



WHEN RECORDED RETURN TO:

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SPACE ABOVE THIS LINE FOR RECORDER

**DECLARATION OF COVENANTS, CONDITIONS,
 EASEMENTS AND RESTRICTIONS
 APPLICABLE TO
 KEMPTEN CREEK BROWNSTONES**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS APPLICABLE TO KEMPTEN CREEK BROWNSTONES is made this 7 day of April, 2023, by **HRC KEMPTEN CREEK, LLC**, a Nebraska limited liability company (the "Declarant").

WHEREAS, Declarant owns the real property legally described in Exhibit A, situated in Douglas County, Nebraska, and wishes to develop brownstones upon a portion of such property; and

WHEREAS, Declarant 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 such brownstone development on the following described real property:

Lots 171 thru 205, inclusive, and Outlots "H" and "I" and "J" of Kempten Creek, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska; together with all easements and servient estates appurtenant thereto, and subject to (a) all easements, covenants and restrictions of record, and (b) zoning and other applicable building laws, ordinances, rules and regulations, (collectively the "Property").

NOW, THEREFORE, Declarants hereby declare 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

Section 1. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Kempten Creek Brownstones Homeowners Association that are on file with the Secretary of State of the State of Nebraska, as the same may be amended from time to time.

Section 2. "Association" shall mean and refer to Kempton Creek Brownstones Homeowners Association Inc., a Nebraska non-profit corporation, and its successors and assigns.

Section 3. "Association Responsibility Elements for Lots" shall mean the following:

- (a) The exterior surface of the Building upon a Lot, excluding windows, window wells, doors, patios, balconies, decks, light fixtures, vents, exhausts, and any improvements installed by Owner.
- (b) The structural portion of the Building upon a Lot, excluding the concrete slab.
- (c) The roof, siding, gutters, downspouts and foundations of the Building upon a Lot, excluding any decks, deck access and supports, and any improvements installed by Owner.
- (d) Any structural portion of common walls between residential structures upon Lots.
- (e) Any exterior lawn, landscaping located upon a Lot, excluding any gardens, plants or flowers installed by any Owner.
- (f) Driveways and sidewalks located upon a Lot.
- (g) Conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of a residential structure that carry any service to more than one Lot.
- (h) Any fences and piers installed by Declarant or the Association.
- (i) Any Street Trees.
- (j) The Common Area and Common Elements, including, but not limited to, the private storm and sanitary sewers, storm water drainage and detention areas, the Private Streets, street and park lighting and identification signs, entrance monuments and landscaping located in the Common Area or abutting street rights-of-way, except for any gardens, plants or flowers installed by any Lot Owner; in addition to any further obligations related to other Common Areas located within the greater Kempton Creek Subdivision, as agreed to between the Kempton Creek Homeowners Association, Inc. and the Association, if any.
- (k) Any and all of the above mentioned maintenance obligations of the Association are made subject to, and in accordance with, that certain Maintenance Agreement (the "Maintenance Agreement"), entered into on [_____], 2021, by and between the Kempton Creek Homeowners Association, a Nebraska not-for-profit corporation, Sanitary and Improvement District No. 603 of Douglas County, Nebraska (the "District"), and the City of Bennington, a municipal corporation in the State of Nebraska (the "City"). In the event of any conflict between this Declaration and the Maintenance Agreement, the Maintenance Agreement shall control.

Section 4. [Intentionally omitted]

Section 5. "Board of Directors" shall mean and refer to the Board of Directors of Association.

Section 6. "Building" shall mean and refer to any structure containing one or more single-family attached or detached dwelling unit(s) that may be constructed on a Lot or on several Lots and shall include any attached or detached garage building conveyed with the Lot.

Section 7. "Bylaws" shall mean and refer to the Bylaws of Kempton Creek Brownstones Homeowners Association, as adopted by the Board of Directors, as the same may be amended from time to time.

Section 7. "Common Area" shall include the private sidewalks, Private Streets, any publicly accessible water features or ponds, bike paths, portions of driveways, the signage, entrance feature and landscaping easements, described in Section 5 of Article VIII of this Declaration and any other common area so designated by Declarants.

Section 8. "Common Elements" shall mean all common water lines, sanitary and storm sewers, gas lines, electric lines and other utility service facilities located within the Property that serve more than one Living Unit from the connection between the public utility service and the meter or other point of separation to serve only a specific Living Unit, as well as any development identification signs, entrance monuments and Common Area landscaping, Street Trees, benches, fences, piers, the Private Streets, the common mailboxes, public sidewalks abutting the Property, and street and park lighting, if any.

Section 9. "Declarant" and "Declarants" shall mean and refer to HRC Kempton Creek, LLC and their successors and assigns.

Section 10. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Property is subject, as the same may be amended from time to time.

Section 11. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Property, or any portion thereof, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or successors to their interests.

Section 12. "Living Unit" shall mean and refer to any portion of a building situated upon a Lot and designed and intended for use and occupancy as a residence by a single family.

Section 13. "Lot" or "Lots" shall mean Lots 171 thru 205, inclusive, all in Kempton Creek, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Section 14. "Member" shall mean and refer to those persons entitled to membership as provided in this Declaration, the Articles of Incorporation of the Association, and the Bylaws of the Association.

Section 15. "Outlot" or "Outlots" shall mean Outlots "H", "I" and "J", all in Kempton Creek, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska. In particular, Outlot "J" shall be used for a detention basin and Outlots "H" and "I" shall be used as private streets serving the Lots, as shown on the Site Plan attached hereto as Exhibit B.

Section 16. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot that is a part of the Property, including contract sellers and vendees (deemed Co-owners), but excluding those having such interest merely as security for the performance of an obligation and excluding those having a lien upon the property by provision or operation of law.

Section 16. "Property" shall have the meaning set forth on Page 1 thereof.

Section 17. "Private Streets" shall mean and refer to Outlots "H" and "I", as shown on the Official Plat thereof, and any Lots created by further subdivision of the Property or any such Lots for purposes of private streets.

ARTICLE II **PROPERTY RIGHTS IN COMMON AREA**

Section 1. Obligations of the Association. The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Common Area conveyed to it and all improvements thereon, including, but not limited to the Common Elements, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management. The Association shall be responsible for the permanent and continuous ownership of Outlots H, I and J and shall be a party to a Maintenance Agreement with the City of Bennington and shall timely and properly comply with all of the duties and obligations thereof, including but not limited to the proper and continuous maintenance and upkeep of Outlots H, I and J which permanent and continuous ownership and maintenance obligations shall survive and shall continue after annexation by the City of Bennington.

