lot in any manner such Owner elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time such contest is concluded (allowing for appeal to the highest appellate court), the contesting Owner shall promptly pay all taxes and assessments encumbered to be owed, together with all interest, penalties and costs thereon.

**ARTICLE VII  
DESIGN CRITERIA**

1. **DESIGN CRITERIA.** The minimum criteria and design standards prescribing the quality and character specifications for the improvements to be constructed on each Lot shall conform to the recommendations adopted by the Association and shall include, without limitation, the following:

(a) All Buildings shall be designed and constructed in accordance with the architectural patterns, plans and specifications as approved by the Association.

(b) All Buildings must be scaled to complement the Lot size, geometry and existing landscaping as well as neighboring Buildings, where applicable.

(c) Lots shall utilize full cut -off optics, minimize lighting trespass from commercial zones to residential zones and use minimum required lighting levels and for night-time curfews on parking area lighting where businesses are not operational 24 hours a day. Lots shall minimize building floodlighting and use high performance optics to minimize the amount of light either being reflected off of the facade or directed up into the sky.

(d) Trash receptacles placed outside shall be in designated areas, have lids or covers, and be screened from public view with permanent enclosures constructed of material so as to match the primary building material.

(e) Landscaping and buffering shall meet the design requirements of the Association.

**ARTICLE VIII  
EASEMENTS**

1. **COMMON AREA AND COMMON ELEMENTS.** A non-exclusive, irrevocable easement is hereby granted over each Lot that includes or abuts the Common Area and Common Elements located within the Property for the benefit of the Owner of each Lot and their respective Permittees to the extent reasonably necessary for non-exclusive use and enjoyment of the Common Area and Common Elements.

2. **INGRESS AND EGRESS.** Declarant hereby grants, conveys and reserves, except as otherwise specifically stated herein for private easements for certain lots, for the mutual and reciprocal benefit of the Property, and the Lots, and for the mutual and reciprocal benefit of the present and future Owners of each Lot and their respective Permittees, a nonexclusive easement for the passage of vehicles over and across the parking and driveway areas located on each Lot as the parking and driveway areas may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveway and sidewalk areas of each Lot, as such areas may from time to time be constructed and maintained for such use. An Owner may relocate the driveway or sidewalk located on its respective Lot; provided, however, that such Owner shall not reduce or alter the driveway or

sidewalk so as to materially impede ingress and egress through the Lot. The rights encompassed within this grant shall include the right to use and enjoy all entrances, exits, sidewalks, service drives and similar facilities that may now or hereinafter be established and constructed upon any portion of the Property.

Specifically, private ingress and egress easements as identified on the Final Plat in Notes 19 and 20 are for the following Lots and the construction, maintenance and repair responsibilities shall be the responsibility of the "Benefitted" Lot Owner:

- The 30 foot private ingress/egress easement shown on Lot 2 provides access to Lot 1 from NE 67<sup>th</sup> Place and benefits Lot 1 and the cost of construction, maintenance and repair shall be the responsibility of the Owner of Lot 1 unless an independent agreement is made and filed of record between the Owners of Lot 1 and Lot 2 if it is agreed that Lot 2 is receiving some benefit from such easement with a declaration of the percentage of responsibility attributed to each Lot Owner.
- The 32 foot private ingress/egress easement shown on Lots 4 and 5 provides access to both Lots from NE 67<sup>th</sup> Place via a shared private driveway benefits both Lots. The construction, maintenance and repair shall be shared equally by the Owners of Lots 4 and 5.

Nothing shall be constructed, planted or placed with the easement areas which will prevent the proper use and maintenance of the easement areas.

**3. PARKING.** Declarant hereby grants, conveys and reserves for the mutual and reciprocal benefit of the Property, and any and all Lots, thereof, and for the mutual and reciprocal benefit of Owners and their respective Permittees, a non-exclusive easement for the parking of vehicles within the parking areas located on each Lot as such parking areas may from time to time be constructed and maintained for such use; provided, however, that there shall at all times be provided and maintained on each Lot at least the minimum number of parking spaces required under the applicable local ordinance governing parking requirements without taking into account the parking provided on any of the other Lots (each Parcel shall be "self-parked" for purposes of governmental parking requirements). Notwithstanding the foregoing, an Owner may seek a parking variance and the other Owners herein agree not to oppose any such variance, and, if successful, the Lot must be "self-parked" considering the application of such variance. The Owner and Occupants of each Lot shall use reasonable efforts to ensure that all employees working within their respective Lot park their vehicles exclusively within those parking areas designated from time to time as "employee parking areas" on their respective Lots.

