



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BENNINGTON PARK WEST**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made and entered by **BP DEVELOPMENT, LLC**, a Nebraska limited liability company (the "Declarant") and **MARQUE CUSTOM BUILDERS, LLC**, a Nebraska limited liability company (the "Existing Owner") effective the 16<sup>th</sup> day of May, 2018 (the "Effective Date").

WITNESSETH:

WHEREAS, the Declarant and the Existing Owner are the owners of certain real property located within Douglas County, Nebraska which was developed for a residential subdivision and generally known as "Bennington Park West", and legally described as follows:

Lots 1 thru 80, inclusive, and Outlots A, B and C, of Bennington Park West, City of Bennington, Douglas County, Nebraska ("Bennington Park West" or "Subdivision").

Lots 1 thru 80 of Bennington Park West are herein referred to collectively as the "Lots" or individually as each "Lot". Outlots A, B and C of Bennington Park West are herein referred to collectively as the "Outlots" or individually as each "Outlot". Lots 21 thru 24 are herein referred to collectively as the "Existing Owner Lots", and Lots 1 thru 20 and Lots 25 thru 80 are herein referred to collectively as "Declarant's Lots".

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities of Bennington Park West, for the maintenance of the character and residential integrity of Bennington Park West, and for the acquisition, construction and maintenance of Common Area (as defined below) for the benefit of the residents of Bennington Park West and the Owners of each Lot.

WHEREAS, the Existing Owner desires to consent to the recording of this Declaration in the Register of Deeds for Douglas County, Nebraska, and hereby agrees to join in this Declaration to preserve the values, amenities, character and residential integrity of Bennington Park West.

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

**ARTICLE I  
DEFINITIONS**

Section 1. "Architectural Control Committee" shall mean an architectural committee composed of two or more representatives appointed by the Board of Directors of the Association. If an Architectural Control Committee has not been appointed, the Board of Directors shall perform the duties of the Architectural Control Committee.

Section 2. "Association" shall mean and refer to the Bennington Park West Association, a Nebraska nonprofit corporation, its successors and assigns.

Section 3. "Board of Directors" or "Board" shall mean the board of directors of the Association.

Section 4. "Common Areas" shall mean the applicable portion of the Lots or Outlots which are intended for the use in common by the Owners and their guests. Common Areas shall include, but not be limited to, the easement areas reserved for common utility lines and systems, the Outlots, designated sign areas and landscaping areas for Bennington Park West (other than those for private use on the individual Lots), areas dedicated to the public in accordance with that certain Plat filed June 12, 2017, with the Douglas County, Nebraska Register of Deeds as Document Number 2017044901, including any designated parking areas, streets, lanes, walkways and sidewalks, as may exist from time to time, and any other areas designated as Common Area by the Association.

Section 5. "Member" shall mean each and every Owner of a Lot which is subject to assessment by the Association.

Section 6. "Owner" shall mean and refer to:

- (a) The record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, but excluding those having such interest merely as security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner, and
- (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the seller retains title solely as security for the performance of the purchaser's obligation under the contract.

## **ARTICLE II**

### **COVENANTS AND RESTRICTIONS**

Section 1. Covenants.

- (a) Sidewalks. Sidewalks shall be constructed immediately upon each Lot as soon as weather permits and by the Lot Owners in conjunction with the construction on each Lot. Sidewalks on Outlots A and B shall be constructed by the Declarant concurrently with the construction of C.W. Hadan Drive and North 161<sup>st</sup> Avenue, respectively.
- (b) Conveyance of Outlots A and B. Within sixty (60) days following Declarant's completion of the public improvements within the Subdivision, Declarant shall convey all rights, title and interest in Outlots A and B to the City of Bennington. Following such conveyance, Outlots A and B shall no longer be included within the definition of "Common Areas", and shall no longer be subject to this Declaration or control or assessments of the Association, and all maintenance obligations with respect to Outlots A and B shall automatically transfer to the City of Bennington.
- (c) Compliance with Laws. The Owners of each Lot shall be bound by and to any provisions of any ordinances, rules, regulations, interlocal agreements, City of Bennington wastewater agreements, and franchises hereafter made, adopted and granted by the City of Bennington applicable to subdivisions whose sewers connect directly or indirectly with or into the sewer systems of the City of Bennington or sewers connected to the sewers of the City of Bennington.