No person other than the Owner of a Lot and/or the Owner's invitees shall have the right to enter upon, use or affect an Association Responsibility Element located within a Lot, except that the Association and its designates may enter upon and within a Lot and the Building located thereon at reasonable times for the following purposes:

- (a) Installation, maintenance, repair, removal, replacement, cleaning, or inspection of any Association Responsibility Element, Common Element, or Common Area.
- (b) Enforcement of any provisions of this Declaration or the Articles of Incorporation or the Bylaws or rules and regulations of the Association.
- (c) Mowing and maintenance of grass and landscaped areas.
- (d) Removal of snow from all driveways and sidewalks, excluding all porches.
- (e) In the event of an emergency, access within a Living Unit to the extent necessary (a) to determine whether the emergency involves an Association Responsibility Element or Common Element that is the responsibility of the Association, (b) to protect and preserve the Living Unit in the absence or inability of the Owner of such Living Unit to protect his or her own Living Unit, or (c) to protect and preserve adjacent Living Units or Association Responsibility Elements or Common Elements; provided that the Association shall take reasonable steps to protect and preserve the Living Unit and its contents after such access.

In the event that the need for maintenance or repair of any portion of the Common Area, the improvements thereof, or of any Association Responsibility Elements or Common Elements is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the cost of such maintenance or repair, shall be added to and become part of the assessment to which the Owner is subject, shall be a lien upon the Lot and Living Unit of such Owner, and shall become due and payable upon demand.

Section 2. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which may be delegated to the family members, lessees and guests of every Owner, (subject to any reasonable and nondiscriminatory rules and regulations which may be

enacted by the Association), and which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to suspend the voting rights of the Owner for any period during which any assessment against the Owner's Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations; provided, however, that nothing contained in this paragraph shall be deemed to deny an Owner access to and from the Owner's Lot;
- (b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by a majority vote of the Members;
- (c) The right and obligation of the Association to maintain sewer and other underground utilities located within the Property;
- (d) The right of the Declarant, its successors and assigns to designate, establish, grant, dedicate, install and/or maintain utility and drainage easements within the Common Area;
- (e) The right of Declarant to maintain a sales office, any number of model Living Units, easements for construction of unsold Lots by Declarant and Declarant's invitees;
- (f) The right, but not the obligation, of Declarant to provide in the Common Area, landscaping, signs, outdoor furniture and recreational equipment, decorative structures and necessary appurtenant utilities;
- (g) The Rules and Regulations promulgated and published by the Association's Board of Directors, the Articles of Incorporation of the Association, and the Bylaws of the Association; and
- (h) The right of the Association to mortgage any or all of the Common Area with the approval of a majority vote of the Members.

Section 3. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it shall convey title to the Common Area to the Association, prior to the sale of the first Lot, by warranty deed, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions of record or created by this Declaration, or granted to the City of Omaha, Nebraska or to the public utility companies furnishing electric service, natural gas service, telephone service, cable television service or data transmission service within the City of Omaha, Nebraska, and subject to a temporary construction easement hereby reserved by Declarant over, through, under and across the Common Area for the purpose of constructing the buildings containing the town homes to be developed upon the Properties. The Declarant hereby covenants for itself, its successors and assigns, that it from time to time and as it is subsequently determined, the fee title to the Common Elements that may have been constructed by Declarant, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions of record or created by this Declaration, or granted to the City of Omaha, Nebraska or to the public utility companies furnishing electric service, natural gas service, telephone service, cable television service or data transmission service within the City of Omaha, Nebraska.

Until the construction work on all Living Units within the Property, and appurtenant improvements incidental to said Living Units, is completed, Declarant or its assignee shall have the right to enter upon the Common Area for the purpose of completing such work and performing under applicable warranties.

Section 4. Use of the Common Area. The Common Area shall be used strictly in accordance with the provisions of this Declaration. No Owner shall obstruct or interfere whatever with the rights and privileges of other Owners or the Association in the Common Area, and nothing shall be planted, altered, constructed upon, or removed from the Common Area by an Owner, except by prior written consent of the Board of Directors. If an Owner violates this section, the Association shall have the right to restore the Common Area to the prior condition and charge and assess the cost thereof against the Owner who violates this section, and such cost shall become a special assessment and a lien upon the Lot and Living Unit of such Owner and shall become due and payable upon demand. The Association shall have the same rights and powers to collect the cost of such restoration as provided in Article IV for the collection of delinquent assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Area, the Association or the offended Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorney's fees as the Court may allow together with all necessary costs and disbursements incurred in connection therewith.

Section 5. Duration. The Common Area as described in Article I, Section 7, shall not be diminished and shall continue in perpetuity, unless this Declaration is terminated and the Common Areas are partitioned among the Owners and except by approval of all members of the Association subject to the provisions for dedication or transfer in Article II, Section 2(b) above and the right to mortgage in Article II, Section 2(h) above.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 1. Membership and Voting. 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. Subject to provisions of Section 2 of this Article, the Owners of a Lot 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, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 2. Declarant as Sole Voting Member. Notwithstanding any other provision of this Declaration, Declarant shall be the sole voting Member of the Association for so long as it holds title to any Lot, or until Declarant waives, in writing, its right to be the sole voting Member. As such sole voting Member, Declarant shall have the right to elect all Directors of the Association and to cast all votes as it deems appropriate. Each Owner by acceptance of a deed to a Lot shall be deemed to have released Declarant from all claims with respect to actions taken or not taken while Declarant controls the Association.

Section 3. Board of Directors. The voting Members shall elect a Board of Directors of the Association as prescribed by the Association's Bylaws. The Board of Directors shall manage the affairs of the Association.

Section 4. Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against the Member's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

Section 5. Notice of Member's Meetings. Unless the Articles of Incorporation or the Bylaws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5)

nor more than fifty (50) days before the date of the meeting, by or at the direction of the president or secretary, or the officer or persons calling the meetings, to each Member entitled to vote at such meeting. So long as Declarant is the sole voting member of the Association, no regular or special membership meeting of the Association need be held.

Section 6. Duration. No dissolution of the Association shall occur unless another association or equivalent entity has been created to succeed to the duties and responsibilities of the Association under this Declaration.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot 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: (1) monthly or annual assessments or charges, (2) special assessments for capital improvements and operating deficits, and (3) special assessments as provided in this Article IV, Article VI and Article VII; such assessments to be established and collected as hereinafter provided. The monthly or annual and special assessments, together with late charges, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with late charges, costs, and reasonable attorney's fees, shall also be the joint and several personal obligation of each person who was the Owner of such property at the time when the assessment fell due. Each Owner shall be responsible for a portion of such expenses equal to one over the number of Units completed for occupancy.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Property and for the improvement, maintenance, repair, replacement, removal and demolition of Association Responsibility Elements, the Common Elements and the Living Units situated on the Property and for other purposes specifically provided herein.