**4. EASEMENTS FOR PUBLIC UTILITIES.** Each Lot abuts a public right-of-way. Therefore, to the maximum extent reasonably possible, each Lot shall obtain its natural gas, electricity, telephone, fiber optic, cable television, sanitary sewer, storm sewer, water and other utility services from where such utility service is located in the respective abutting public right-of-way, without necessity for an easement across any other Lot. Notwithstanding the

foregoing, in the event that the public utility company providing any such utility service to any Lot determines that it is more desirable to furnish such utility service through an easement across another Lot, then such Owner of such Lot shall grant to the public utility company an easement for the installation, operation, use, maintenance, repair, replacement and removal of such utility service upon the following terms and conditions:

(a) The location of all such utility easements shall be subject to the prior written approval of the Owner of the Lot across whose property the same is to be located; and upon completion of construction of such utility facilities, the Owner of the Lot and the public utility company shall join in execution of an agreement, in recordable form, appropriately identifying the type and location of each respective utility facility, which agreement is to be recorded at the expense of such utility company; and

(b) There is hereby reserved to and retained for the benefit of the Owner of each Lot that is subject to any such public utility easement, the right to utilize and construct walkways, driveways, parking areas, signage, irrigation lines and equipment, and landscaping (the "Surface Improvements ") on, under and across the surface area of all such easements, and any person disturbing any such Surface Improvements in the course of operation, maintenance, repair or replacement of such utility facilities shall be responsible for repairing, restoring or replacing such Surface Improvement so as to place it into as good a condition as it was in prior to such work, and the right to require such utility service to relocate such utility line, at the public utility company's expense, to the extent necessary to permit construction, alteration, repair or replacement of any Building upon such Lot.

**5. SURFACE WATER DRAINAGE.** Declarant hereby grants, conveys and reserves for the mutual and reciprocal benefit of the Property, and any and all Lots thereof, and for the mutual and reciprocal benefit of the Owners, a non-exclusive easement under, over, on, through, across and within each Lot for the purpose of discharging surface water drainage or runoff. No Owner of a Lot shall alter or permit to be altered the surface of the Owner's Lot if such alteration would materially increase the flow of surface water onto another Lot, either in the aggregate or by directing the flow of surface water to a limited area.

**6. PARTY WALLS.** Any wall which is built as part of the original construction of a Building which is located on the dividing line between the Lots constitutes a party wall and there are hereby created mutual perpetual exclusive easements on each Lot for the benefit of the Owner of the adjacent Lot for the encroachment of any such party wall. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Except as otherwise provided herein, the costs of repair, maintenance, restoration and replacement of the party wall shall be shared equally by the Owners of the two (2) Lots.

If a party wall is destroyed or damaged by fire or other casualty, the Owner who has used

the wall may restore it, and if the other Owner thereafter makes use of the wall, such Owner shall reimburse the other Owner for one-half (1/2) of the cost of restoration thereof. Any such use shall be without prejudice to the right of any Owner to call for a larger contribution from the other Owner under any rule of law which provides for liability for negligent or willful acts or omissions. The right of any Owner to contribution from the other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

Notwithstanding anything herein to the contrary, in the event that any such damage or destruction of a party wall is caused by the willful or negligent act of an Owner, such Owner shall be responsible to pay that portion of the cost of repair thereof which may be in excess of any insurance proceeds including, without limitation, the deductible amount under any applicable insurance policy. Notwithstanding any other provisions of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**7. OTHER GRANTS OF EASEMENTS OR DEDICATIONS.** The Owners shall not grant any easements on their respective Lots to or for the benefit of any person who is not an Owner or to or for the benefit of any real estate outside the Property other than (i) for street widening purposes, or (ii) for public or private utility company making improvements within the Property.

