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SPACE ABOVE THIS LINE FOR RECORDER

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
APPLICABLE TO ALDER POINT OWNERS ASSOCIATION
FOR SINGLE FAMILY LOTS**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS APPLICABLE TO ALDER POINT OWNERS ASSOCIATION is made this 18 day of July, 2023, by **HRC ALDER POINT, LLC**, an Iowa limited liability company (the "Declarant").

WHEREAS, Declarant owns and desires to establish and place residential covenants, conditions and restrictions and to reserve certain easements, all as hereinafter specifically set forth, for the benefit of the Owners (as defined in 1.01(l)) of Lots (as defined in Section 1.01(i)) and of Units (as defined in Section 1.01(r)) in Alder Point and to provide for the Association (as defined in Section 1.01(a)) to operate and maintain common elements of Alder Point.

NOW, THEREFORE, Declarant hereby declares that the Property (as defined in 1.01(n)) 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

1.01 Intent. It is the intent of this Declaration to provide conditions, covenants, easements, restrictions, and reservations to ensure the proper use and appropriate development of improvements to each Lot in Alder Point so that Alder Point is developed as a harmonious and integrated development, and to protect the value and desirability of property within Alder Point. It is further the intent to provide for the Association to perform the operation, maintenance, repair, replacement, alterations, improvement or modification of the Declarant Improvements (see Section 1.02(g)) and to perform the installation, operation, maintenance, repair, replacement, alteration, improvement or modification within Alder Point.

1.02 Definitions.

- (a) **“Association”** shall mean Alder Point Owners Association, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa, and its successors and assigns.
- (b) **“Association Lot”** shall mean a Lot that is owned by the Association for the use and benefit of members of the Association and on which, either by recorded restrictions, recorded plats or zoning, no single-family home may be constructed.
- (c) **“Board”** shall mean the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.
- (d) **“Builder”** shall mean any company, corporation, partnership, or individual contractor with the sole purpose of constructing a single-family home on a Lot.
- (e) **“City”** shall mean the City of Waukee, Dallas County, Iowa.
- (f) **“Declarant”** shall mean HRC Alder Point, LLC, an Iowa limited liability company, and its successors and assigns as to the entirety of the undeveloped portion of Alder Point that has not theretofore been conveyed to home builders or home owners unless the context indicates otherwise.
- (g) **“Declarant Improvements”** shall mean those public streets and improvements Declarant is to construct as part of the platting of any plats within Alder Point, as shown on the Site Construction Plans, those improvements that Declarant is to construct pursuant to this Declaration, and any additional improvements, whether similar or dissimilar to any of the foregoing that Declarant chooses to construct and deliver to the Association for continued operation, maintenance, repair, replacement, alteration, improvement or modification.
- (h) **“Hereof” and “Herein”** shall refer to the entirety of this Declaration and not only to any particular part of this Declaration, unless the context clearly provides otherwise.
- (i) **“Improvements”** shall mean and include a single-family home, outbuildings, driveways, parking areas, sidewalks, walking trails, play equipment, swimming pools, tennis courts, fences, walls, hedges, signs, lawns, landscaping, lighting, storm water infrastructure, flag poles and any structure of any type or kind, and all additions to any of the foregoing.
- (j) **“Lot”** shall mean any platted lot, tract, or portion thereof, or two or more contiguous lots, tracts, or portions thereof in Alder Point, including real estate subject to recorded easements, but shall not include any land deeded to the City.
- (k) **“Occupant”** shall mean an Owner and any person from time to time entitled to use and occupy any building, or any part of any building on a Lot, under any lease, deed, license or other instrument or arrangement by which such person has acquired rights with respect to the use and occupancy of any building or part of a building on a Lot in Alder Point.
- (l) **“Owner”** shall mean the person or persons who from time to time collectively hold the entire fee title to any Lot, as applicable, in Alder Point, including sellers under executory contracts of sale, (but shall not include any person who holds such fee title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such loan documents), and the use of the singular shall include the plural.
- (m) **“Property”** shall mean as it is defined in Exhibit A.

- (n) **“Lot”** shall mean any platted lot, tract, or portion thereof, or two or more contiguous lots, tracts, or portions thereof in Alder Point, including real estate subject to recorded easements, but shall not include any land deeded to the City.
- (o) **“Alder Point”** shall mean the real estate described in Exhibit “A” attached hereto together with all additional real estate which is hereafter made subject to this Declaration pursuant to one or more amendments to this Declaration, including all lots and outlots, except streets, parks and other lots, if any, conveyed to the City (as defined in Section 1.02(d)), developed in any plats of any part of the property described in “Exhibit “A” or in any plats of any part of any additional property which is hereafter made subject to this Declaration pursuant to one or more amendments to this Declaration, and any replats of any portions of any of said plats or parcels together with all easements and servient estates appurtenant thereto, and subject to (1) zoning and other applicable building ordinances, (2) easements, covenants and restrictions of record.
- (p) **“Unit”** shall mean a single-family residential dwelling on a Single-Family Lot.
- (q) **“Zoning Ordinance”** shall mean the zoning ordinances of the City of Waukee, Iowa, as the same may be amended from time to time.
- (r) Words and phrases in this Declaration, including the acknowledgment, shall be construed as in the singular or plural number, unless the context permits only one such number.
- (s) 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

GENERAL USE RESTRICTIONS AND BUILDING SPECIFICATIONS

The Lots in Alder Point shall be held, occupied, sold and conveyed subject to the following use restrictions and building specifications, as well as those restrictions set forth elsewhere in this Declaration:

1.01 Uses.

- (a) **Single-Family Residences.** The use of the Lots in Alder Point shall be limited to single-family residential dwellings and shall be developed with not more than one single-family dwelling on each Lot in the final applicable plat or replat and may be developed only with such other uses of land or structures customarily incidental and subordinate to the single-family residential use as permitted by the City’s zoning ordinance, unless such uses or structures are otherwise regulated or prohibited by this Declaration. No modular, manufactured, or mobile homes are permitted to be built or used in Alder Point.
- (b) If an Owner does not commence construction within six (6) months after the purchase of a Lot from Declarant, the Owner shall seed the Lot with grass and maintain it in accordance with Section 2.20 and as required by the Iowa Department of Natural Resources and the Environmental Protection Agency.
- (c) **Business Activity.** No full-time or part-time business activity may be conducted on any Lot or in any building or structure constructed or maintained on any Lot, except to the extent of a home occupation permitted by the City’s Zoning Ordinance and except that home builders may maintain model homes during construction and Declarant may maintain a sales office during its development and sales of the Lots in Alder Point. No Lot shall be used for transient purposes. Transient purposes shall be defined to mean any leasing of a Lot for a period of time less than two weeks.