Section 3. Maximum Monthly Assessments. The maximum monthly assessment shall be established by the Board of Directors at the first Regular Meeting of the Board of Directors and the assessment shall include a pro rata portion of the amount of any real estate taxes and special assessments payable by the Association. Thereafter, the maximum monthly assessment may be increased effective January 1st of each year, beginning January 1, 2021, but such increase shall not be more than twenty percent (20%) greater than the maximum assessment for the previous year for the aggregate of all items included in the monthly assessment, except for insurance, property taxes on the Common Area and reasonable reserves for repair or replacement of Association Responsibility Elements or Common Elements, without a vote of a majority of Members who are voting in person or by proxy, at a meeting duly called for this purpose. The Board of Directors shall fix the monthly assessment at an amount not in excess of the maximum.

A portion of such monthly assessments may be set aside or otherwise allocated in a separate reserve fund for the purpose of providing repair, replacement, removal and demolition of the Common Elements, the Association Responsibility Elements, or any capital improvement that the Association is required to maintain. The Directors of the Association shall be responsible for establishing the funding levels required.

Once the Declarant or Association, as applicable, has given the Owners written notice of any change in the monthly assessment or any special assessment, the Declarant and Association shall not be required to submit monthly statements for assessments to any Owner. All monthly payments (and any

special assessments that can be paid on a monthly basis) shall be made on the first of each month. Any special assessments that cannot be paid on a monthly basis shall be due and paid as stated in the notice of such special assessment, which due date can be no sooner than thirty (30) days after such notice is mailed to the Owners.

Section 4. Special Assessments and Fines. 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 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 assessment shall have the assent of a majority of the votes of all classes of Members who are voting in person or by proxy at a meeting duly called for this purpose, with regard to class designation. If the Board of Directors adopts any schedule 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.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than five (5) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast twenty-five percent (25%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments (except for fines) must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments. The monthly assessments provided for herein shall commence as to each respective Lot on the date of conveyance to an Owner of a Lot with a completed Living Unit constructed thereon and for which a certificate of occupancy has been issued (with a pro rata portion of the monthly assessment being due from the Owner if the closing date is after the first of the month), and on the first of each month thereafter. LOTS OWNED BY THE DECLARANT THAT DO NOT HAVE COMPLETED LIVING UNITS CONSTRUCTED THEREON AND COMPLETED LIVING UNITS OWNED BY THE DECLARANT THAT ARE NOT SOLD, LEASED OR OCCUPIED OR THAT ARE USED AS MODEL UNITS OR SALES OFFICES SHALL BE EXEMPT FROM THE ASSESSMENTS DESCRIBED IN THIS ARTICLE IV AND THE ASSESSMENTS DESCRIBED IN ARTICLE VII. The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of monthly assessments. The insurance assessment provided for in Article VII shall commence as to each Lot on the date of conveyance of said Lot to an Owner (with a pro rata portion thereof for the first month if the closing date is after the first of the month). The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. 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.

Section 8. Effect of Nonpayment of Assessments. Any assessments not paid within fifteen (15) days of the due date may be assessed a late fee, in such amount to be determined annually by the Board of Directors (the "Late Fee"). Any such Late Fee on a delinquent payment shall also be part of the assessment against the Lot and subject to the lien for assessments created by this Declaration. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such 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 Elements or abandonment of the Owner's Lot. In addition to the Late Fee, the Association may charge any Owner a fee for any returned check or electronic payment, in an amount to be determined by the Board of Directors.

Section 9. Subordination of Assessments Liens. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The assessment, any late fees, interest, and administrative fee shall be paid prior to or at the closing of sale or transfer of any Lot. The sale or transfer of any Lot shall not terminate the assessment lien against such Lot; provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments against such Lot that became due prior to the date of such sale or transfer.

ARTICLE V **DECLARANT'S RIGHTS**

Declarant is irrevocably and perpetually empowered, notwithstanding any use restrictions or other provisions hereof to the contrary, to sell, lease, or rent Living Units not previously sold by the Declarant to any person and shall have the right to transact on the Property any business relating to construction, sale, lease, or rental of such Living Units and any recreation facilities including, but not limited to, the right to maintain models, offices signs, employees, and equipment and materials on the premises, and to use the Common Elements to show such Living Units. A sale or rental office, signs and all items and equipment pertaining to sales or rentals and other facilities furnished by Declarant shall remain Declarant's separate property. Declarant retains the right to be and remain the Owner of completed but unsold Living Units under the same terms and conditions as other Owners including membership in the Association save for its right to sell, rent or lease. Any such lease shall be in writing and remain subject to this Declaration, the Bylaws and any rules or regulations adopted from time to time by the Board.

Declarant reserves the right and is hereby vested with the sole control over all Common Area or Common Element landscaping, plantings and the like. Declarant shall have the right to change landscaping within these areas from time to time.

Declarant further reserves the right to convey, or cause the Association to convey, a portion of the Common Area if necessary due to encroachments thereon by any building. Declarant shall also have the right to add additional Lots and Common Areas to the Property.

The rights of Declarant shall continue 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 after Declarant no longer retains ownership of any Lot within Kempton Creek Brownstones. In the event the Owners do not accept turnover of the Association at the turnover meeting, Declarant may maintain, at its sole discretion, its rights under this Declaration until such time as the Owners accept turnover at a meeting.

ARTICLE VI **MAINTENANCE**

Section 1. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for, at the Owner's own expense, all maintenance and repairs of Owner's Lot and all maintenance, repair and replacement of all structures, improvements, and equipment located thereon including decorating and replacements within the Owner's Living Unit, including all interior wall coverings, floor coverings and ceiling and wall paint, dryer and roof vents, the heating and air conditioning systems, any partitions and interior walls appurtenant to such Living Unit, all elements of deck, porch or balcony spaces and all fixtures and equipment located within the Living Unit, except for the Association Responsibility Elements. The Owner shall be responsible for the maintenance, repair, and replacement of all windows in Owner's Living Unit (including the frame, trim, latch and other apparatus related to the window such as the window well), the doors leading into the Owner's Living Unit (including the frame, trim, hinges and other apparatus related to the door), and all electrical fixtures located on the exterior of the Owner's Living Unit, and any and all other maintenance, repair, and replacements of the improvements on the Owner's Lot unless otherwise provided herein, including the maintenance, repair and replacement of a spicket designed to serve a single Owner. The Owner shall also be responsible for the maintenance, repair, and replacement of all electrical wiring from the main electrical box to the Owner's Living Unit, notwithstanding the fact that such wiring crosses a Common Element or is located off-premises from the Owner's Lot. The Owner shall be responsible for maintaining exterior light fixtures of the Living Unit, including replacement of the light bulbs. The Owner shall be responsible for maintaining the irrigation system including replacement and winterization.