**8. PRIVATE STORM WATER EASEMENTS ON LOTS.** The Final Plat identifies in its Note 21 that there is a 30' private storm water sewer easement shown abutting Lots 4 and 5 and extending across Lot 4 onto Outlot "X". The Owners of Lots 4 and 5 will be responsible for the maintenance of the private storm sewer abutting their respective Lots and the Owner of Lot 4 will be responsible for the maintenance of the private storm sewer extension over, under and across Lot 4 to Outlot "X". The Association will be responsible for maintenance of the storm sewer located on Outlot "X" until the same is platted in the future and provisions are made for its maintenance thereafter. Nothing shall be constructed, planted or placed with the easement areas which will prevent the proper use and maintenance of the easement areas.

## **ARTICLE IX GENERAL COVENANTS**

**1. PERMITTED USES.** All Lots shall be used only for uses permitted by the zoning ordinance applicable to the Plat as approved, including accessory uses permitted by such applicable zoning ordinance, and for no other uses.

**2. PROHIBITED AND NOXIOUS USES.** No part of the Property shall be used or occupied for any purpose which is considered improper or sensitive to the development or which is inconsistent with the applicable zoning regulations. Without limiting the generality of the foregoing, the following uses shall not be permitted:

(a) any distribution of pornographic material, including an adult book store, and any adult entertainment exhibiting either live or by other means, to any degree, nude or partially clothed dancers;

(b) any establishment selling or exhibiting illegal drug-related paraphernalia, it being acknowledged that the operation of a drug store shall be expressly permitted;

(c) any massage parlor or establishment that appeals to the prurient interest; provided, however, this subsection shall not prevent massage therapy services by a medical clinic, chiropractor, spa, health spa, fitness center, athletic facility and other similar businesses;

(d) any bar, tavern, cocktail lounge or other business selling alcoholic beverages for on-premises consumption; provided, however, this subsection shall not prevent the operation of such bar which contains an on-site kitchen as part of its operation for the sale of restaurant style food that makes up at least twenty-five percent (25%) of such Occupant's gross receipts;

(e) any flea market or pawn shop; provided, however, national users such as Goodwill or Salvation Army shall be expressly permitted;

(f) any check cashing or payday lending business;

(g) any coin operated laundermat;

(h) any mortuary or funeral home;

(i) any mobile home park, trailer court, junkyard, or stockyard;

(j) any tattoo establishment;

(k) any dumping, disposing, incineration or reduction of garbage or refuse (exclusive of garbage compactors or dumpsters located on the Lot);

(l) any distribution of circulars, handbills, placards or booklets; any solicitation of memberships or contributions; and any picketing or demonstrating;

(m) any animal raising or boarding business; provided, however, the boarding of pets as an ancillary part of a retail or veterinarian operation shall be expressly permitted;

(n) any refining, smelting, industrial, processing or rendering, agricultural, drilling or mining operations;

(o) any fire sale or bankruptcy sale operation (unless pursuant to a court order); provided, however, this subsection shall not prevent an Occupant from a marketing program which

emphasizes deeply discounted prices; and

(p) any restaurant, bar, tavern or cocktail lounge employing wait staff whose manner of dress appeals to the prurient interest, including, but not limited to, Hooters, Twin Peaks and Tilted Kilt.

**3. RESTRICTED EXCLUSIVE USES.** So long as Declarant owns at least one (1) Lot in the Property, Declarant reserves the right to restrict the uses of Lots, and to grant exclusive use rights as determined by Declarant from time to time.

**4. RULES AND REGULATIONS.** The Association shall have the authority to adopt rules and regulations governing the use of the Common Area and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns, and licensees. Such rules after being properly adopted shall have the same force and effect as if contained in this Declaration.

**5. PROHIBITED STRUCTURES.** No structure of a temporary character, trailer, shack, garage, shed or other similar building shall be used, constructed or placed on any Lot.

**6. TREE REMOVAL AND MAINTENANCE.** No trees shall be removed unless diseased or substantially damaged by wind, lightning or other natural forces. All such diseased or damaged trees shall be promptly replaced by the Association.

**7. WASTE AND REFUSE.** No waste material or refuse shall be dumped upon or permitted to remain on any Lot other than in the trash enclosure outside the Buildings constructed thereon.