2.02 Architectural Standards. The following architectural standards shall apply to the development of all Lots in Alder Point:

(a) **Character.** No building or structure shall be constructed, altered or maintained upon any Lot other than a detached single-family dwelling with an attached or detached private garage and may have such other accessory structures permitted by this Declaration. In order to preserve the general design for development of the Lots in Alder Point, no single-family dwelling of any kind, or addition thereto, shall be erected upon any Lot unless the plan, design, building materials, exterior colors and location thereof shall have been first approved by Declarant, or if the Declarant no longer owns any Lots in Alder Point or otherwise delegates this responsibility to the Association, by the Board, or such person or persons or entity designated by it for this purpose, which approval shall not be unreasonably withheld or delayed.

(b) **Siding.** Siding material variations on the elevation for accent purposes are encouraged, but the overall character and predominant siding must be consistent on all four elevations of the structure. Siding shall not have a reveal of greater than 8". Exterior colors shall be earth tones, white, or soft, muted tones, which may include muted yellows, greens or blues. No bright colors of any kind are permitted. Exterior materials may be pre-finished.

(c) **Roof Materials.** Roof material shall be slate, tile, cedar shakes, or composition shingles. Composition shingles shall be architectural grade, minimum twenty-five (25) year warranty. Shingle colors shall be muted earth tones and be compatible with and complimentary to the exterior materials and colors. White and white blend roof shingles are not acceptable. All flashing and vents shall closely match or blend with the surrounding roof area. All vents and other roof penetrations should be located on the rear elevation wherever possible. Gutters should be part of the fascia detailing.

(d) **Garages.** All single-family homes shall have, as a minimum, a two-car attached, detached or built-in basement garage.

(e) **Minimum Single-Family House Sizes.** All single-family homes shall contain a minimum square footage of living space exclusive of attached garages, breezeways, porches, and finished basement areas as follows:

- (i) One-story dwellings must have a minimum of 1,200 square feet of finished area directly under the roof.
- (ii) Two-story dwellings must have a finished floor area of at least 1,400 square feet.
- (iii) All split-level, raised ranch, or split foyer dwellings must have a minimum of 1,400 square feet of finished area directly under the roof.

(f) **Minimum Finished Basement Floor Levels.** If a minimum basement elevation requirement is shown on the final plat of the applicable Lot the single-family home constructed on such Lot shall have a finished basement floor elevation as shown on the applicable final plat.

(g) **Decks and Porches.** Decks attached to a single-family dwelling must be built from cedar, redwood, treated lumber or other products approved by Declarant, or once the Declarant no longer owns any Lots in Alder Point or has delegated such approval to the Association, approved by the Board. Unpainted natural wood decks, though appropriate for rear yard spaces, are not acceptable as front entry porches. Front entry porches should be designed as integral, yet dominant features that invite entrance to the dwelling.

(h) Building Elevation and Drainage Standards. The finished grades for single-family homes constructed on each Lot shall be established to permit positive drainage away from such single-family homes and provide finished grades as shown on the Final Plat.

2.03 Landscaping.

(a) Single-Family Lots. On each Lot, the Owner at the time the dwelling is first occupied is required to plant, within one-hundred twenty (120) days following the date of commencement of occupancy, one tree on such lot from any of the following species of trees: Red Maple (*Acer rubrum*), Norway Maple (*Acer platanoides*), Ulmus Elm (*Triumph Elm*), Northern Red Oak (*Quercus borealis*), Burr Oak (*Quercus macrocarpa*), or Tilia American Linden (*Americana Linden*), or Tilia Silver Linden (*Tomentosa*), or any other species approved by Declarant, in writing, or once the Declarant no longer owns any Lots in Alder Point or has delegated such approval to the Association, approved by the Board, a copy of which additional approved trees shall be kept on file with the Association, (hereinafter such species of trees shall be referred to as "Front Yard Trees"), in the front yard of the Lot, or outside the public right-of-way.

(b) Front yard Requirements: Sodding. A minimum of seventy-five percent (75%) of the front yard of each Lot (excluding driveways and sidewalk areas) must be maintained as a groomed yard. Within one-hundred twenty (120) days after completion of the single-family home upon a Lot, and with the exception of permitted landscaping features, the front yard, side yards and the twenty-five feet (25') of the rear yard measured from the rear of the dwelling foundation shall be fully sodded, and the remainder of the rear yard to the rear lot line shall be seeded or sodded

If weather conditions make it impossible to comply with the foregoing requirement, Declarant, or if Declarant no longer owns any Lots in Alder Point or has delegated such approval to the Association, the Board, shall establish a reasonable period of time for compliance.

2.04 Fences And Hedges. No fences, walls, hedges or barriers shall be permitted upon Lots or adjoining property lines except as follows:

All fences must be approved by Declarant, or if Declarant no longer owns any Lots in Alder Point or has delegated such approval to the Association, the Board, in writing.

(a) Walls, fences, or hedges located along the side property lines of Lots not abutting Open Space Areas shall not exceed six feet (6') in height above ground level.

(b) Notwithstanding anything in this Declaration to the contrary, no Owner shall have the right to erect a fence within or across any easement area shown upon the Final Plats of any plats within Alder Point without the prior consent of the City or utility company or companies for whose benefit such easement runs. Any fence erected within or across an easement area without such consent may be taken down by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Lot Owner to restore or repair such fence. Declarant and Association shall have the right to remove any unauthorized obstructions or structures placed or erected on the Easement Areas and the right to restore any changes made by any Lot Owner. Lot Owner shall reimburse Declarant and Association for the cost incurred from removal of any unauthorized obstructions and restoration of the easement area.

(c) The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. No chain link fence shall be permitted unless it is black vinyl coated fence. All fences shall be kept in good repair and attractive appearance.

(d) No fences shall be built forward of the center line of the single-family home. All fences shall be either wood, vinyl, decorative wrought iron, or black vinyl coated chain link. All wood fences shall be natural in color, stained, or painted in soft, earth-tone colors so as to blend in with the terrain.

2.05 Mailboxes. If required by the City ordinances or the United States Postal Service regulations, Declarant shall install "cluster-style" mailboxes to serve groups of the Lots, substantially in accordance with the requirements of such ordinances or regulations, which mailbox, upon installation, shall become the property of the United States Postal Service without any further deed or transaction. Thereafter, the United States Postal Service shall maintain, repair and replace said mailbox. If the United States Post Office fails to maintain, repair or replace said mailbox, then the owners of each Lot may erect individual mailboxes in the public right-of-way adjacent to their property (or across the street from the Lot on the side of the street on which mail delivery is made) such that the front of the mailbox is at least six inches (6") back of the curb and the mail box is installed in such a manner so as not to lean or tilt. All such mailboxes and mailbox poles serving the Units shall be of a uniform style and appearance adopted in writing by Declarant, or another equivalent mailbox or mailbox pole approved in writing by Declarant, or once the Declarant has relinquished control of the appointment of the Board, adopted or approved by the Board, which list of approved mailboxes and approved mailbox poles shall be kept on file with the Association and shall be uniformly applied. In the event there is any change in the approved style and appearance of a mailboxes or mailbox poles to be used in Alder Point, then all existing mailboxes and mailbox poles may continue to be used as long as they are maintained in good condition and repair, but any replacements of such mailboxes or mailbox poles shall conform to the revised criteria for mailboxes and mailbox poles.