To the extent that equipment, facilities, and fixtures (including fences) within any Lot shall be connected to similar equipment, facilities, or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs, or replacements of or to any equipment, facilities, or fixtures affecting or serving other Lots.

In the event of damage or destruction of part or all of a Living Unit, the Association shall be responsible to repair or replace (a) any damaged or destroyed exterior walls of Living Units, including on the exterior side with an exterior finish substantially similar in appearance and color and with as good or better materials as the exterior materials that existed immediately prior to such damage and destruction (except the Association shall not be required to repair or replace any damaged or destroyed windows, window frames, exterior doors or door frames) (b) any damaged or destroyed common walls between Living Units, which common walls shall be finished on the interior side with dry wall, sanded, taped and primed, (c) any damaged or destroyed roof, by repairing or replacing such roof (excludes the interior side of ceiling of the top floor of the residence), (d) any damaged or destroyed structural framing, and (e) any damage or destruction to the structural foundation on which the Living Unit is located. The Association shall perform such work with materials and in a manner to provide the required fire rated construction between Living Units and on the exterior surfaces of Living Units. The Owner of such Living Unit shall be responsible to make all other repairs or replacements of any damage or destruction to such Living Unit. In the event that, after the Association has completed its repairs and replacements to the Living Unit, the Owner of the Living Unit does not promptly repair or replace damaged windows and exterior doors so as to make the Living Unit weather tight, secure and free from nuisance, then the Association may, but it is not required to, repair or replace such damaged windows and exterior doors in the name of the Owner of such Living Unit and the cost of such repair or replacement of damaged windows and exterior doors shall be added to and become a part of the assessments to which such Lot is subject.

Any repair or replacement of an exterior structure, improvement, or equipment (including, without limitation, electrical fixtures) shall match the original item that it repairs or replaces. All exterior structures, improvements and equipment (including, without limitation, decks and fences) shall be constructed in accordance with local ordinances and building codes.

Section 2. Maintenance of Driveways and Private Streets. The Association shall be responsible for the maintenance, including snow removal, repair, and repaving of all driveways, the Private Streets, the private sidewalks outside of any fenced areas appurtenant to each Lot and the public sidewalks abutting the Property, and for the maintenance and repair of any pedestrian walkways or sidewalks, constructed or to be constructed within the Property by Declarant for the benefit of all Owners of Lots. Driveways shall be maintained at all times in such manner as to provide ingress and egress, both pedestrian and vehicular, from each Lot to and from a public street or highway. The specification for replacement of any driveways, walkways or sidewalks shall be determined by the Board of Directors, or by an architectural committee composed of three (3) or more representatives appointed by the Board of Directors.

Section 3. Maintenance Obligations of Association. The Association shall maintain the driveways, the Private Streets, sidewalks, and street and park lights, lawns, shrubs (but excluding any gardens, plants, flowers or shrubs installed by any Owner and excluding patios, balconies, decks, vents, exhausts, windows, siding, window wells, doors, and any improvements installed by Owner), trees, recycling, trash removal and snow removal from the paved portions of the front walks for all Lots. The Association shall also provide all maintenance, repair or replacement of the Association Responsibility Elements for Lots and Common Elements, including but not limited to maintenance upon each Lot that is subject to assessment hereunder as follows: repair, replace and care for roofs, gutters, downspouts, exterior building surfaces and other exterior improvements,

In the case of lawns, shrubs, trees, and other elements of landscaping, the Association shall perform all necessary repairs, replacements, and maintenance thereof in a manner consistent with the level of maturity and development of the landscaping at the time that the repair, replacement, or maintenance activity occurs, except in the case of dead, mature trees, which will simply be removed. In any berm area of the development, the Association shall plant and maintain the berm area in a fashion that satisfies applicable zoning requirements. The Association shall paint the exterior building surfaces of all Association Responsibility Elements for Lots and Common Elements that when constructed were painted and that require paint when the Board of Directors, in its sole discretion, determines such painting is needed to maintain the same. Such exterior maintenance shall not include glass surfaces, doors and doorways, windows, window frames, or the operability of any garage doors. The Association shall be responsible for the permanent and continuous ownership of Outlots H, I and J and shall be a party to a Maintenance Agreement with the City of Bennington and shall timely and properly comply with all of the duties and obligations thereof, including but not limited to the proper and continuous maintenance and upkeep of Outlots H, I and J which permanent and continuous ownership and maintenance obligations shall survive and shall continue after annexation by the City of Bennington.

Section 4. Responsibility for Willful or Negligent Acts. In the event that the need for any maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessments to which such Lot is subject.

ARTICLE VII **INSURANCE**

Section 1. Casualty Insurance. The Association shall purchase a master casualty insurance policy or policies affording property special form coverage insurance for the Association Responsibility Elements

in an amount consonant with the full replacement value of any and all such Association Responsibility Elements. The Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Association, it may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the monthly maintenance assessment for each Lot on a pro rata basis. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the first mortgagee of each Lot.

Such master casualty insurance policy shall (to the extent the same are obtainable) contain provision that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense against invalidity based upon the acts of the insured; and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted.

Section 2. Liability Insurance. The Association shall also purchase a master commercial general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event not less than a minimum limit of liability of \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage, \$1,000,000.00 per person for personal injury and advertising injury, \$50,000.00 per fire for fire damage, and \$1,000,000.00 for non-owned and hired automobiles, together with an aggregate for the preceding coverages of \$2,000,000.00 per policy for bodily injury and property damage. The Association shall also purchase an umbrella insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event not less than \$1,000,000.00 over the preceding liability insurance coverages. Such commercial general liability and umbrella insurance policies shall cover the Association, its Board of Directors, any committee or organization of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association, all Owners and all other persons entitled to occupy any Lot.

