



MISC Inst. # 2020121238, Pg: 1 of 22 Rec Date: 10/21/2020 11:47:01.633

Fee Received: \$136.00 Electronically Recorded By: MLS

Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NEWPORT VISTA, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA

THIS DECLARATION is made on the date hereinafter set forth by Krejci Development, LLC, a Nebraska limited liability company, "Declarant",

W I T N E S E T H:

WHEREAS, Declarant, is the owner of certain property in Douglas County, Nebraska, more particularly described as follows:

Lots 1 through 215 and Outlots A through F, of Newport Vista, a subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded.

WHEREAS, Declarant desires to make all of the above described property subject to the covenants, conditions, restrictions and easements hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the property hereinabove described 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, 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 thereof.

ARTICLE I DEFINITIONS

SECTION 1. "ASSOCIATION" shall mean and refer to the Newport Vista Homeowners Association, Inc., a Nebraska nonprofit corporation, its successors and assigns.

Record and Return to: James E. Lang, 8526 F Street, Omaha, NE 68127

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SECTION 2. "COMMON AREA" shall mean and refer to Outlots A through F, Newport Vista, and any improvements thereon, which Common Area shall be owned and maintained by the Association, and any additional real property owned by the Association, with the exception of Outlots A, B, C and E which contain stormwater drainage and post construction stormwater management features, which stormwater drainage features shall be maintained by Sanitary and Improvement District No. 594 of Douglas County, Nebraska ("SID 594") through June 30, 2025, and commencing on July 1, 2025 and thereafter the Association shall maintain Outlots A, B, C and E and the stormwater features within such Outlots.

SECTION 3. "COMMON FACILITIES" may include parks (public or otherwise); dedicated and non-dedicated roads, pathways and green areas; signs; and entrances for Newport Vista, and other improvements and facilities owned by the Association and/or the Sanitary and Improvement District.

SECTION 4. "CONSTRUCTION IMPACT DEPOSIT" shall mean the amount established by the Declarant, or its assignee, to be deposited in an account determined by the Declarant, or its assignee, by the builder or Owner constructing a dwelling on a Lot to secure performance by such builder or Owner of the requirements of this Declaration or the conditions of the Improvement plan approval.

SECTION 5. "DECLARANT" shall mean and refer to all persons and entities signing this instrument, and their successors and assigns.

SECTION 6. "DECLARATION" shall mean this document.

SECTION 7. "LOT" shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties or one of two parcels resulting from a Lot split and Outlots A through F, Newport Vista.

SECTION 8. "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 Properties, 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.

SECTION 9. "PROPERTIES" shall mean and refer to:

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Lots 1 through 215, and Outlots A through F, Newport Vista, a subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded,

together with any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II OUTLOTS A THROUGH F NEWPORT VISTA

The Association shall permanently and continuously own Outlots A through F and be a party to a Maintenance Agreement with the City of Bennington and 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 A through F and any other common areas, including all storm water basins (temporary and permanent), trails, subdivision signs, entrance signs, fencing, and related fixtures, and including all landscaping and related fixtures, within the Newport Vista Subdivision, which permanent and continuous ownership and maintenance obligations shall survive and shall continue after annexation by the City of Bennington, however, notwithstanding the foregoing, SID 594 may provide the maintenance of Outlots A, B, C and E which contain stormwater drainage and post-construction stormwater management features through June 30, 2025, at which time the Association shall then maintain such Outlots and the stormwater drainage and post-construction stormwater management features thereon.

ARTICLE III PROPERTY RIGHTS

SECTION 1. VOTING RIGHTS. The Association may suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for any period not to exceed 60 days for any infraction by any such Owner, or members or such Owner's family, or guests or tenants of such Owner, of the published rules and regulations of the Association.

SECTION 2. PARKING RIGHTS. Ownership of any Lot shall entitle the Owner or Owners thereof to such parking rights as shall be available upon such Lot.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Every Owner of a Lot which is subject to assessment 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 2. Except as otherwise set forth herein, members holding 1/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum.

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SECTION 3. The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

CLASS A: Class A Members shall be all Owners, including the Declarant. Each Class A 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.

CLASS B: Class B Members shall be the Declarant or its successors and assigns which shall be entitled to three votes for each Lot owned by the Declarant or its successors or assigns (in addition to Declarant's number of votes as a Class A member). The Class B membership shall terminate (with the Declarant or its successors and assigns then still entitled to one vote for each Lot owned by the Declarant or his successors and assigns as a Class A member) upon the occurrence of the first of the following dates:

- (a) The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership, or
- (b) January 1, 2030.