- (d) Compliance with Municipal Code Section 6-212. Pursuant to the City of Bennington Municipal Code Section 6-212, as amended, and the City's Agreement for Wastewater Service with the City of Omaha, as amended, the Lots are subject to the payment of a sanitary sewer connection fee, which shall be paid to the City of Bennington in the then current amount by each Lot Owner in conjunction with the application for a City of Bennington building permit.
- (e) Valuation. The minimum building permit valuation for all single-family houses to be built on Lots 1-8 and 25-80 shall be at least \$275,000, and the minimum building permit valuation for all of the duplexes to be built on Lots 9-24 shall be at least \$150,000.
- (f) Subdivision Agreement. The Owners of each Lot shall be bound by and to any provisions, requirements or obligations set forth in that certain Subdivision Agreement, dated May 8, 2017, by and between the Declarant and the City of Bennington, Nebraska, as amended by that certain Amendment No. 1 to Subdivision Agreement dated August 14, 2017 (as amended, the "Subdivision Agreement").

Section 2. Restrictions. Every Owner shall have full rights of ownership and full use and enjoyment of such Owner's Lot, subject to the following restrictions:

- (a) All fences erected and installed on any Lot shall be constructed of wood, approved vinyl, or other material approved by Declarant. It is the intention of this regulation to prohibit the use for fencing of wire rope, barbed wire, chain or galvanized chain link fence material, or other materials not approved by Declarant. The City of Bennington has and enforces fence regulations and permit requirements.
- (b) No clothes line or clothes hanger shall be constructed on any Lot or used on any Lot outside of a building located thereon, except in patio areas.
- (c) No exterior television, radio antenna or satellite dish shall be erected on any Lot where it is visible from the street.
- (d) No animals, livestock or poultry of any kind shall be raised or kept on any Lot, other than non-exotic household pets, which shall be limited to two (2) per household. All pets shall be leashed when outside the residential structure and patio area or restrained by a fence or an underground electronic fence. Owner must notify the Board of Directors before installing an underground electronic fence. No pets, however, shall be kept, bred, or maintained for commercial purposes. All reptiles are classified as exotic pets. All unpleasantries created by the household pet shall be the responsibility of the Owner, and each Owner shall be obligated to clean up after such pet.
- (e) No noxious, offensive, or illegal activity shall be carried on upon the Lots, nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any Lot, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood. No outside above-ground trash receptacles or incinerators shall be permitted on any Lot.
- (f) No advertising signs or billboards shall be permitted on any Lot with the exception of "for sale", lender or builder signs, which shall not exceed four square feet in size; provided, however, Declarant and/or the Association shall be permitted to install signs

which indicate the name of the Subdivision (the "Signs") at the various entry points to the Subdivision.

- (g) No swimming pool shall be permitted which extends more than one (1) foot above ground level. Any swimming pool installed on a Lot must comply with all governmental ordinances, must be located in the backyard of such Lot and must be fenced in with a fence which satisfies the requirements of Section 2(a) above.
- (h) No garden shall be grown upon that portion of any Lot nearer to the street than provided for minimum building setback lines; and no trees, shrubs, hedges or other plants shall be maintained or permitted in such proximity to any Lot as will interfere with the use and maintenance of any street or walk or the unobstructed view at intersections sufficient for the safety of pedestrians and vehicles. Suitable ground cover, consisting of either sod or native grasses, shall be maintained on those portions of a Lot not formally landscaped in such manner as to prevent erosion by wind or water. All ground cover shall be regularly mowed to a height of not more than six (6) inches, unless otherwise approved in writing by the Declarant, Association or Architectural Control Committee. Each Lot Owner shall take whatever steps are necessary to control noxious weeds or overgrowth on such Lot.
- (i) No trailer, mobile home, motor home, tent, shack, shed, barn, greenhouse or other outbuilding shall at any time be used for human habitation or erected on any Lot, either temporarily or permanently.
- (j) No Owner shall park, keep, store or maintain a trailer, mobile home, motor home, boat, recreational or similar type vehicle upon the exterior of any Lot or in any common parking area of the Subdivision for period of ten (10) consecutive days, and in no event more than twenty (20) total days in any twelve (12) month period.
- (k) Except as set forth herein, no dwelling may be occupied by anyone other than the Owner, along with members of the Owner's immediate family, related by blood or marriage, his or her servants, and temporary guests. It is the intention of this subparagraph (k) to prohibit the rental of any dwelling on any Lot, which would result in occupancy by persons other than those described in this subparagraph (k) unless such rental has and does not violate the City of Bennington's applicable residential ordinances and regulations.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Homeowners' Association. Declarant shall cause the incorporation of the Association. The Association shall have as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including, but not limited to:

- (a) The acquisition, construction, landscaping, improvement, equipping, maintenance, operation, repair, upkeep and replacement of Common Areas for the general use, benefit and enjoyment of the Members.
- (b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Area, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Areas by Members, their families, guests, and/or by other persons.

- (c) The exercise, promotion, enhancement and protection of the privileges and interests of the residents of the Subdivision; and the protection and maintenance of the residential character of the Subdivision.

Section 2. Association Threshold. Until such time as seventy-five percent (75%) of the Lots are sold to Owners (the "Association Threshold"), Declarant shall maintain the rights, responsibilities and obligations of the Association set forth in this Declaration. Upon the Association Threshold, Declarant shall immediately turn over all rights, responsibilities and obligations to the Association, and the Association shall operate pursuant to the terms of this Declaration.

Section 3. General. Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Each Lot Owner is empowered to enforce the covenants. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to any assessment.

Section 4. Voting. Each Member shall be entitled to one vote for each Lot owned. When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Lot shall be exercised as such persons or entities or both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot. Prior to the Association Threshold, Declarant shall have ten (10) votes for each Lot owned by the Declarant.

Section 5. Proxy. In order to ensure that a quorum is present for all meetings of the Members, and to allow for orderly management of the Association's affairs, it shall be the duty of each Member to attend such meetings or to execute and deliver to the Association a continuing proxy prepared by the Association. This continuing proxy shall operate in lieu of the actual attendance at the meeting by the specific Member and shall be void if the Member personally attends that meeting to exercise the Member's right to vote. A Lot Owner may provide a superseding proxy to be voted by his or her duly authorized attorney in fact for one specific meeting only. The proxy shall be subject to the terms of the Nebraska Nonprofit Corporation Act concerning revocability and life span of the proxy.

The continuing proxy shall be voted by the President of the Association in his or her discretion at any meeting. It is noted that Nebraska law requires that members holding 1/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The continuing proxy shall provide on its face that it is valid on a continuous basis for an indefinite period of time until revoked in writing by the specific Lot Owner. All proxies shall be in writing and filed with the Secretary of the Association. Each proxy shall be freely revocable and shall automatically cease when the Member giving such proxy shall cease to be an Owner of a Lot or at such earlier time as shall be specified in the proxy or by operation of law.

Section 6. Suspension of Voting Rights. The Association may suspend the voting rights of an Owner: (i) for any period during which an assessment against such Owner's Lot remains unpaid for sixty (60) consecutive days; or (ii) for any period during which an Owner, or members of such Owner's family, guests or tenants of such Owner, remain in violation of this Declaration for a period of thirty (30) days following receipt of written notice from the Association of such violation.

#### **ARTICLE IV**

#### **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Owners of each Lot shall pay to the Association:

- (a) Special assessments for capital improvements as may be required for the Association to fulfill its responsibilities hereunder, and
- (b) Monthly, quarterly or annual assessments for maintenance and other operational expenses as deemed necessary by the Association,

as such assessments shall be established and collected as hereinafter provided. The special assessments and monthly, quarterly or annual assessments, and other amounts due from an Owner to the Association as set forth herein, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lots and shall be a continuing lien upon the Lots against which each such assessment shall be made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity who, or which, was the Owner of the Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title, unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to improve, maintain and manage the Common Areas of the Subdivision, to perform the duties of the Association as required hereunder, and to pay insurance premiums thereon, all for the benefit of the Owners of Lots as more fully set forth in this Declaration.

Section 3. Monthly, Quarterly and/or Annual Assessments. As the need may arise in the future, the Board of Directors shall have the authority to levy and assess any monthly maintenance assessment and determine the provisions for the payment of any future monthly, quarterly and/or annual assessments. The preferred form of payment for Members' monthly, quarterly or annual assessments is via automatic electronic withdrawals from their bank accounts. The Association may charge a handling fee of \$10.00 for other forms of payment. Prior to the Association Threshold, the Declarant shall have the right to issue an annual assessment of One Hundred Dollars (\$100) per Lot. Such fixed assessment shall be due on January 1 of each calendar year. With respect to newly acquired Lots, such fixed assessment shall be paid on the closing date of such acquisition and prorated as of the closing date for the remainder of the calendar year.