The Association shall obtain and maintain fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association. 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 Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, directors and officers liability insurance. 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 of the Association. Each Owner shall be deemed to have delegated to the Board of Directors the Owner's right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 3. Monthly Assessment for Insurance. The premiums for all such insurance hereinabove described shall be paid by the Association and the pro rata cost thereof shall become a part of the monthly assessment described in Article IV, Section 3 and 4 herein, to which each Lot conveyed by Declarant shall be subject under the terms and provisions of Article VII. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

Section 4. Distribution to Mortgagee. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of

insurance. In such event, any remittances shall be to the Owner and the Owner's mortgagee jointly, or in accordance with the terms of any endorsement in favor of said mortgagee.

Section 5. Additional Insurance. Each Owner shall be solely responsible for and should obtain such additional insurance as such Owner deems necessary or desirable at the Owner's own expense affording coverage upon the Owner's personal property, the contents of the Owner's Living Unit, and all components of the Living Unit not included in the Association Responsibility Elements (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements) and the Owner's personal property stored elsewhere on the Property, and for the Owner's personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. The Owner should obtain homeowner's insurance coverage for the entire Owner's Living Unit, both the interior and exterior. Each Owner may obtain casualty insurance at the Owner's own expense upon the Owner's Lot but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

Section 6. Casualty and Restoration. Damage to or destruction of the Association Responsibility Elements or Common Elements of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. If for any reason the Association chooses not to repair or reconstruct any Association Responsibility Elements or Common Elements of any Building damaged or destroyed by fire or other casualty, the Owner(s) of the affected Lots shall have the right, but not the obligation, to perform such repair or reconstruction and to collect the cost thereof from the Association. The Owner(s) of any Building damaged or destroyed due to fire or any other casualty shall repair or reconstruct all other portions of such Building (other than the Association Responsibility Elements or Common Elements) and shall be entitled to use the proceeds of such Owner's insurance for that purpose.

Section 7. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area or Common Elements or any Association Responsibility Elements of any Building or Buildings so damaged or destroyed (or the cost thereof in excess of insurance proceeds received, if any) shall be paid by the Association, which shall then have the right to levy a special assessment against all Lots for such deficiency.

For the purpose of Section 6 above, repair, reconstruction and restoration shall mean construction or rebuilding of any Building or Buildings to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same or similar type of architecture.

Section 8. Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds collectible from the Association's insurance after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damages shall not constitute a waiver of any rights against Owner for committing willful or malicious damage.

ARTICLE VIII

EASEMENTS AND ENCROACHMENTS

Section 1. Drainage, Utility and Sewer Easements. As noted on the Plat, Declarant has reserved certain areas of the Lots and Common Area for public utility, sanitary sewer and water main line easements. In doing so, it is the intention of Declarant to provide the needed flexibility to itself, for the benefit of all Lots and Owners, to properly install and allow to be maintained and read all electrical, telephone, water, gas, sewer and other utility services (including all lines, pipes, wires, cables, ducts, waterways, etc.) to the Living Units constructed on various Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such utility easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant and the Association to provide for and maintain appropriate drainage. Regardless of whether shown on the recorded plat, each Lot shall accept surface water drainage from adjacent properties whether or not located within the Property and each Lot shall have the right to drain its surface water to the adjacent Lots located within the Property.

Section 2. Additional Easement Rights. Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement and full right, title and authority to relocate, alter or otherwise change the location of any drainage, utility, sewer, access, and water easement and to grant such further easements, licenses and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of the Property. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility, sewer and water easement, or other easement, license or right of way by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder for Douglas County, Nebraska, and any Owner of any Lot shall take title subject to the rights and easements reserved herein; provided, however, the rights reserved in this Section 2 shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section 2 shall run with the land and Declarant's right to further alter or grant easements shall automatically transfer to the Association when Declarant shall have conveyed the last Lot within the Property.

Section 3. Easement for Access and Maintenance. The Association, its agents and contractors and each Owner shall have an easement and license to, in and over each Lot for the purpose of performing its maintenance obligations and for access to the rear of the Lot owned by such Owner. The Association, its agents, and contractors shall have an easement and license to use hoses, bibs and water from all Lots for the purpose of performing its maintenance obligations provided the Association shall reimburse the Owner for any water costs relating to such usage by the Association or its agents or contractors to the extent that the Owner's water bill for the month of such usage exceeds the Owner's average bill for the immediately three (3) prior months.

Section 4. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use, in the case of an emergency, by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Private Streets, any pedestrian walkways or sidewalks, and all Lots for benefit of others.

Section 5. Easements for the Benefit of the Lot Owners. An easement is hereby reserved and granted for the use of all Lots for pedestrian and vehicular ingress and egress over and across the Private Streets. No Owner shall park or allow to be parked any vehicular or other obstruction within the Private Streets so as to prevent access to the driveways, garages or doorways on any Lot that are connected to the Private Streets.

An easement is hereby reserved and granted to each Lot for the balcony, if any, attached to the Living Unit on such Lot to hang over the Common Area.

An easement is hereby reserved and granted for the benefit of each Lot served by a sidewalk or pedestrian walkway located in part or in whole in the Common Area for pedestrian ingress and egress purposes over the portion of such sidewalk or pedestrian walkway located on such Common Area. Neither the Association nor any Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walkway that would impair use and access to any Living Unit served by such sidewalk or pedestrian walkway.

An exclusive easement is hereby reserved and granted for the benefit of each Lot over, under, through and across the fenced portion of the Common Area appurtenant to such Lot for the closed loop wells, if any, for any ground source heat pump that serves such Living Unit.

An easement is hereby reserved and granted for the benefit of each Lot over, under, through and across the fenced portion of the Common Area appurtenant to such Lot for the Owner of such Lot to plant annual or perennial flowers, but not shrubs or trees, in any flower box on such Living Unit and in the grassy portion of such Lot.

An exclusive easement is hereby reserved and granted for the benefit of each Lot over, under, through and across any fenced portion of the Common Area appurtenant to such Lot for the Owner and occupants of the Living Unit on such Lot to use for their own recreation, but subject to such rules and regulations as the Association may from time to time adopt and apply generally to the Owners and occupants of all Living Units.

An easement is hereby reserved and granted for the benefit of each Lot over, through, under and across the remaining areas of the Common Area that are outside of any fenced portions of the Common Area appurtenant to each of the Lots, for the use and enjoyment of the Owners and occupants of each Living Unit, but subject to such rules and regulations as the Association may adopt from time to time and apply generally to the Owners and occupants of all Living Units.

An easement is hereby reserved and granted for the benefit of each Lot and occupants of the Living Unit over, under, through and across any landscape buffer easement located in the Common Area, including any landscape buffer easement recorded of record and such buffer easement shall be maintained, repaired, and replaced by the Association at its cost and expense.