**8. LOUD ACTIVITIES.** Loud activities within the Property, if any, shall be kept to a minimum and be limited to routine business hours. No music or similar sounds shall be audible from the Property on the neighboring residential property, except from municipal or Association sponsored events.

**9. RESTRICTION ON SUBDIVISION.** Once a Lot has been purchased from Declarant, or its successors or assigns, such parcel of land shall be considered a single unit, and it shall not be subdivided, nor shall such Lot be sold, or leased, prior to completion of the improvements to the entire Lot without the prior written approval of the Board of Directors, which approval shall not be unreasonably withheld.

## **ARTICLE X DURATION**

**1. COVENANTS RUN WITH THE LAND.** Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and inure to the benefit of Declarant, the Association, the City, and the Owners of each Lot,

and their successors and assigns and all parties and persons claiming under any of them, and shall be deemed covenants that run with the land.

**2. DURATION - GENERAL.** It is the intent that, notwithstanding anything in the Code of Iowa to the contrary, all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall continue in perpetuity without further action by Declarant, the Association, the City, or any Owner of any Lot. However, in the event that Section 614.24 of the Code of Iowa, as the same may be amended or replaced, may require that a verified claim be filed in the office of the County Recorder prior to the twenty-first anniversary of the date of this Declaration or the twenty-first anniversary of the last filing of such verified claim in order to continue all or some of the covenants of this Declaration, including, but not limited to, any covenant, term, provision or restriction that is or may be considered a use restriction, reversion or right of reverter, then:

(a) Declarant, the Association, or any Owner acting jointly or severally, shall file all verified claims necessary to continue all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration in full force and effect;

(b) A verified claim filed by Declarant, the Association, or any Owner shall be valid and binding upon the Association and all the then Owners of Lots in Property (the "Interested Parties"), and their successors and assigns, with the same effect as if executed by all such persons, and in order to facilitate filing of any verified claim required to continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration in full force and effect, the Association and each Owner is hereby irrevocably appointed the attorney-in-fact for all of the other Interested Parties for the purpose of filing any such verified claim;

(c) That in the event of any defect in the verified claim or its filing and recording at the office of the County Recorder, no Interested Person or anyone claiming, by, through or under an Interested Person shall be entitled to assert such defect as a basis to avoid its duties and obligations under this Declaration;

(d) That in the event an Interested Party fails or refuses to cooperate to file any verified claim required to continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration in full force and effect, such Interested Party hereby waives and shall be deemed to have waived the right to, and estopped to, assert any failure to file such verified claim as a defense to its duties and obligations under this Declaration; and,

(e) That each Interested Party by acquisition of its interest in the Property or under this Declaration, whether or not expressly provided in any instrument creating such interest, hereby waives its right to assert the failure to file any verified claim required by the Code of Iowa as a



legal basis to avoid any duty or obligation upon it and its respective portion of the Property.

**3. DURATION - EASEMENTS.** The easements granted in or pursuant to this Declaration and any other covenants, indentures, restrictions and reservations of this Declaration that are reasonably or necessarily incidental to the benefit or burden of such easement rights, shall continue in perpetuity, unless sooner modified or terminated as provided in this Declaration.

**4. AMENDMENTS.** This Declaration may be amended by an instrument recorded in the office of the County Recorder by the affirmative vote of not less than two-thirds (2//3) of the Owners pursuant to the allocation of voting by the Owners contained in this Declaration provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. No amendment shall reduce or modify the rights or obligations granted to, or imposed upon, the Association with respect to the continued operation, maintenance, repair restoration and replacement of the Common Area and Common Elements and the power to levy assessments therefor or to eliminate the requirement that there be an Association unless some persons or entity be substituted for the Association and succeed to all of its rights and duties under this Declaration. Notwithstanding the foregoing, so long as Declarant owns at least one (1) Lot in the Property, this Declaration may be amended by the Declarant without approval of all other Owners of the Association.

**5. ASSIGNMENT OF DECLARANT'S RIGHTS.** Declarant shall have the right to assign all of its rights and obligations as Declarant under this Declaration to any person, corporation or other entity by written instrument executed by both parties and filed with the County Recorder. The assignee of any such assignment shall be responsible for Declarant's duties and obligations under this Declaration.