2.06 Playhouses, Utility Buildings and Other Accessory Structures. Playhouses, utility buildings, storage sheds or other similar structures shall be permitted; provided that the exterior and the roof of any such structure shall be constructed of the same material, have the same color and appearance as the residential dwelling on the same Lot and are located only in rear yards. No such improvements shall be located closer than thirty-five feet (30') from any lot line.

2.07 Driveways. No single-family home shall be constructed, altered, or maintained on any Lot unless it has a driveway from a street running to the single-family dwelling. All parking and driveway areas shall be hard surfaced, using a suitable thickness of Portland cement, or clay or concrete interlocking pavers installed in a manner suitable for vehicular traffic.

2.08 Sidewalks. Except as hereinafter expressly provided to the contrary, five-foot (5.0') wide public sidewalks are required within the public right-of-way along all public streets abutting Lots on one side of the public right-of-way, as shown on the Final Plat for such portion of the development, provided, however, Declarant may allow a lesser width of sidewalk for such distance as necessary to avoid a conflict between sidewalk and any fire hydrants. At the time a building is built upon such a Lot, the Owner of the Lot shall be responsible for construction of the public sidewalk along the portion of public street frontage(s) abutting said Lot and within any sidewalk easement areas on such Lot according to City specifications. Declarant shall have no obligation to a purchaser of a Lot to install sidewalks.

2.09 Garbage Cans and Equipment; Outside Storage; Holiday Displays. No trash receptacles, garbage cans or recycling bins shall be permitted to be located upon a Lot unless hidden by an attractive screen, except that garbage cans, trash sacks, recycling bins, yard refuse bags and other materials for collection by an authorized refuse collector may be placed at the pickup area designated by the City or its authorized refuse collection company on the evening of the day before the scheduled collection and may remain until the evening of the day of the scheduled collection of the same. Items such as compost containers, lawn or garden equipment, building materials, and other similar items shall be placed out of public view. Firewood shall not be stored on the front or side of a house. Stacked firewood in excess of 4' long by 3' high shall be adequately screened from view and must be stacked in the rear yard and be at

least twenty feet (20.0') from any rear or side yard lot line. No material of any kind whatsoever may be stored in the front yard or side yard of a house (except that garden hoses may be stored in a side yard adjacent to an outside faucet if neatly coiled or contained on a hose reel), and no material of any kind shall be stored in a rear yard unless appropriately covered or screened from view by neighbors. No clothes lines shall be permitted. No clothing, rugs or other items shall be hung on or from any railing, landscaping or window. All repair of motorcycles, automobiles or other vehicles shall be done out of public view. No exterior holiday decorations shall be erected more than six (6) weeks prior to the holiday and all exterior holiday decorations shall be removed within three (3) weeks following the holiday. If the Owner of a Lot has not removed such holiday display within fifteen (15) days after such Owner receives written notice from the Declarant, the Association or from any Owner within five hundred (500) feet of such Lot, the Declarant or the Association shall have the right and easement to enter upon the premises and remove and dispose of the holiday display at the expense of the Owner of the applicable Lot where such holiday display is located, and shall have the right of action against the Owner of the applicable Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Dallas County, Iowa, until such amount, plus the reasonable costs, including attorney's fees of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid.

2.10 Motor Vehicles, Boats, Recreational Vehicles, Trucks and Tents. No inoperable vehicle, and no camper (including fold down camper), motor home, boat, tractor, trailer, three-quarter ($\frac{3}{4}$) ton or larger truck, bus, snowmobile, or all-terrain vehicle, shall be parked or maintained on any Lot (except inside a garage) or on the public street adjacent to any Lot for a period of longer than three (3) consecutive days or for longer than a total of thirty (30) days in any calendar year. No tent shall be maintained on any Lot for longer than a total of thirty (30) days in any calendar year and no longer than three (3) consecutive days.

2.11 Temporary Structures; Mobile Homes. With the exception of temporary sales offices placed by Declarant or its agents, there shall be no temporary structures or partially completed structures shall be erected or occupied on any Lot and no home or other building shall be moved onto any Lot from outside Alder Point. No mobile homes shall be permitted to be located upon or occupied on any Lot at any time.

2.12 Swimming Pools. Hot tubs and below-ground swimming pools are allowed provided that any hot tubs which are not below ground are skirted in wood or other materials approved, in writing, by Declarant, or once Declarant has relinquished control of the appointment of the Board, adopted or approved by the Board, which list of approved materials shall be kept on file with the Association and shall be uniformly applied. In the event there is a change in the approved materials for hot tubs, then all existing hot tubs that contain previously approved material may continue so long as such materials are maintained in good condition and repair and all replacements of such material shall conform to the new criteria. All swimming pools and hot tubs shall be located only in rear yards. Any outdoor hot tub must be located within ten (10) feet of the dwelling. No above-ground swimming pools are allowed. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or any other purpose.

2.13 Satellite Dishes. Satellite dishes or parabolic devices in excess of 22" in diameter used to receive television or other signals from satellites shall not be permitted. Declarant, or once Declarant has relinquished control of the appointment of the Board of the Association or delegated this responsibility to the Association, the Board of the Association, may increase or decrease the permitted size of satellite dishes or parabolic devices by a written notice of Declarant or resolution of the Board of the Association which shall be kept on file with the Association and shall be uniformly applied, except that any previously lawfully existing satellite dish or parabolic device that is in excess of the newly established maximum

diameter for such devices may be maintained and repaired, but not replaced. The satellite dishes or parabolic devices shall be mounted on the rear elevation or the rear half of the side elevation only. In no event shall a satellite dish or parabolic device be mounted on the front elevation or the front half of a side elevation.

2.14 Towers and Antennas. No extension tower, projection tower, receiver or antennas of any kind shall be constructed or maintained on any Lot or on the exterior of any building on a Lot.