An easement is hereby reserved and granted for the benefit of each Lot and occupants of the Living Unit over, under, through and across any signage easement located in the Common Area, including any signage easement recorded of record and such easement shall be maintained, repaired, and replaced by the Association at its cost and expense.

Section 6. General Easements. Each Lot shall be subject to the following easements in favor of the Association and the other Owners:

- (a) Every portion of a structure upon a Lot which contributes to the support of any structure not on the same Lot is burdened with an easement of such support.
- (b) Each Lot is burdened with an easement through the Lot and through the attic and basement of any structure thereon for conduits, duct, plumbing, wiring, pipes and other facilities for the furnishing of utilities and services to other Lots, including the location of utility meters on one Lot for service to other Lots.

- (c) Each Lot is burdened with an easement of ingress and egress for maintenance, repair and replacement of Association Responsibility Elements or Common Elements by the Association.
- (d) Each Lot is burdened with an encroachment easement for minor encroachments of commons walls due to settling, shifting or inexact location during construction.
- (e) Each Lot is burdened with easements for public utilities, private utilities, buffers, and sidewalks as may be shown upon any recorded subdivision plat.

Section 7. Storm Water Detention Facility Maintenance Easements. Declarant hereby reserves to Declarant, and to the Association, a non-exclusive easement over, through and across any Lot within Kempton Creek Brownstones on which there is a storm water drainage ways or detention facilities to the extent reasonable or necessary for the operation, maintenance, repair or restoration of any such storm water drainage ways or detention facilities and any related improvements, which may include stocking any permanent wet detention basins with fish or other wildlife (but not ducks or geese) and controlling any algae or other pests or nuisances associated therewith. The Association shall have the primary responsibility, at its cost, to maintain and keep the storm water detention ponds to be located in Kempton Creek Brownstones in good condition and repair. The Association may, but is not required to, enhance such storm water drainage ways or detention facilities, for example by stocking fish in any permanent wet detention basins.

ARTICLE IX PARKING RIGHTS

Subject to the provisions of Article VIII, Section 5, above, the paved driveway in front of each Owner's garage shall be for the exclusive benefit of such Owner and Owner's guests. No one shall use these parking spaces for parking or storing of boats, snowmobiles, trailers, camping vehicles or other recreational vehicles or for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickup and deliveries to neighboring Lots or for the period of time reasonably necessary to load or unload such boat, trailer, camping vehicle or recreational vehicle. No bicycles, toys or other private property shall be allowed to obstruct any driveway nor shall the same be stored in the open alongside building walls or other locations in public view. No vehicles shall be parked as to impede access from or to any Lot or public street. No fence, barrier or other obstruction of any kind shall ever be placed or constructed so as to impede access from or to any Lot or public street. The Association shall have the right to adopt rules and regulations concerning the use of and parking on the Private Streets, including rules prohibiting all parking on the Private Streets, and implementing these restrictions on parking in driveways.

ARTICLE X PARTY WALL

Section 1. General Rules of Law to Apply. Each wall that is built as a part of the original construction of the Living Units upon the Property and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The Association shall be responsible for repair and maintenance of the part of the party wall that is an Association Responsibility Element and for so long as it has such responsibility, then the provisions of the remainder of this Section and Sections 3 and 4 of this Article shall not apply; however, in the event that the Association no longer exists or has responsibility for repair and maintenance of the party wall, then the costs of reasonable repair and maintenance of a party wall

shall be shared by the Owners who make use of the wall in proportion to such use and the provisions of Sections 3 and 4 of this Article shall apply.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weather proofing. Notwithstanding any other provision of this Article, an Owner who by such Owner's negligent or willful act causes the party wall to be exposed to the elements shall bear the sole costs of furnishing the necessary protection against such elements.

Section 5. Right of Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE XI **ARCHITECTURAL CONTROL**

No building, fence, wall or other structure, except as originally constructed by or on behalf of Declarant, shall be commenced, erected, altered, or maintained upon the Property, nor shall any exterior additional to or change or alteration thereof be made (including screen doors, satellite dishes or similar fixtures), other than by the Board of Directors, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any changes in the appearance or the color of any part of the exterior of a Building (including the exterior items for which the Owner is responsible for maintenance pursuant to Article VI, Section 1, hereof) shall be deemed a change thereto and shall require the approval therefore as above provided. Any and all plans submitted to the Board of Directors of the Association or architectural committee pursuant to this Article XI, shall be assessed a review fee payable to the Declarant during such time as Declarant still holds title to at least one (1) Lot in the Property, thereafter to the Association, in immediately available funds, in accordance with the following:

- (a) \$150.00 review fee for all site plans, elevations and specifications related to proposed or existing Improvements on the Lot;
- (b) \$50 review fee for all landscaping or grading plans;
- (c) \$100 review fee for all proposed fencing plans, and other amenities.

ARTICLE XII **SIGNS AND HOME OCCUPATIONS**

Section 1. Signs. No signs of any kind shall be displayed on any Lot or within any window and visible from the exterior including, but not limited to, signs of any nature, kind, or description that identify, advertise or in any way describe the existence or conduct of a home occupation, except that an Owner shall be entitled to display on Owner's Lot one (1) "for sale" or one (1) "for rent" sign of standard size no larger than 18 inches by 24 inches and materials in connection with attempts by the Owner to market that Lot and/or Living Unit for sale or for rent. Nothing in this Article shall affect the rights of Declarant provided in Article V.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incident to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot, provided the same is permitted under the ordinances of the City of Omaha, Nebraska. No child-care service or activity shall be regularly conducted on any Lot, except for incidental childcare activities for the sole benefit of the Owner of the Lot. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant in the sale of Lots or single-family dwellings as a part of the development of the Property.

Section 3. Rentals. Any Living Unit may be leased and each such lease shall be and remain subject to this Declaration and the Bylaws. The Board may require that all leases include restrictions on window coverings and on the placement of signs or other materials in windows. No transient rentals or transient living arrangements are allowed. Transient rentals or transient living is defined as any non-family member residing at the property for 29 days or less.

ARTICLE XIII **ENCROACHMENTS AND EASEMENTS FOR BUILDINGS**

Section 1. Encroachment. If, by reason of the location, construction, settling, or shifting of a building, any part of a Building consisting of a Living Unit appurtenant to a Lot (hereinafter in this Article XIII referred to as the "Encroaching Unit") encroaches upon any minor portion of any other adjacent Lot or on the Common Area, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit and all appurtenances thereto, for the period during which the encroachment exists.

Section 2. Easements. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in or on any other Lot or Living Unit and serving Owner's Lot.