**6. SUCCESSORS.** This Declaration shall be binding upon and inure to the benefit of the parties designated herein, their heirs, executors, administrators, beneficiaries, successors and assigns; provided that the respective Owners from time to time of the Lots forming the Property shall be liable in money damages and subject to the action for specific performance only for breaches of the undertakings contained in this Declaration occurring during their respective period of ownership of each Lot; provided further, however, that such successor-in-title to any of the Lots shall be subject only to an action for specific performance with respect to breaches of undertakings hereunder which occurred during the ownership of any predecessor-in-title.

**7. RIGHT OF ENFORCEMENT.** In the event of a violation, or threatened violation, of any of the covenants, conditions, and restrictions herein enumerated, Declarant, the Owners and all parties claiming under them shall have the right to enforce the covenants, conditions, and restrictions contained herein and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof. Failure of Declarant, the Association or any

Owner to enforce any covenant, condition or restriction of this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto shall not constitute a waiver of the right to enforce the same thereafter.

**ARTICLE XI  
MISCELLANEOUS**

1. **RELEASE UPON SALE.** Subject to the provisions of this Section, if an Owner sells, transfers, or assigns its Lot (other than as security for a loan), then such Owner (but not the Lot) shall be released from its future obligations under this Declaration. It shall be a condition precedent to such release and discharge that any and all amounts that shall then be due and payable by such Owner shall have been paid, that such Owner shall give notice to the other Owners and the Association of any such sale, transfer, conveyance, or assignment concurrently with the filing for record of the instrument effecting the same, and that the grantee, assignee or transferee thereof shall assume all of grantor, assignor or transferor's rights and obligations in a writing that is delivered to the Owners of the other Lots and to the Association.

Notwithstanding anything in this Declaration to the contrary, it is expressly understood and agreed that nothing in this Declaration shall preclude the release of, or constitute a condition precedent to the release of, any first mortgagee who shall have acquired title to any Lot, or portion thereof, through foreclosure or deed in lieu of foreclosure, from all unaccrued obligations under this Declaration effective upon the sale, transfer, conveyance or assignment of such mortgagee's title or interest in such Lot.

2. **ESTOPPEL CERTIFICATES.** Each Owner and the Association shall issue to any other Owner or the Association or to any mortgagee of, or purchaser from, any of the foregoing parties, an Estoppel Certificate in such form as may reasonably be requested stating:

(a) Whether the Owner or Association to whom the request has been directed knows of any default under this Declaration, and if there are known defaults, specifying the nature thereof;

(b) If known, the nature and amount of any amounts owed to the Owners of other Lots or to the Association by any Owner about whose Lot the request is made, and the nature and amount of any amounts owed by the Owner of any other Lot or the Association to the Owner about whose Lot the request is made;

(c) If directed to the Owner of any Lot, the applicable share of any assessments for which that Owner is liable, and if directed to the Association, the applicable share of any assessments for which the Owner about whose Lot the request is made is liable;

(d) If directed to the Association, the nature and amount of any budget or approved expenditures that have been adopted by the Association;

(e) Whether this Declaration has been amended, and if so, the nature of any such amendment;

(f) Whether the person to whom the request is directed claims any offsets or defenses to any of its obligations under this Declaration, and if so, the nature of such offsets or defenses; and

(g) Whether to the knowledge of the person to whom the request is directed, this Declaration is in full force and effect, or if it is claimed it is not in full force and effect, specifying the portions of, or manner in which, this Declaration is not in full force and effect.

**3. MORTGAGEE'S NOTICE OF DEFAULT.** Any mortgagee under any first mortgage affecting any Lot shall be entitled to receive a copy of any notice of any default under this Declaration given to the Owner of such Lot by the Owner or any other Lot or by the Association, provided that such mortgagee shall have delivered a copy of a notice in the form set forth below to the Association and all Owners of other Lots. The form of such notice to be sent by the mortgagees is as follows:

The undersigned, whose address is \_\_\_\_\_, does hereby certify that it is the holder of a first line mortgage upon the real estate described on Exhibit "A" attached to this certification, the real estate being property owned by \_\_\_\_\_ in the Property. In the event that any notice shall be given of default to the Owner to whose property this lien applies, a copy of such notice shall also be delivered to the undersigned who shall have all the rights of such Owner to cure such default. Failure to deliver a copy of such notice to the undersigned shall in no way effect the validity of the notice of default as it applies to such Owner, but shall make the same invalid as it respects the interest of the undersigned and its lien upon the property.