Section 4. Special Assessment for Capital Improvements. In addition to the monthly assessments authorized in Section 3 above, the Association may levy special assessments for the purpose of meeting the requirements of Article V herein for exterior maintenance and, in addition, may levy in any year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of any capital improvements of the Association, including fixtures and personal property related thereto, and for the costs of exterior maintenance.

Section 5. Notice for Any Action Authorized Under Article IV. Written notice of any meeting called for the purpose of taking any action authorized under this Article IV shall be provided to the Members in accordance with the provisions relating thereto set forth in the Bylaws of the Association, as the same may be amended from time to time.

Section 6. Uniform Rate of Assessment. Both special assessments for capital improvements and monthly assessments, with respect to all Lots, shall be uniform in amount, and may be collected on a monthly basis by the Association. The Board of Directors of the Association shall fix the amount of the monthly assessment against each Lot. Written notice of the monthly, quarterly and/or annual assessment shall be sent to every Owner subject thereto. The dates payments are due 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 or not all assessments on a

specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot shall be binding upon the Association as of the date of its issue by the Association.

Section 7. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date thereof shall be deemed delinquent and shall bear interest at the lesser of (i) sixteen percent (16%) per annum, or (ii) the maximum legal rate allowable by law in the State of Nebraska. The Association may also, at its option, impose a late payment fee in an amount not to exceed three (3) times the current monthly assessment rate if any assessment becomes delinquent. Should any assessment, or other amount due from an Owner to the Association as set forth herein, remain unpaid more than sixty (60) days after the due date thereof, the Association may declare the entire unpaid portion of said assessment for said year, or other amount due, to be immediately due and payable and thereafter delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, file a lien, or may foreclose the lien of such assessment, or other amount due, against the Lot subject to the assessment, or other amount due, through proceedings in any Court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments, or other amounts due, provided herein by abandonment or title transfer of such Owner's Lot.

Section 8. Subordination of the Lien to Mortgages. The lien on the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association. Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default; if such Board of Directors determines that such lien has no value to the Association. No mortgagee shall be required to collect any assessments due. The Association shall have the sole responsibility to collect all assessments due.

## **ARTICLE V**

### **EXTERIOR MAINTENANCE**

The Association may provide exterior maintenance upon each Lot and Outlot which maintenance shall be subject to the applicable monthly, quarterly, annual and/or special assessments as set forth hereinafter.

Section 1. General. Monthly, quarterly and/or annual assessments may be assessed for, but not limited to, the following:

- (a) Maintenance of trees and shrubs, lawns, and other exterior landscaping improvements within the Common Area, except such improvements as may be within the confines of any fenced-in area on any Lot or installed by or at the direction of the Owner, which improvements shall be the responsibility of the Owner. Each Owner shall be responsible for replacement of all dead landscaping improvements and the Owner agrees to allow the Association to replace such dead landscaping improvements at the expenses of the Owner of record at the time of replacement and the Owner shall reimburse the Association on demand. The Association shall have no duty to repair, replace or maintain any exterior concrete surfaces.

- (b) Snow removal as to be determined by the guidelines set forth by the Board of Directors
- (c) Installation and maintenance of the Signs.

Section 2. Owner Responsibility. It shall be the duty, responsibility and obligation of each Owner at its own cost and expense to care for, maintain and repair the exterior and interior of the dwelling and any improvements on such Owner's Lot, including, but not limited to maintenance, repair and replacement of all exterior painting, siding, roof, doors, windows, garage doors and openers, mailboxes, air conditioning condensers and related fixtures, appliances, equipment and other appurtenants thereto, and also including any private driveway appurtenant to such Owner's dwelling, fencing, patios, decks, personalized landscaping, flowers, and sidewalks which are appurtenant to such Owner's dwelling and situated on such Owner's Lot. The Association shall have no duty or obligation to any Owner in this regard.