ARTICLE XIV **ADDITIONAL RESTRICTIONS**

Section 1. No Lot shall be used except for residential purposes, as defined in the Bennington Zoning Ordinance as applicable to the zoning district, except for rights of Declarant as provided in Article V. No buildings, structures or sheds shall be erected on any Lot other than the Living Units or replacement thereof.

Section 2. 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. 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 the Commons Areas and Common Elements. 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. Outside pens or dog runs will not be allowed. Any complaint shall be brought before the Board, which shall have the right to prohibit them from continued

habitation on the Lot if further complaints occur. 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.

Section 3. No noxious or offensive activities not involving the maintenance of Lots shall be carried on upon any Lot nor shall anything be done thereon that may be or may become an annoyance or a nuisance to the neighborhood; nor shall any Lot be used for any unlawful purpose. Nor shall any Owner cause, or suffer or harbor the source of, any noise or activity that disturbs the peace, comfort and quiet enjoyment of the other Owners or those claiming under or through other Owners.

Section 4. The Owner of each Lot shall keep the same free of weeds and debris. Owners shall be permitted to plant flowers along the back of the Lot within three (3) feet of the foundation. Owners who choose to plant flowers are required to maintain an acceptable appearance as determined by the Board of Directors. Owners will also be allowed to plant trees and shrubs on their Lot provided written approval is secured from the Association as to the type and location of such planting. Any plantings must consider accessibility of mowers and yard maintenance equipment of the contractors who will be hired by the Association.

Section 5. No recycling, trash receptacles and garbage cans shall be permitted to be placed outside of a building or a structure on any Lot. This restriction shall not preclude the placement of waste containers outside of such area on a temporary basis if so required by governmental regulation or terms of contract with a commercial waste collector, on trash pickup days only and not more than twenty-four (24) hours in advance of pickup. If the City of Bennington does not provide pickup service, then the Owners, individually or collectively, shall contract with only one (1) private trash removal service that is designated by the Board of Directors.

Section 6. No temporary structure, trailer, basement, tent, shack, garage, barn or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 7. No tower, or television or radio antennae, satellite dish or flag pole shall be placed upon the exterior of a Lot or Living Unit, except that one satellite dish may be placed on each Building containing a set of town homes by a provider as designated by Declarant or the Association. 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.

Section 8. No basketball goal (whether attached to the exterior of a Living Unit or affixed to a free-standing pole), soccer goal, baseball backstop, hockey goal or other similar sporting equipment shall be constructed on any Lot, in any driveway, or on any Private Streets.

Section 9. All unattached sporting equipment, toys, storage containers, workout equipment, outdoor cooking equipment and other equipment and supplies necessary or convenient to residential living shall be stored on the patio or deck of the Living Unit. Nothing may be erected on or suspended from the exterior of, or hang over, any railings on any of the balconies. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weed or other noxious substance and the harboring on the source of any noise or activity which disturbs the peace, comfort and serenity of Owners is prohibited. Laundry and clothing shall not be hung outside the Living Unit.

Section 10. No pools or hot tubs shall be allowed, constructed or installed on any Lot without prior written consent of Declarant.

Section 11. Living Unit Owners shall be individually responsible for utility charges for their respective Living Unit, which they incur for electricity, natural gas, water and sewer services, in the same manner as persons occupying single-family, detached homes.

Section 12. No fence shall be allowed to be constructed on any Lot unless prior written approval from the Board of Directors of the Association has been granted. Any such fence so approved by the Association shall be limited to privacy or decorative fences located around the decks or patios of the Living Units.

Section 13. No personal property shall be stored or left upon a Lot except within the residential structure or garage located upon the Lot. Garage doors shall be kept closed except during times of access to the garage.

Section 14. Nothing shall be altered in, constructed in or removed from the Common Area or Common Elements, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Association.

Section 15. No boat, snowmobile, recreational vehicle, trailer or other vehicle, other than automobiles shall be stored or parked in any driveway or street. The Association may, by regulation or rule, limit or prohibit the parking of automobiles on any driveway. In the event of a violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreational vehicle, trailer or other vehicle.

Section 16. No activity shall be allowed that unduly interferes with the peaceful possession and use of the Property by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

Section 17. Nothing shall be done or kept in any Lot or in the Common Area or Common Elements which will increase the rate of insurance on the Common Area, Common Elements or the Association Responsibility Elements, without proper written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his Lot or Common Area which will result in the cancellation of insurance on any Lot or any part of the Common Area, Commons Elements or the Association Responsibility Element, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners.

Section 18. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repair of the property concerned.

Section 19. The Board of Directors of the Association shall have the authority to adopt rules and regulations governing the use of Lots, the Common Area, the Common Elements and the Association Responsibility Elements and the penalties for violations of such rules and regulations and the Declaration, and such rules and regulations and the Declaration shall be observed and obeyed by the Owners, their guests, lessees, assigns and licensees.

Section 20. Agents of or contractors hired by the Board of Directors of the Association may enter any Lot when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable, and may enter any Living Unit after prior notice to the Owner, in connection with any maintenance or construction that requires access to or through the interior of such Living Unit; provided no such notice is required in an emergency if the Owner is not readily available.

Section 21. Neither the Owners nor the Association nor the use of the Common Area or the Common Elements shall interfere with the completion of the contemplated improvements and the sale of the Lots by the Declarant. The Declarant may make such use of the unsold Lots and the Common Area and Common Elements as may facilitate such completion and sale, including, but not limited to, the maintenance of a sales office, model home, the showing of the property and the display of signs.

Section 22. 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 has not removed the holiday display within the foregoing time periods and if the Owner of a Lot has not removed such holiday display 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, 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 Douglas County, Nebraska, 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.

Section 23. No Waiver. Failure of the Association or any Owner to enforce any covenant, condition or restriction, 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 XV

GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all parties claiming under them, and the Association shall have the right to enforce the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorney's fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. Declarant may amend this Declaration at any time without the approval by the other Owners 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 after Declarant no longer retains ownership of any Lot within Kempton Creek Brownstones. In the event the Owners do not accept turnover of the Association at the turnover meeting, Declarant may maintain, at its sole 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 at a meeting. Thereafter, this Declaration may be amended or changed at any time by an instrument recorded in the Office of the Recorder for Douglas County, Nebraska, signed or approved in writing by at least two-thirds of the then Owners. Provided however, that no termination or amendment of any provisions of this Declaration regarding the maintenance or ownership of Outlots H, I and J, or regarding the Maintenance Agreement with the City of Bennington, shall be made without the advance written consent of the City of Bennington, which written consent shall only be provided if another proper entity, as approved by the City of Bennington, assumes full responsibility for the required Maintenance Agreement and in addition assumes ownership of Outlots H, I and J, which permanent and contiguous ownership and maintenance obligations shall survive and shall continue after annexation by the City of Bennington.