All such notices or copies of notice shall be served personally, or by certified United States mail, postage prepaid, to the last known address of record of the person to whom it is delivered, and shall be considered delivered upon such personal delivery or mailing.

Any such mortgagee who provides the notice to the Association and the Owners of the other Lots shall have the right to cure the default of the Owner upon whose Lot its mortgage is a lien within the same time period as is applicable to such Owner.

**4. RIGHT OF SELF-HELP.** In the event any Owner does not comply with any provision of this Declaration within thirty (30) days (or such shorter period as may be reasonable in an emergency) after written notice from Declarant, the Association or the City, or if such failure is of a nature that it cannot reasonably be cured within the thirty (30) day period (or such shorter period as may be reasonable in an emergency), if such Owner fails to commence such cure within the period or thereafter fails diligently to pursue such cure to completion, the Declarant, the Association or the City shall have the right to enter onto such Owner's Lot and

perform any necessary maintenance and repair and charge the cost of such work to such Owner. Any such cost shall become a special assessment and lien upon the Lot of such Owner and shall become due and payable upon demand.

**5. PAYMENT DEFAULTS.** In the event any Owner does not make any payments due under any provision of this Declaration within ten (10) days after such Owner is notified thereof, then such charge, together with interest thereon at the rate of fifteen percent (15%) per annum or the highest rate allowed by law, whichever is less, from the date such demand is made until paid, and the costs of collection, including reasonable attorneys' fees and expenses, shall become a lien on the Lot in question, enduring and collectible the same as the lien for assessments of the Association pursuant to the provisions of this Declaration.

**6. SPECIFIC ENFORCEMENT OF RESTRICTIONS.** All Owners of Lots within the Property covenant and agree, by acceptance of a deed to such Lot, whether or not it shall be so expressed in such deed, that monetary damages may not provide adequate compensation for the breach of the restrictions and covenants contained in this Declaration and that this Declaration may be specifically enforced by Declarant, the Association, or the City.

**7. ATTORNEYS FEES.** In the event, in the reasonable opinion of the Declarant, the Association, or the City, it shall be necessary to secure the services of an attorney to enforce the provisions of this Declaration, then the fee of such attorney, and all other costs in connection with the enforcement of this Declaration, including, but not limited to, the costs of any contemplated or actual legal proceedings and preparation and presentation of any evidence in such connection shall be the obligation of the Owner of the Lot which is the subject of such enforcement action, unless such Owner is found not to have violated any provision of this Declaration, and provided such Owner shall not be obligated for any such attorneys fees and costs incurred by Declarant, the Association or the City after such Owner offers to settle such matter for an amount equal to or greater than that finally approved by a court of competent jurisdiction and/or by taking or forbearing from the requested action, as appropriate.

**8. SEVERABILITY.** In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

**9. GOVERNING LAW.** This Declaration shall be construed in accordance with the laws of the State of Iowa.

**ARTICLE XII  
ADDITION OR REMOVAL OF LAND**

1. **ADDITIONAL COMMON AREAS.** Declarant shall have the right at any time to convey additional Common Areas to the Association from time to time within the Property. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant to convey additional Common Areas to the Association in the future. The Association shall be obligated to accept any additional Common Areas so conveyed by Declarant and to hold and maintain the additional Common Areas pursuant to the terms of this Declaration.

2. **SUBJECTING ADDITIONAL LAND TO DECLARATION.** Declarant shall have the irrevocable right to subject additional land to the terms of this Declaration at any time in the future without the consent of the Association, the Owners or any other person. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration and Owners of Lots within the additional land shall automatically become Members of the Association in the same manner as described in this Declaration and shall be subject to the same applicable terms, conditions, duties and assessments as described in this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration with the County Recorder.