2.15 Livestock and Poultry Prohibited; Exterior Animal Houses. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that pets, specifically dogs, cats, fish and birds may be kept, provided they are not kept, bred or maintained for commercial purposes and the Owner complies with the restrictions set forth in this Section 2.15. Owners shall not keep more than two (2) dogs, or two (2) cats, or one (1) of each a dog and a cat at one time on the Lot. There shall be no weight restrictions on the pets. Any breeds that have been determined by local municipal, county and state laws, regulations, or ordinances to constitute dangerous breeds, or animals that endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to other Owners in the sole discretion of the Board shall not be kept on any Lot. Any person owning or keeping a pet shall be responsible for the care and control of, and shall at all times clean up any waste or excrement from such pets on any common areas or other Lots. Failure to do so in a prompt or responsible manner shall result in a fine or special assessment by the Association against such Lot on which such pet is kept. Dogs shall be kept on a leash or otherwise confined whenever outside a residence or enclosed portion of the Lot and Owners shall bear full responsibility for animals not under leash. No animal shall be chained or otherwise restrained outside or in the garage. The Association may, by rules and regulations, prohibit or further limit the raising, breeding or keeping on any Lot, front lot or rear lot of any pet.

Animal runs and animal houses shall not be permitted unless they are located at the rear of the house or garage and abut the house or garage. All animal houses, animal runs and animal shelters shall be screened with landscaping so that they are not visible (i) to neighbors, (ii) from the street or (iii) from any Open Space Area. Any animal house or animal shelter shall have the same external appearance, color and roof material as the single-family home or townhome situated on the Lot. No animal house, animal shelter or animal run shall exceed twenty-five (25) square feet in area.

2.16 Sales Office. Declarant reserves the right to maintain one or more Units as a model or a sales and display office for itself, for its marketing firm, and/or for builders of homes within its plats; display or post signs of any type or size which are a part of the development and marketing of Alder Point; and to have agents and employees equipment and material on any Unit used as a model or sales office.

2.17 Utilities and Utility Meters. All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground. Utility meters shall be hidden architecturally or through the use of remote reading devices. No private wells or septic systems shall be permitted on any Lot. No window mounted heating or air-conditioning units are permitted.

2.18 Security Lighting. Security lighting for driveways, parking and other external areas shall be designed, located and directed in a fashion, which will avoid direct lighting onto adjoining Lots. Other than security lighting, no light poles are permitted on any Unit or Lot, except for decorative lights in the back yards for pool lighting, unless specifically approved by Declarant, or if the Declarant no longer owns any lots or has delegated such consent to the Association, by the Board of the Association.

2.19 Noxious Activities. No noxious or offensive activity, noise or odors shall be permitted on or to escape from any Lot, nor shall anything be maintained or done thereon which is or may become an annoyance or nuisance, either temporarily or permanently.

2.20 Maintenance of Lot. The Owner of any Lot, whether vacant or improved, shall keep the Lot free of debris and shall keep the Lot mowed so that the grass or weeds do not exceed six (6) inches in height. Each Owner of a Lot shall cut such grass or weeds and/or remove such debris within fifteen (15) days after such Owner receives written notice from the Association or from any Owner within five hundred (500) feet of such Lot. If the grass or weeds are not mowed within fifteen (15) days of receiving notice, the Association shall have the right and easement to enter upon the premises and mow or cut the weeds or grass or remove the offending debris at the expense of the Owner of the Lot where such grass or weeds are not so mowed or such debris is located, and shall have a right of action against the Owner of such Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Dallas County, Iowa until such amount, plus the reasonable costs, including attorney's fees of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid.

2.21 Construction Clean Up and Maintenance. Each Owner shall confine all of its construction activities solely to its Lot, shall keep its construction site clean, shall prevent any damage to any of the Declarant Improvements constructed or to be constructed by Declarant or by anyone else, and shall prevent any dirt, construction debris or other material from its Lot from being washed, blown, thrown, dumped, deposited or otherwise getting into the storm sewers, any storm water detention ponds, any overland flowage ways, the public streets, the public sidewalks or trails, the Open Space Areas, or onto any other Lot in Alder Point. Weekly clean up of trash and debris is required. During construction, the Owner shall install and maintain silt fences or equivalent erosion control on the downhill property line(s) from construction on its Lot. Owners are responsible for their contractors or subcontractors. Such Owner shall promptly repair any such damage and restore all such facilities, other Lots and public streets to their condition immediately prior to such damage, destruction or deposit of dirt, construction debris or other material. If an Owner fails to adequately keep its construction site or the street clean or fails to repair any such damage and restore such facilities, other Lots or public streets, and such failure continues for more than three (3) days after written notice from the Declarant in whose plat such Lot is located or the Association, then such Declarant or the Association shall have the right and easement to enter upon the premises and perform such clean up, repair or restoration at the expense of the Owner of the Lot where such construction site is not adequately maintained or whose construction activity caused dirt and debris to be deposited upon the Lots of others or the public streets, and shall have a right of action against the Owner of such Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum, or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Dallas County, Iowa until such amount, plus the reasonable costs, including attorney's fees, of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid.

2.22 Unimproved Lot. Bare Lots must be sodded or seeded.

2.23 Requirement and Limitations with Respect to Easements Located upon an Owner's Lot. Easements for the installation and maintenance of sanitary sewers, public utilities, storm sewers, overland flowage areas, snow storage, and drainage ponds and related facilities, water mains, and/or ingress/egress are reserved as shown on the recorded plats of any portion of Alder Point as the same hereafter are filed from time to time, or any replat of any portion thereof. The Owner of any Lot in Alder Point shall, at such Owner's expense, keep and preserve that portion of such easements within such Owner's property, at all times, in good condition, and shall neither erect nor permit erection of any building or structure of any kind nor permit any growth of any kind within such easement area nor change the grade of any such easement area in any manner that might interfere in any way with the use, maintenance, repair, restoration or replacement of

any of the utility services, drainage, or sidewalks located in said easement area, without the prior consent of the City, or utility company or person or entity for whose benefit such easement runs. Any such building or structure erected, growth permitted, or change in grade made within an easement area without such consent may be removed or regraded by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Owner to restore, repair or replace such building, structure, growth or change in grade.

2.24 Signage. Signage within Alder Point impacts the aesthetics of the neighborhood and property values. All signage shall meet the following requirements and restrictions:

(a) In connection with the development of any plat within Alder Point, Declarant, or any other developer of a particular plat, may erect project signage, real estate signage, financing signage, contractor, supplier or subcontractor signage related to construction and financing of such plat development and sale of the developed within such plat; provided, however, all such signage, including, but not limited to, the size, location and materials, shall be subject to the written approval of Declarant or if Declarant no longer owns any Lots in Alder Point or otherwise delegates this responsibility to the Association, the approval of the Board.

(b) In connection with the construction of any residence or building upon any Lot in Alder Point the Owner or person constructing such residence or building may erect project signage, financing signage, contractor, supplier or subcontractor signage, or real estate signage related to the construction and financing of such residence or building and the sale of such residence or sale or lease of such building; provided, however, none of the foregoing signs shall be larger than 30" wide by 24" high without the written approval of Declarant or if Declarant no longer owns any Lots in Alder Point or otherwise delegates this responsibility to the Association, the written approval of the Board.