Section 3. Covenants Binding and Running with the Land; Duration. 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, and the Owners of each Lot in the Property, 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.

The easements granted in or pursuant to this Declaration, any other provisions of this Declaration expressly incorporated in any Section of this Declaration granting such easements 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 this Declaration. The party wall provisions of Article X of this Declaration shall continue in perpetuity.

Except as provided in the preceding paragraph of this Section, the covenants, indentures, restrictions and reservations in this Declaration shall be for an initial period of twenty-one (21) years from the date of recordation in the Office of the Recorder of Douglas County, Nebraska, and shall automatically extend for successive periods of twenty-one (21) years each unless prior to the expiration of any such twenty-one-year period it is amended or changed in whole or part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment of decree shall in no way affect any of the provisions hereof, but the same shall remain in full force and effect.

It is the intent that 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.

Section 4. Notice to Mortgagees. The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its Bylaws or any other applicable documents which default has not been cured within sixty (60) days. The Owners shall provide, upon request by the Association, the name, address and loan numbers of any mortgage placed upon their property.

ARTICLE XVI
LIMITATION OF LIABILITY

Section 1. Limitation of Liability. Declarant shall not be liable to the Association or any Owner for damages or repairs to:

- (a) Any Private Streets, sidewalk, driveway, curbs, stoop or other concrete improvement located within the Property, including, but not limited to, cracking or chipping that may occur due to weather conditions; or
- (b) Any Living Unit beyond the express warranties set forth in the homeowner's warranty provided to the original Owner of such Living Unit; or

(c) Any appliances within any Living Unit, including, but not limited to, the furnace, air conditioner, stove, oven, microwave, dishwasher, and garbage disposal, beyond the express warranties set forth in the manufacturer's warranty provided to the original owner.

ARTICLE XVII
DISCLAIMER OF WARRANTIES

Section 1. Except for those warranties expressly provided in writing, to the maximum extent permitted by law, Declarant hereby disclaims any and all and each and every express or implied warranties provided by law, as to the design, construction, sound and/or odor transmission, existence and/or development of molds, mildew, toxins or fungi, furnishing and equipping of the Property, including, without limitation, any implied warranties of habitability, fitness for a particular purpose or merchantability, compliance with plans. Each Owner acknowledges that Declarant has not given and the Owner has not relied on or bargained for any such warranties. Each Owner, by accepting a deed to a Lot, or other conveyance thereof, shall be deemed to represent and warrant to Declarant that (i) in deciding to acquire the Living Unit, the Owner relied solely on such Owner's independent inspection of the Living Unit and the Property and (ii) the Owner has not received nor relied on any warranties and/or representations from Declarant of any kind, other than as expressly provided for herein.

All Owners, by virtue of their acceptance of title to their respective Living Units (whether from Declarant or another party) shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages that the Owner would have otherwise had arising out of any breach of any of said waived warranties. The foregoing shall also apply to any party claiming by, through or under an Owner, including a tenant thereof.

All Owners acknowledge that molds, mildews, toxins and fungi, may exist and/or develop within the Living Unit and/or the Property. Each Owner is hereby advised that certain molds, mildews, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially cause a health risk. By acquiring title to a Living Unit and Lot, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released Declarant from any and all liability resulting from same.

Each Owner, by acceptance of a deed or other conveyance of a Living Unit, acknowledges and agrees that there are various methods for calculating the square footage of a Living Unit, and that depending on the method of calculation, the quoted square footage of the Living Unit may vary by not more than a nominal amount. Each Owner acknowledges that actual square footage of a Living Unit may have changed from the contemplated square footage in connection with the construction of the Living Units. By accepting title to a Living Unit, the applicable Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Living Unit, regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing. Without limiting the generality of this Article XVII, Declarant does not make any representation or warranty as to the actual size, dimensions or square footage of any Living Unit.

For as long as Declarant remains liable under warranty, whether statutory, express or implied, for act or omission of Declarant in the development, construction, sale and marketing of the Kempton Creek Brownstones Project and Living Units located therein, then Declarant and its contractors, agents and designees shall have the right, in Declarant's sole discretion and from time to time, to enter the Kempton Creek Brownstones Project and Living Units located therein for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Declarant can fulfill any of its warranty obligations. Nothing herein shall be deemed or construed as Declarant making or offering any warranty, all of which are disclaimed (except to the extent same may not be) as set forth in this Article XVII.

All manufacturers' warranties will be passed through to the buyer of a Living Unit at closing with Declarant and all items covered by manufacturers' warranties are expressly not warranted by Declarant.

If the Owner undertakes structural alteration or replacement of components of the Living Unit, even with consent of the Association, then the Owner hereby agrees that the Owner has waived and relinquished any claim for breach of an implied or statutory warranty for fitness for a particular purpose, merchantability and habitability pertaining to the component altered or replaced by the Owner.

This Declaration, including, but not limited to, this Article XVII shall survive (continue to be effective after) closing of the purchase of any Living Unit and shall not be merged with the delivery of the title to any Living Unit at closing.

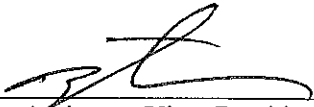
ARTICLE XVIII
NOTICE

Section 1. 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.

[signatures to follow]

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

HRC KEMPTEN CREEK, LLC, a Nebraska
limited liability company

By: 
Dave Vogtman, Assistant Vice President and
Assistant Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

Now on this 7 day of April, 2023 before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Dave Vogtman, the Assistant Vice President and Assistant Secretary of HRC Kempten Creek, LLC, a Nebraska limited liability company, being the Sole Member of HRC Development, LLC, an Nebraska limited liability company, who is personally known to me to be the same person who executed in such capacity the within instrument on behalf of said entity and who duly acknowledged the execution of the same to be the act and deed of said limited liability company.

{Seal}

State of Nebraska – General Notary
HEATHER DEMBINSKI
My Commission Expires
September 30, 2026

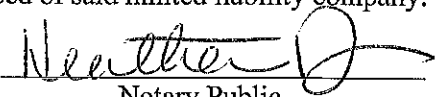

Notary Public

EXHIBIT A

Lots 171 thru 205, inclusive, and Outlots "H", "I" and "J", inclusive, Kempton Creek, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Exhibit B

**Kempton Creek Brownstones Site
Plan**