3. **REMOVING LAND FROM OPERATION OF DECLARATION.** Declarant shall have the right now and in the future to remove any portion of the Property from the operation of this Declaration provided that the portion so removed has not yet been platted into individual lots and a plat for that portion has not been filed of record with the County Auditor; provided, however, in the event any such removal of land shall result in an increase of twenty percent (20%) or more in the assessment of any Owner who remains liable for assessments to the Association on the date of such removal and such increase is attributable solely to the removal of such land, then such land may not be removed from the operation of this Declaration without the prior written consent of any such Owners. Declarant shall signify this removal by filing an amendment to this Declaration with the County Recorder. Notwithstanding the foregoing, no approval of the Association, the Owners, or any other person shall be necessary.

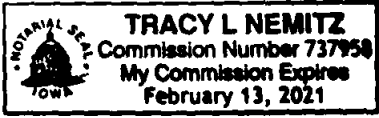
**IN WITNESS WHEREOF**, Declarant has executed this Declaration as of the day and year first above written.

**D.R.A. PROPERTIES, L.C.,**  
an Iowa Limited Liability Company

By: Jana Meredith  
AUTHORIZED SIGNATURE

STATE OF IOWA )  
                              )ss:  
COUNTY OF POLK )

This instrument was acknowledged before me on November 20, 2019, by  
Tara Meredith, Secretary of D.R.A. PROPERTIES, L.C.



*Tracy L Nemitz*  
Notary Public in and for the State of Iowa

**ARTICLES OF INCORPORATION  
OF  
ALBAUGH 10 INDUSTRIAL PARK OWNERS ASSOCIATION**

The undersigned, acting as incorporator of a nonprofit corporation, adopts the following Articles of Incorporation for such Corporation.

**ARTICLE I  
NAME**

The name of the corporation is “Albaugh 10 Industrial Park Owners Association”, hereinafter called the “Corporation”.

**ARTICLE II  
CORPORATE EXISTENCE**

The Corporation’s existence shall commence upon the filing of these Articles of Incorporation and shall continue in perpetuity.

**ARTICLE III  
REGISTERED AGENT AND OFFICE**

The name of the initial registered agent is Tara Meredith and the initial registered office shall be 1515 N.E. 36<sup>th</sup> Street, Ankeny, Iowa 50021.

**ARTICLE IV  
PURPOSE AND POWERS OF THE CORPORATION**

The Corporation does not contemplate pecuniary gain or profit to the members thereof and the specific purposes for which it is formed are to provide for the management, maintenance, care preservation and architectural control of all Lots and Association Responsibility Elements within those certain tracts of property described as:

All Lots in Albaugh Industrial Park Plat 10, an Official Plat now included in and forming a part of Polk County, Iowa,

and such other additional property submitted to the terms of any Declaration of Covenants, conditions and restrictions applicable to the above-described property, and to promote the health, safety and welfare of the owners within the above-described property and any additions thereto as may hereafter be brought within the jurisdiction of this Corporation. To achieve these purposes the Corporation may:

- A. Exercise all of the powers and privileges and perform all of the duties and obligations of the Corporation as set forth in any Easement, Agreements or Declaration of Covenants, Conditions and Restrictions, either individually or

collectively, hereinafter called the "Declaration", applicable to the property and recorded or to be recorded in the Office of the Polk County Recorder and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

- B. Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Corporation, including all licenses, taxes or governmental charges levied or imposed against the property of the Corporation;
- C. Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Corporation;
- D. Borrow money, and with the assent of all of the Members, mortgage, pledge, deed in trust or hypothecate any or all of this real or personal property as security for money borrowed or debts incurred;
- E. Dedicate, sell or transfer all or any part of the Corporation property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by all of the Members agreeing to such dedication, sale or transfer;
- F. Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property, provided that any such merger, consolidation or annexation shall have consent all of the Members.
- G. Have and exercise any and all powers, rights and privileges which a corporation organized under the Iowa nonprofit Corporation Act by law may now or hereinafter have or exercise.

The purposes of the Corporation are exclusively not for private profit or gain. No part of the net earnings of the Corporation shall inure to the benefit of any director or officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes). No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, except as otherwise may be permitted in §501(h) of the Internal Revenue Code. The Corporation shall not participate in or intervene in (including the publishing or distributing or statements) in any political campaign on behalf of (or in opposition to) any candidate for public office.