(c) Once a Unit is sold and occupied as a residential dwelling unit, signage on that Unit shall be approved in writing by Declarant or, after Declarant delegates such function to the Association or no longer owns a Lot in Alder Point, approved by the Board. Signs permitted by Declarant or the Board shall only be displayed for such time as authorized by Declarant or the Board, as applicable. Approved signs shall be limited to no more than a 30" wide by 24" high yard sign and shall be professionally constructed. No hand painted signs will be allowed. Except for address and owner identification signs, no signs shall be erected on any building elevation, erected so that it is visible through window or glass openings or, except for vehicles with professionally made business signage on the vehicle, attached to vehicles parked within the neighborhood. Declarant reserves the right to display signs without obtaining prior written consent from the Board.

ARTICLE III **PRIVATE EASEMENTS**

3.01 Landscaping Features.

(a) Declarant hereby grants to the Association, for and on behalf of the Owners of all Lots within Alder Point, an easement for the purpose of installing, maintaining, operating, repairing, replacing and removing, at its sole discretion signage, flags, other entrance features and landscaping in, on, over, and under such easement areas as are dedicated for such purposes by the Association on the Common Elements.

3.02 Ingress/Egress Easement for Future Access to be Conveyed to and Maintained by the Association.

(a) Various Outlots may be developed as Open Space Areas within the Alder Point development and if so developed, will be conveyed to the Association. These areas shall be developed with landscaping, and may be developed with playground equipment, play fields, benches, garden areas or other amenities as determined by the Developer or the Association. These Open Space Areas shall be subject to an easement that is hereby granted to the Owners of Lots within Alder Point for the use and enjoyment of the residents of Alder Point and their family members and guests under such written rules and regulations as may be established, modified or repealed from time to time by the Declarant or the Association and distributed to the residents of Alder Point and kept on file with the Association, and the Association may impose reasonable fees for the use of some of the facilities if it determines such charges to be appropriate. The Association shall own, maintain and repair these Outlots and all Improvements located thereon, and may, in its sole discretion replace, relocate or demolish any Improvement that is no longer in good condition and repair. As the Open Space Area is to be maintained and managed in its natural state, neither the Declarant or the Association shall have a duty, affirmative or otherwise, to maintain the Open Space Area with regard to the management and maintenance of rodents, snakes, insects, or any other animal or insect that may inhabit the Open Space Areas and come on to a Lot Owner's property.

(b) No Lot Owner or Occupant may maintain the Open Space Areas or make any improvements to the same. No dumping of trash, garbage, sewage, grass clippings, landscaping debris, sawdust, concrete or other construction debris, and no placement of any unsightly or offensive material shall occur upon the Open Space Areas, except as is temporary and incidental to the bona fide improvement of the Open Space Area by the Declarant or Association in a manner consistent with its classification as an Open Space Area. In the event a Lot Owner or Occupant, modifies the Open Space Area in any way, such cost to Declarant for reseration to its original state shall be the sole and absolute cost to Lot Owner or Occupant.

(c) Declarant, for so long as it owns any portion of Alder Point, reserves to itself and its successors and assigns, the right to grant perpetual, alienable easements under, through and across any of the Open Space Areas for the construction, maintenance, repair and replacement of and including but not limited to water mains, sanitary sewer lines, storm sewer, surface water drainage facilities, overland flowage ways, or snow storage areas, to be granted to the City or any public utility easements for the construction, maintenance, repair and replacement of any electrical service, natural gas service, telephone service, cable television service or data transmission service to serve or extend service of the same to any Lots in Alder Point. These reservations and rights expressly include the right to cut trees, bushes, or shrubbery, rights to change the grade of the Open Space Area, or to take any other similar action reasonably necessary to provide economical and safe utility installation and maintain reasonable standards of health, safety and appearance; provided that Declarant shall cause the surface of such Open Space Area and any improvement in such Open Space Area that is damaged as a result of the use of such easement area to be restored to a similar condition to prior to such work or shall place the burden for such restoration upon the grantee of such easement. This right shall not create any obligation on the part of Declarant to provide or maintain any such utility or service.

3.03 Stormwater Management Facilities Maintenance Agreement. There exists an easement for constructing, reconstructing, repairing, and maintaining the Detention Basin located on Outlot Y (the "Detention Basin") as further described in that certain Stormwater Management Facilities Agreement ("Stormwater Management Agreement") entered into by and between the Association, and HRC Alder Point, LLC, and filed of record in Dallas County, Iowa, Recorder's Office. Alder Point receives the benefit of the Detention Basin and shall be responsible for the cost of such maintenance, repair and replacement of the Detention Basin as provided in the Stormwater Management Agreement.

(a) Every Owner hereby consents to the Stormwater Management Agreement, the Facilities Agreement and the Facilities Maintenance Agreement (collectively the "Agreements"), and consents to sharing the costs of the maintenance, replacement and repair as provided therein. The common expense of the Agreement shall be prorated to each Owner based upon the same calculations as provided in Article

V, Section 5.03 for the rate of assessments. The common expenses set forth in this Section shall be part of the assessments levied by the Association provided for in Article V.

(b) Every Owner located in future plats of the Property hereby consents to the Storm Water Facilities Easement and Stormwater Maintenance Agreement recorded with the future plats and consents to sharing the costs of the maintenance, replacement and repair as provided therein. The common expense of the Agreements shall be prorated equally to each Owner among such Lots located in future plats of the Property. The common expenses set forth in this Section shall be part of the assessments levied by the Association provided for in Article V. This section may be amended to add the Agreements with future plats.

If the Association or the Owners fail to abate any nuisance by repairing, reconstructing, grading, dredging and replanting, as the case may be, as necessary to restore such facilities into substantial compliance with the Stormwater Management Plan (as set forth in the Agreements) within a reasonable time after receipt of notice from the City, the City may cause such work to be done to abate the nuisance, and assess the reasonable and necessary costs of such work, including the cost of materials and equipment, as a special assessment upon the Property as set forth below:

The total reasonable and necessary costs of any corrective action taken by the City to restore the Stormwater Management Facilities to compliance with the Stormwater Management Plan shall be allocated against the Lots prorated in accordance with the calculations provided in Article V, Section 5.03.

The share allocated to each lot and parcel within the Property shall be assessed against the Lot or parcel as a special assessment and shall be a lien on the property, billed and collected as ordinary taxes.

3.04 Surface Water Flowage Easements. The topography of Alder Point is such that surface water may flow from certain Lots onto other Lots. In regard to all matters concerning surface water, each Lot shall be subject to such easements as may exist for the flowage of surface water under the laws of the State of Iowa, as may be in effect from time to time, and all Owners shall have such rights and obligations with respect thereto as may be provided by such law.