Section 3. Common Area Maintenance. The Association, as a common expense of all Owners and through application of the assessments provided hereunder, shall care for, maintain and keep in good repair any Common Area other than the sidewalks (which shall be maintained by the Owners as referenced above), maintenance of trees, shrubs, lawns and other exterior landscaping (subject to the limitations in Section 1(a) above). The Association shall be responsible for maintenance, upkeep and repair of the Signs and drainage facilities located on Outlot A, until such time as Outlots A and B are conveyed to the City of Bennington as set forth in Section 1(a) herein.

Section 4. Self-Help. The Association, its employees and agents shall have a general easement over and upon any Lot and shall have the right to go into or upon any Lot within the Subdivision at reasonable times upon reasonable notice for the purpose of performing the maintenance provided in this Article V, including the maintenance required of each Owner pursuant to Section 2 above, if the Association elects to provide such maintenance.

In the event that the need for such maintenance or repair is caused through the willful or negligent act of the Owner, his or her family, guests or invitees, or the alteration of any portion of the Lot requiring the approval of the Architectural Control Committee without first obtaining such approval, the Board, or their duly authorized agents, shall have the right to: (i) give notice to the offending Owner of the violation or breach; and (ii) if such violation or breach continues for a period of thirty (30) days following written notice, or if Owner is diligently pursuing cure of such violation or breach then such other time as is reasonably necessary to accomplish such cure, enter upon the Lot where such violation or breach exists and summarily remove, at the expense of the Owner thereof who shall pay such expenses within five (5) days after demand, any structure, thing or condition that may be or exist hereon contrary to the intent and meaning of the provisions of this Declaration.

Notwithstanding the foregoing, in the event the need for maintenance or repair of any of the foregoing on any Lot shall result from the willful or negligent acts of the Owner of any Lot, or of such Owner's family, guests, invitees, or tenants, the cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject.

## **ARTICLE VI** **ARCHITECTURAL CONTROL**

Section 1. Architectural Controls. No dwelling will be altered, built, constructed or otherwise maintained on any Lot without the express approval of the Board, with the advice and recommendation of the Architectural Control Committee, as to general appearance, exterior color or colors, harmony of external design and location in relation to surroundings and topography and other



relevant architectural factors, location within Lot boundary lines, quality of construction, size, and suitability for clustered residential purposes of such dwellings.

No exterior air conditioning equipment, mailbox, antenna, satellite dish, ditch, fence, flag pole, tennis court, deck, patio, kennel, swimming pool, radon mitigation, wall, shed, greenhouse or other structure or associated structures, and no trees or other landscaping in any location will be altered, built, constructed, erected, installed, planted, or otherwise maintained or undertaken on any Lot without such approval by the Board, as recommended by the Architectural Control Committee, so secured as to general appearance, composition, design, exterior color or colors, and suitability for clustered residential purposes.

Plans and specifications, including landscape plans, shall be submitted by the Owner to the Architectural Control Committee prior to the commencement of any action requiring approval pursuant to this Article VI, and the Architectural Control Committee will provide the same to the board with the Architectural Control Committee's recommendation. Approval or disapproval by the Board shall be based upon the standards established by the Association, including the standards stated in this Declaration.

The Board shall use reasonable efforts to approve or disapprove the plans and specifications within twenty one (21) days after such plans and specifications have been submitted for review. If the Board does not approve, disapprove, or provide notice of a reasonable extension of the review period if necessary to approve or disapprove any such final plans and specifications within such twenty one (21) day period, they shall be deemed to be approved as received by the Architectural Control Committee; but neither approval nor disapproval thereof shall constitute any guaranty, warranty or other representation by the Association as to the feasibility, practicability or structural or other soundness or suitability of any such final plans or specifications or any such proposed building or structure.

Subject to regulations or rules from time to time adopted by it, the Architectural Control Committee shall consider requests for partial or whole waiver of application of any covenants subject to such waiver by the Association and will make recommendations to the Board and the Board will determine whether a permit granting any such request, to the extent consistent with relevant architectural factors of concern to the Association, should be issued.