**ARTICLE V  
MEMBERS**

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to covenants of record or assessment by the Corporation, including the contract sellers, shall be a Member of the Corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessments by the Corporation.

**ARTICLE VI  
MEMBER VOTING RIGHTS**

Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Notwithstanding the above, D.R.A. Properties, L.C. and its successors and assigns as Declarant shall be the sole voting Member of the Corporation until such time as D.R.A. Properties, LC and/or its successors and assigns as Declarant no longer own any portion of the properties, or until D.R.A. Properties, LC and/or its successors and assigns as Declarant waives this right to be the sole voting member, whichever first occurs.

**ARTICLE VII  
BOARD OF DIRECTORS**

The affairs of this Corporation shall be managed by an initial board of two (2) directors and thereafter by a Board of not less than three (3) nor more than five (5) directors, who need not be changed by amendment of the Bylaws of the Corporation. The name and address of the person who is to act in the capacity of the initial director until the election of his successor is:

NAME

ADDRESS

Dennis R. Albaugh

1515 N.E. 36<sup>th</sup> Street  
Ankeny, IA 50021

**ARTICLE VIII  
DISSOLUTION**

The Corporation may be dissolved with the assent given in writing and signed by all of the Members subject, however, to the prior approval of the Polk County, Iowa. No person or persons shall be entitled to share in any of the Corporation's assets upon the dissolution or

termination of the Corporation. Upon dissolution of the Corporation, other than incident to a merger or consolidation, the assets of the Corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Corporation was created. In the event that the acceptance of such dedication is refused, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes. Any such assets of the Corporation not so distributed by the Board of Directors shall be so distributed by a court of competent jurisdiction on application of the Board of Directors.

**ARTICLE IX  
EXEMPTION OF PRIVATE PROPERTY**

The private property of the Members, directors and officers of the Corporation shall be exempt from all debts and liabilities of the Corporation of any kind whatsoever. Consistent with §504, Code of Iowa (2017), a Member, director, officer, employee or other volunteer of this Corporation shall not be personally liable in that capacity for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the Corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law is hereafter changed to mandate or permit further elimination or limitation of the liability of the Corporation's Members, directors, officers, employees and volunteers, then the liability of the Corporation's members, directors, officers, employees and volunteers shall be eliminated or limited to the full extent then permitted.

**ARTICLE X  
INDEMNIFICATION**

The Corporation shall indemnify a director, officer, employee, agent, or volunteer of this Corporation to the fullest extent possible against expenses, including attorneys' fees, judgments, fines, settlements and reasonable expenses, actually incurred by such person with respect to any proceeding against such person relating to his conduct as a director, officer, employee, agent or volunteer, except that the mandatory indemnification required by this sentence shall not apply (i) to a breach of such person's duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, (iii) for a transaction from which such person derived an improper personal benefit, or (iv) against judgments, penalties, fines, and settlements arising from any proceeding by or in the right of the Corporation, or against expenses in any such case where such person shall be adjudged liable to the Corporation. No amendment to or repeal of this ARTICLE X shall apply to or have any effect on the indemnification hereunder of any director, officer, employee, agent or volunteer of the Corporation for or with respect to any acts or omissions of such person occurring prior to such amendment or repeal.

**ARTICLE XI  
AMENDMENTS**

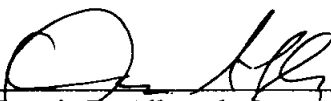
The Articles of Incorporation may be amended at any time and from time to time as provided by the Iowa Nonprofit Corporation Act. No proposed amendment shall be effective unless it is approved by the affirmative vote of all of the Members. Provided, however, that any purported amendment to these Articles of Incorporation in conflict with or contrary to any provision of the Declaration, including supplements for amendments thereto, shall be void and of no force and effect.

**ARTICLE XII  
NAME AND ADDRESS OF INCORPORATOR**

The name and address of the Incorporator is:

Dennis R. Albaugh  
1515 N.E. 36<sup>th</sup> Street  
Ankeny, IA 50021

Dated and signed this 4<sup>th</sup> day of November, 2019.

  
\_\_\_\_\_  
Dennis R. Albaugh, Incorporator