3.05 Storm Sewer Easement. Storm Sewers are located on certain Lots within Alder Point. In regard to all matters concerning storm sewers, each Lot shall be subject to such easements as may exist for overland stormwater flowage purposes under the laws of the State of Iowa, as may be in effect from time to time, and all Owners shall have such rights and obligations with respect thereto as may be provided by such law.

3.06 All of These Easements Are Subject to Concurrent Public Utility Easements. All of the easements granted in this Article III are subject to the following concurrent easements granted in part or all of these respective easement areas: (a) any sanitary sewer easements, snow storage, storm sewer, water main easement, and/or overland flowage easements, granted to the City, and (b) any public utility easements granted to the electric company or companies providing electrical service within the City, to the natural gas company or companies providing natural gas services within the City, to the telephone company or companies providing telephone service within the City, to the cable television company or companies providing cable television service within the City, and to the data transmission company or companies providing data transmission services within the City.

3.07 Construction of Certain Improvements and Amenities to Alder Point by Declarant. Any Declarant Improvements set forth on the Final Plat or installed by the Association, the Association shall operate, maintain, repair, restore and replace all such Declarant Improvements. Declarant shall execute such documents, including, but not limited to, bills of sale to convey title to any of the Declarant Improvements,

but not the land upon which they lie, to the Association as may be necessary or desirable to enable the Association to fulfill the duties and obligations delegated to the Association by this Declaration.

3.08 Conveyance of Lots Prior to Completion of Declarant's Improvements. Declarant may convey any Lot in its plats in Alder Point prior to completion of the Declarant Improvements to be made to Alder Point pursuant to Section 3.07 of this Declaration. In such event, Declarant shall have an easement to go on such Lot to the extent necessary to complete construction of the Declarant Improvements.

Declarant and the Owner of any such Lot conveyed prior to substantial completion of such Declarant Improvements to Alder Point shall use all reasonable efforts to cooperate and coordinate their respective construction work to the extent reasonably practicable so that each may undertake construction at the same time; provided, however, the Owner of such Lot may not undertake any construction work that materially interferes with the ability of Declarant to complete the Declarant Improvements, that materially delays Declarant in the completion of the Declarant Improvements, or that increases the cost to Declarant of constructing the Declarant's Improvements.

ARTICLE IV **MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

4.01 Membership. Every Owner of a Lot in Alder Point shall be a member of the Association. A person who is not an Owner of a Lot in Alder Point may not become a member in the Association and will not be allowed access or use of any Declarant Improvements, other than as a guest or invitee of a member (which shall be subject to the Articles of Incorporation, Bylaws of the Association, and rules and regulations established by the Association from time to time), unless and until such person becomes the Owner of a Unit in Alder Point and becomes a member of the Association.

4.02 Voting Rights. The voting rights of members and the reserved rights of the Declarant are specified in the Articles of Incorporation and Bylaws of the Association.

4.03 Authority and Obligations. The Association through its Board, shall have the right, power and authority to:

- (a) provide for the enforcement of this Declaration;
- (b) borrow money and own, mortgage, pledge and convey real property and personal property;
- (c) provide for any operation, maintenance, repair, reconstruction, restoration, replacement, or improvement of the Declarant Improvements to Alder Point or any Improvements hereafter made by the Association;
- (d) provide for the installation, maintenance and care of landscaping and project signage within Alder Point;
- (e) provide for any operation, maintenance, repair, reconstruction, restoration, replacement, or improvement of any recreational facility, constructed by Declarant or the Association in the Common Areas;
- (f) make additional common improvements for the benefit of Alder Point;
- (g) in its discretion, perform services on behalf of the Owners of one or more of the Lots within Alder Point;

- (h) hire accountants, architects, contractors, lawyers, managers, employees, and such other persons as necessary or desirable to carry out its duties;
- (i) purchase such insurance as may be reasonable, including, but not limited to, general liability insurance, property and casualty insurance and officers and directors coverage;
- (j) 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;
- (k) establish rules and regulations for the use of Association property and easement areas which are established for the benefit of the members of the Association by members of the Association and their guests and invitees, which may include remedies and the imposition of reasonable fines for the violation of such rules and regulations;
- (l) otherwise establish such procedures and policies as may be necessary or deemed desirable to provide for the general welfare of the Owners and Occupants of Alder Point, in accordance with the spirit and letter of this Declaration, including the power to make variances in this Declaration, but only in accord with the intent and purpose of Section 1.01 above; and
- (m) do such other things as are reasonable or necessary to carry out its obligations hereunder or under any agreement with any Owner of any Lot.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

5.01 Creation of Lien and Personal Obligation. Declarant hereby covenants, and each Owner of a Unit 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 of a Unit set forth elsewhere in this Declaration, together with late charges, costs and reasonable attorney's fees related to collection of such charges or enforcement of this Declaration or any of the rules and regulations promulgated pursuant to this Declaration shall be a charge on the Unit of such Owner and shall be a continuing lien upon such Unit against which each such assessment or charge is made senior to all liens except the first mortgage of record, any ad valorem taxes, and any special assessments levied by the City. Such assessment or charge, together with late charges, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of the Unit at the time when the assessment or charge fell due. The personal obligation for delinquent assessment or charge, together with interest, costs and reasonable attorney's fees, shall not pass to said Owner's successor in title unless expressly assumed by them.

5.02 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 alteration of the Declarant Improvements to Alder Point or the Improvements hereafter constructed by the Association as provided in this Declaration, insurance coverage of the Association and its property, any legal or other costs of enforcement of this Declaration, and for such reasonable reserves as the Board 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.

5.03 Personal Liability of Unit Owners for Assessments. The general assessments provided for herein shall commence as to each Lot Owner, by his acceptance of a deed or possession thereof. The Board of Directors shall fix the amount of the general and special assessments against each Lot at least thirty (30) days in advance of their effective date. Written notice of the general assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

5.04 Procedures. All assessments shall be made in the manner and subject to the following procedure, to wit:

(a) Notice of all assessments may be given by e-mail address or by mail addressed to the last known or usual post office address of the holder of legal title of the assessable property and deposited in the United States mail with postage prepaid, or may be given by posting a brief notice of the assessment upon the assessable property itself.