Section 2. Violations and Remedies. Any deviation from or exception to the architectural controls in the Declaration will be deemed a violation of the Declaration unless the Board votes to allow such deviation or exception by unanimous vote of the members of the Board. Any allowance by the Board will be specific to the deviation or exception before it and shall in no event be deemed a waiver of the right to enforce the architectural controls for any similar deviation or exception. The Board and the Architectural Control Committee shall have the right to take any action against an Owner for violation of the architectural controls, including but not limited to, removal of any improvements which violate this Declaration, assessment of fines, which may be assessed from time to time by the Board for various types of violations that may arise (fines will be reasonably related to the nature of the violation, as determined by the Board). Such fines or the costs associated with any action taken by the Board (including the cost to remove improvements) shall be added to and become a part of the assessment to which such Lot is subject. Notwithstanding the foregoing, the Association shall have all rights and remedies as set forth in Section 52-2001 of the Nebraska Revised Statutes.

## **ARTICLE VII** **PARTY WALLS**

Section 1. General Rules. Each wall built as a dividing wall between separate dwellings constructed upon the Lots as part of the original construction of a duplex or similar dual dwelling unit shall constitute a party wall to be used by the adjoining Owners as such, notwithstanding the fact that the wall so constructed, through error in construction or settling of the wall, may not be located precisely on the dividing line between the Lots. 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. Destruction by Fire or other Casualty. In the event of the damage or destruction of a party wall from fire, or other casualty, other than the negligence of either adjoining Owner, the Owners shall, at joint expense, repair or rebuild said wall in a good and workmanlike manner, and in compliance with all applicable laws, codes, rules and regulations, and each Owner, his successors and assigns, shall have the right to the full use of said party wall so repaired or rebuilt. If either Owner's negligence shall cause damage to or destruction of said party wall, such negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay his share, or all of such cost in case of negligence, the other Owner may have such wall repaired or restored and shall be entitled to have a construction lien on the Lot owned by the Owner so failing to pay, for the amount of such defaulting Owner's share of the repair or replacement cost.

Section 3. Maintenance, Use and Alteration. The cost of maintaining the party wall shall be borne equally by the Owners on either side of said wall. Neither Owner adjacent to said party wall shall have the right to add to or subtract from the said party wall in any manner whatsoever, it being the intention that said party wall shall at all times remain in the same position as when erected. Each party to the party wall shall have a perpetual easement in that part of the premises of the other on which covers the party wall shall be shared proportionately by both adjoining Owners.

Section 4. Right to Contribution Runs with the 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 Owners, successors in title.

## **ARTICLE VIII** **INSURANCE**

Section 1. General. On behalf of the Association, the Board of Directors may, from time to time, in its discretion, offer to purchase and provide physical property coverage insurance with respect to the improvements (residential structures and related structures) on each Lot in the Subdivision (hereinafter "Optional Insurance"). The terms and conditions of such insurance, including but not limited to amount of coverage and allocation of deductibles and premiums, shall be as determined by the Board of Directors. If the Board of Directors determines to provide such insurance, it shall notify each Lot Owner in writing prior to obtaining such insurance. If the Board of Directors determines to provide such insurance, each Lot Owner may elect to either accept such insurance or decline such insurance, and shall notify the Board of Directors within the time frame specified therefor by the Board of Directors in its notice to Lot Owners. If the Association is unable, or chooses not to provide physical property coverage insurance with respect to the improvements on an Owner's Lot, or if the Owner declines such insurance offered by the Association, the Owner shall submit evidence of insurance obtained by such Owner covering the full replacement value of the improvements on such Owner's Lot to the Board of Directors of the Association annually, and no later than thirty (30) days following the anniversary date of the Owner's purchase of the Lot, or the effective date of the insurance policy.

With respect to the Common Area, the Association shall purchase and provide comprehensive general liability coverage insurance, against any other hazards and in such amounts as shall be determined

necessary by the Board of Directors of the Association. In addition, the Association may purchase such additional insurance against any additional hazards which may be deemed appropriate by the Board of Directors. The above insurance shall not cover the personal property of any Owner of any Lot, it being the Owner's responsibility to provide such insurance coverage for the Owner's protection.

The Association, in addition to the foregoing, shall provide directors and officers liability coverage insurance for the Association, for its officers, and for the members of the Board of Directors. Finally, if the Association has any employees of any nature, the Association shall purchase and provide Worker's Compensation insurance for all employees who may come within the scope of Nebraska Worker's Compensation laws. Insurance premiums, with the exception of premiums for the Optional Insurance, shall be assessed uniformly among the Association's membership. Premiums for the Optional Insurance shall be assessed to those Owners for whom such Optional Insurance was obtained, in the manner determined by the Board of Directors.