(b) Every assessment shall become due and payable within thirty (30) days after notice is given as hereinabove provided, unless the assessment by its own terms provides for payment in monthly, quarterly or semi-annual installments, in which case each such payment shall be due as stated in such notice. From and after the date when said payment is due, it shall bear interest at lesser of (i) the rate of twelve percent (12%) per annum, or (ii) the maximum rate allowed by law, until paid and such payment and interest shall constitute a lien upon the assessable property and said lien shall continue in full force and effect until the assessment is fully paid. The Board may also impose a late charge in such amount as it shall establish from time to time and set forth in any notice of assessment to defray the Association's administrative costs associated with and collecting delinquent assessment payments. At any time after the passage of the resolution levying an assessment and its entry in its minutes, the Board may, in addition, execute and acknowledge with respect to any assessable property and cause same to be recorded in the Recorder's Office for Dallas County, Iowa, and the Board may, upon payment, cancel or release any assessable property from the liability of assessment (as shown by recorded instrument) by executing, acknowledging and recording (at expense of the Owner of the property affected) a release of such assessment with respect to any assessable property affected, and the Board shall cause to be noted from time to time in the minutes of their proceedings, the payment made on account of assessments. Notwithstanding any other provision herein, the Association may bring an action at law against the Owner personally obligated to pay such assessment, or foreclose the lien against the assessable property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment, the cost of preparation, and filing the petition in such action including reasonable attorney's fees. No Owner of assessable property may waive or otherwise be relieved of liability for the assessments provided for herein by non-use of the common areas or facilities or abandonment of its assessable property.

5.05 Initiation Assessments. The first purchaser of each Single Family Lot, other than the Developer, shall be subject to an initiation assessment payable to the Association at the time of closing for the start-up of the Association in an amount equal to two full annual assessments as set by the Board of Directors. The Association may use the initiation assessment for any of the purposes set forth in this Declaration.

5.06 Special Assessments. In addition to the monthly assessments and initiation assessment 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 or replacement 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 assessments shall have the assent of a majority of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.07 Fines. The Board of Directors may adopt any schedule of fines or make a determination of fines as a remedy for violation of the rules and regulations of the Association or this Declaration, then the imposition of any such fine after notice and a hearing before the Board of Directors shall be a special assessment against the Owner found to be in violation and the Lot owned by such Owner.

ARTICLE VI
GENERAL PROVISIONS; DURATION OF DECLARATION

6.01 Specific Enforcement of Restrictions. Declarant, the Association and each Owner of a Lot in Alder Point that is subject to the terms and conditions of this Declaration shall have the right to enforce this Declaration and each and every covenant, condition, easement, provision, restriction and term of this Declaration and in the event of the breach of any such covenant, condition, easement, provisions, restriction or term contained in this Declaration, Declarant and each such Owner shall have the right to exercise all rights and remedies available at law or in equity. All Owners of Units within the Alder Point covenant and agree, by acceptance of a deed to such Unit, 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 or the Board. All remedies provided for in this Declaration or which are otherwise available at law or in equity shall be cumulative. Neither Declarant, the Association nor any Owner of a Lot that is subject to the terms of this Declaration shall have any liability to any person or entity for any failure to enforce any provision of this Declaration.

6.02 Breaches Deemed to be a Nuisance. Every act or omission that violates, in whole or in part, any of the covenants, conditions, easements, provisions, restrictions and terms contained in this Declaration is hereby declared to be a nuisance, and every remedy allowed by law or equity therefore shall be applicable against the party who so violates this Declaration and may be exercised by Declarant or by any Owner of a Lot which is subject to this Declaration. Association may assess fees for breaches deemed to be a Nuisance.

6.03 Attorneys Fees. In the event, in the reasonable opinion of the Board or Declarant, 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 obtaining and/or continuing an abstract of title to the Lot in question, the costs of any contemplated or actual legal proceedings, and the costs of 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 such Declarant or the Association 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. If such costs and attorneys' fees are not paid within ten (10) days from the date of written notice thereof by the Board or such Declarant to the Owner of such Lot, said fee and costs shall thereupon constitute a lien against the property in question, the same as the lien for the general assessment pursuant to the provisions of Article V hereof, and all interest and remedies applicable to such lien shall apply thereto.

6.04 Inspection. Declarant or representatives of the Association who are authorized by the Board may, from time to time, at any reasonable hour or hours, enter and inspect any Lot or Unit subject to this Declaration to ascertain compliance therewith.

6.05 Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner of a Lot which is subject to this Declaration to enforce any condition, covenant, easement, provision, restriction, reservation or term of this Declaration in any one instance shall not be deemed a waiver of the right to do so thereafter nor shall it be deemed to constitute a waiver of the right to enforce any other condition, covenant, easement, provision, restriction, reservation or term of this Declaration.

6.06 Rights of Third Parties. Nothing in this Declaration shall be construed so as to impose or create any duty or obligation on either Declarant, the Association or any Owner of any Lot which is subject to this Declaration to the benefit of the general public, third parties, or invitees, guests, employees, agents, principals or licenses of any Owner or Occupant of any Lot which is subject to this Declaration.

6.07 Liability. Neither the Declarant nor the Association, nor their respective members, shareholders, directors, managers, officers, employees, agents and representatives shall have any liability to or for damages of any sort to any Owner or Occupant or to any other person or entity for any exercise or failure to exercise any right or duty or obligation, if any, of Declarant or Association hereunder, or in any manner arising here from, or for the granting of approval or withholding of approval, required or permitted under the terms of this Declaration, except as in Declarant's or the Association's capacity as the Owner of any Lot that is subject to this Declaration. Provided, however, any Owner of a Lot which is subject to this Declaration may exercise any rights such Owner may have against the Declarant or Association or otherwise seek to enforce the conditions, covenants, easements, provisions, restrictions, reservations and terms of this Declaration against such Declarant or the Association, by an action in equity for specific performance or injunctive relief, to which Declarant shall be subject. These remedies of specific performance and injunctive relief, shall be the only remedies available against Declarant or the Association (except as in Declarant's or the Association's capacity as the Owner of any Lot that is subject to this Declaration) for any exercise or failure to exercise any right, duty or obligation, if any, of Declarant or Association hereunder, or in any manner arising here from, or for the granting of approval or withholding of approval required or permitted under the terms of this Declaration, all other remedies being expressly waived by acceptance of a deed to any Lot within Alder Point.

6.08 Condemnation. In the event of any partial taking by a governmental body or other entity that has the power of eminent domain that involves a taking of all or part of improvements to be constructed by Declarant, the Owners of each Lot agree, by acceptance of a deed to such Lot, whether or not it is so expressly stated in such deed, that the Association shall have and shall be deemed to have an interest in proceeds to be paid for such taking in the amount necessary to repair, restore or replace the portion of such improvements so taken as near as practicable to a functional whole to serve the same purpose after such taking as the facility so taken served prior to such taking. To the extent that the Association does not receive its own award or payment from the condemning authority or the award or payment received is inadequate to cover the cost of repair, restoration or replacement of such improvements, the Owners of each Lot receiving such award or payment shall pay to the Association pro rata from their awards or payments the amount necessary for the Association to complete such repair, restoration or replacement of such improvements. In the event that the awards or payments received from such condemnation are inadequate to pay the entire cost to complete such repair, restoration or replacement of such improvements, then the remaining cost shall be assessed against all Owners of Units in Alder Point in proportion to their respective assessment shares. All amounts due to the Association from the Owners of any Unit shall constitute a lien against the property in question, the same as the lien for the general assessment pursuant to the provisions of Article V hereof, and all interest and remedies applicable to such lien shall apply thereto.