Section 2. Owner's Insurance. Each Lot Owner may obtain such additional insurance for the individual Owner's benefit and at such Owner's own expense as may be deemed necessary by the Lot Owner, including coverage for specific improvements and betterments in the Owner's unit, personal liability, specific personal property items, and the co-insurance provision of the full replacement cost, along with any exclusions of the insurance coverage from any master policy that may be provided by the Association.

## **ARTICLE IX** **ACCESS AND EASEMENTS**

Section 1. Association Access Easement. The Association, its officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement for such purposes. Notwithstanding anything to the contrary herein, until such time as the Association is formally created and operational, the Declarant shall have the rights granted to the Association in this Section 1.

Section 2. Utility Company Access. Each of telephone companies, Metropolitan Utilities District, Omaha Public Power District, the applicable cable television franchisee and their respective successors and assigns is granted an easement, together with rights of ingress, egress and other access thereto, for purposes of constructing, installing, maintaining, operating, renewing or repairing their respective telephone, gas, water, electric, cable television, public sewer, private sewer, or other utility conduits, lines, or other facilities in, over, under, and upon such strip or strips of Common Area or of any Lot which may be necessary or required to carry out the purposes set forth above; provided, however, that the easement shall not interfere with any structural element of any single family clustered residence and further provided that the grantees shall at all times restore the easement area to its pre-existing condition or better.

## **ARTICLE X** **GENERAL PROVISIONS**

Section 1. Enforcement. The Declarant, Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Declarant, Association or of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one or more of these covenants or restrictions, by judgment or court order, shall in no way affect any other provisions, which other provisions shall remain in full force and effect.

Section 3. Amendment. This Declaration may be amended at any time by the approval of the Owners of not less than three-fourths (3/4) of the Lots then covered by this Declaration. Any such amendment shall be valid only upon its being recorded in the same manner as deeds shall be recorded at such time. Notwithstanding the foregoing, so long as the Declarant owns at least one (1) Lot, Declarant shall have the right to unilaterally amend this Declaration ("Unilateral Amendment"); provided, however, (i) the then current Owners shall not be liable for any then-existing violation of the terms of any Unilateral Amendment, and (ii) the Declarant shall provide written notice to the Owners at least fifteen (15) days prior to filing a Unilateral Amendment.

Section 4. Term. These covenants and restrictions contained in this Declaration shall run with the land, and shall be binding for an initial term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless earlier terminated by a vote of three-fourths (3/4) of the Owners prior to expiration of the then current term.

**[The Remainder of This Page Intentionally Left Blank; Signature Page Follows.]**

IN WITNESS WHEREOF, the Declarant and Existing Owner have caused these presents to be executed as of the Effective Date.

**DECLARANT:**

BP DEVELOPMENT, LLC, a Nebraska limited liability company

By: Douglas W Rolloff

Name: Douglas W Rolloff

Its: MANAGING MEMBER

**EXISTING OWNER:**

MARQUE CUSTOM BUILDERS, LLC, a Nebraska limited liability company

By: Mark Hopkins

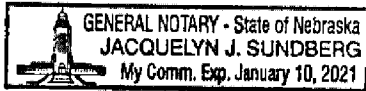
Name: MARK HOPKINS

Its: MANAGING MEMBER

(Notary Blocks on Following Page)

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing signature of BP Development, LLC, a Nebraska limited liability company, was acknowledged before me this 10<sup>th</sup> day of May, 2018, by Douglas Wayne Robloff, as Managing member of BP Development, LLC a Nebraska limited liability company, on behalf of the company.

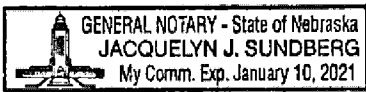


*Jacquelyn J. Sundberg*  
\_\_\_\_\_  
Notary Public

My Commission expires: Jan. 10, 2021

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing signature of Marque Custom Builders, LLC, a Nebraska limited liability company, was acknowledged before me this 10<sup>th</sup> day of May, 2018, by Mark R. Hopkins, as Managing member of Marque Custom Builders, LLC, a Nebraska limited liability company, on behalf of the company.



*Jacquelyn J. Sundberg*  
\_\_\_\_\_  
Notary Public

My Commission expires: Jan. 10, 2021