6.09 Estoppel Certificates. The Association shall issue to any Owner of a Unit or to any mortgagee of, or purchaser from, any Owner of a Unit, an Affidavit Explanatory of Title or Estoppel Certificate in such form as may reasonably be requested stating any or all of the following information:

- (a) whether the Association knows of any default under this Declaration by the Owner of such Unit, and if there are known defaults, specifying the nature thereof;
- (b) the nature of any amounts owed to the Association by any Owner about whose Unit the request is made, and the nature of any amounts owed by the Association to the Owner about whose Unit the request is made;
- (c) the applicable share of any assessments for which the Owner about whose Unit the request is made is liable;
- (d) 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 Association claims any offsets or defenses to any amounts owed by it under this Declaration to the Owner of such Unit, and if so, the nature of such offsets or defenses; and
- (g) whether 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.

The Association shall be entitled to establish a reasonable fee for the provision of a certificate in accordance with the foregoing provisions and may condition the delivery of such certificate upon the payment of the applicable fee.

6.10 Covenants Binding and Running with the Land. Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and insure to the benefit of Declarant, the Association, and the Owners of each Lot in Alder Point, 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, and shall continue for the applicable periods specified in this Declaration.

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 be covenants running with the land for the full period specified in this Declaration without further action by either Declarant, the Association, or any Owner of any Lot in Alder Point. 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 Recorder for Dallas County, Iowa 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, in effect throughout the applicable periods specified in this Declaration, then:

- (a) the Association, or the Owners of the Lots acting jointly or severally, shall file all verified claims necessary to keep all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration;
- (b) a verified claim filed by the Association or any Owner of a Lot in Alder Point shall be valid and binding upon the Association and all the then Owners of Units in Alder Point, (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 so continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods

specified in this Declaration in full force and effect, the Association and each Owner of a Lot 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 in the Office of the Recorder for Dallas County, Iowa, 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 unless, if such defect is in a claim prepared by any interested party, such defect is not corrected within thirty (30) days after notice of such defect to all interested parties;

(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 throughout the applicable periods specified in this Declaration in full force and effect, such interested party hereby waives and shall be deemed to have waived the right to, and be 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 Alder Point 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 Alder Point throughout the applicable period specified in this Declaration.

6.11 Duration. The easements granted in or pursuant to Article III of this Declaration or granted in any other Section of this Declaration, any other provisions of this Declaration expressly incorporated in Article III or such other Section of this Declaration to the extent applicable to such easements, 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, including any rights of assessment or for liens for the payment of costs associated therewith, shall continue in perpetuity, unless sooner modified or terminated as provided in Section 6.12 of this Declaration.

Except as provided in the preceding paragraph of this Section, the covenants, indentures, restrictions and reservations in this Declaration shall be for an initial term of twenty (20) years, and shall automatically renew for successive terms of ten (10) years each, unless sooner modified or terminated as provided in Section 6.12 of this Declaration.

6.12 Amendment of This Declaration. This Declaration may not be altered, amended, modified, supplemented or terminated, in whole or in part, except in writing and as provided in this Section.

Declarant may by written declaration signed and acknowledged by it and recorded in the Office of the Recorder for Dallas County, Iowa, alter, amend, supplement, add to, or terminate such conditions, covenants, indentures, restrictions and reservations of this Declaration, until the earlier of either occurrence: (1) the Declarant relinquishes its rights hereunder or (2) Declarant turns the Association over to the Owners, which shall be attempted by holding a turnover meeting within 120 days after Declarant no longer retains ownership of any Lot within Alder Point. In the event the Owners do not accept turnover of the Association at the turnover meeting, Declarant may maintain, at its discretion, its rights under this Declaration, including, but not limited to, act as the Board and the right to alter, amend, supplement, add to, or terminate such terms described herein, until such time as the Owners accept turnover or until Declarant appoints new members of the board and waives its rights hereunder.

Except as provided above, the Declaration may not be alter, amend, supplement, add to, or terminate such conditions, covenants, indentures, restrictions and reservations of this Declaration without two-thirds

approval from the Owners. No such alteration, amendment, modification, or change 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 Declarant Improvements to Alder Point and the power to levy assessments therefore or to eliminate the requirement that there be an Association unless some other person or entity be substituted for the Association and succeed to all of its rights and duties under this Declaration. It is expressly understood that no such alteration, amendment, supplement, addition, or termination shall require the consent of any Occupant (other than an Owner, and then for such Owner-Occupant only to the extent provided elsewhere in this Section) or any mortgagee of any Lot, or from the City.

6.13 No Public Dedication. Nothing contained in the Declaration shall be deemed to be a gift or dedication of any portion of Alder Point to general public, or for the general public, or for any public purpose whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the benefit of the Owners of the Lots in Alder Point and the purposes herein expressed.

6.14 Release Upon Sale. Subject to the provisions of this Section, if an Owner of a Lot in Alder Point sells, transfers, or assigns its Lot (other than as security for a loan), then it 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, and that such Owner shall give written notice to the Association of any such sale, transfer, conveyance, or assignment concurrently with the filing for record of the instrument effecting the same.

Notwithstanding anything in this Declaration to the contrary, it is expressly understood and agreed that any first mortgagee who shall have acquired title to any Lot, or portion thereof, through foreclosure or deed in lieu of foreclosure, shall not be personally liable for any obligations under this Declaration that arose with respect to the obligations of the Owner of such Lot prior to the date such mortgagee acquired title thereto; provided, however, that any existing lien or right to a lien against such Lot allowed by this Declaration or as a result of the enforcement of this Declaration with respect to matters occurring before such mortgagee so acquired title thereto and shall continue and remain in full force and effect.

6.15 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.

6.16 Time of Essence. Time is of the essence with respect to the performance of each of the conditions, covenants, terms and provisions of this Declaration.

6.17 Governing Law. This Declaration shall be construed in accordance with the laws of the State of Iowa.

6.18 Captions. The captions of the Articles, Sections and Subsections of this Declaration are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

ARTICLE VII **NOTICE**

All notices referenced hereunder shall be in writing and shall be deemed to have been given (a) when delivered by personal delivery, (b) when deposited in the United States Mail (postage prepaid), (c) when deposited with a nationally recognized courier, or (d) on the date sent by facsimile or email transmission. Notwithstanding the foregoing, turnover meeting announcements and annual assessment letters shall be sent via U.S. mail or certified mail.

IN WITNESS WHEREOF, HRC Alder Point, LLC has caused this Declaration to be executed this as of the day and year first above stated.

[signatures appear on the following page.]