ARTICLE V COVENANT FOR ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant hereby covenants for each Lot and for each Owner of any Lot, with the exception of Outlots owned by the Association, Lots owned by the Declarant, or until January 1, 2026 as to Lots upon which model homes or builder spec homes are constructed and Lots owned by builders which are held for home construction and sale to the public, by acceptance of a deed therefore or by entering into a contract for the purchase thereof, whether or not it shall be so expressed in such deed or in such contract, that it is, and shall be, deemed to covenant and agree to pay to the Association;

- (1) Periodic assessments for the repair, maintenance and improvement of the Common Area, and operational expenses of the Association, (the "Association Periodic Assessment"), and
- (2) Special assessments for capital improvements

as such assessments shall be established and collected as hereinafter provided. The special assessments and periodic assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment shall be made. Each such assessments, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity

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who, or which, was the Owner of the property 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. PURPOSES OF ASSESSMENTS. The assessments levied by the Association shall be used to promote the health, safety, recreation and welfare of the residents in the Properties for the ownership, maintenance, construction, reconstruction and repair of the Common Area, the roadway, utilities and improvements within the Common Area, and other matters as more fully set out in Article VI herein.

SECTION 3. PERIODIC ASSESSMENTS. The Board of Directors shall have the authority to levy and assess from time to time against a Lot subject to assessment, the Association Periodic Assessment for the purpose of meeting the requirements of Article V and VI and the other requirements of this Declaration, and to establish the payment dates for the assessments.

SECTION 4. SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS. The Association may levy special assessments from time to time against a Lot subject to assessment for the costs of any construction, reconstruction, repair or replacement of any capital improvements on or within the Common Area, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of membership, who shall vote in person or by proxy at a meeting duly called for such purpose, or, if so elected by the Declarant or the Association Board of Directors, by Electronic Voting pursuant to Article XII, Section 7 of this Declaration.

SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 4 OF ARTICLE V. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 of this Article V shall be sent or emailed to all Members not less than 10 days or more than 50 days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of the combined total of votes of both classes of 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 such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Any such subsequent meeting shall be held within 60 days following the preceding meeting. In addition to the above meeting and quorum provisions, if elected by the Declarant or the Association through its Board of Directors, the Association may utilize Electronic Voting pursuant to Article XII, Section 7 of this Declaration for meeting the quorum and voting requirements set forth in this section. If such Electronic Voting is utilized, then in order to establish the quorum requirements as set forth in this section, there must be in excess of 60% of the combined total of votes of both classes of membership cast in order to constitute a quorum, and if the required quorum vote is not obtained, then another vote may be called subject to the same notice requirements and the required quorum at such subsequent Electronic Voting shall be one-half of the required quorum of the preceding Electronic Vote with any subsequent Electronic Vote to be held within 60 days following the preceding vote. Once the quorum requirements are met, the item shall pass if a majority of the Lot Owners in each class vote in favor of the matter. In the event Electronic Voting is utilized in place of an actual meeting, when notice is provided, the notice shall provide sufficient information in order for the Members to be properly informed as to the contents of the matter upon which they are to vote.

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SECTION 6. RATE OF ASSESSMENT. The Association Periodic Assessments shall be paid pro-rata by the Owners of all Lots subject to the Association Periodic Assessments under Article V, Section I of this Declaration based upon the total number of Lots. The Association Periodic Assessments may be collected on a monthly or other periodic basis by the Association. The Board of Directors of the Association shall fix the amount of the periodic assessments and dues against each Lot which is subject to such assessments and dues. Written notice of the assessment shall be sent or emailed to every Lot 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 shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Nebraska, which at the time of the execution of these Declarations, is sixteen percent (16%) per annum. Should any assessment remain unpaid more than sixty (60) days after the due date, the Association may declare the entire unpaid portion of said assessment for said year 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, or may foreclose the lien of such assessment against the property 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 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.

SECTION 9. ABATEMENT OF DUES AND ASSESSMENTS. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period when such Lot is owned by the Declarant, or until January 1, 2026 as to a Lot a builder is holding for house construction, sale to the public or upon which a builder model or spec is located.

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SECTION 10. MAXIMUM ANNUAL DUES. The maximum Association Periodic Assessments shall not exceed \$100.00 per year through December 31, 2021. Thereafter, the Board of Directors shall be permitted to raise the annual dues, if necessary, however, such annual dues shall not exceed 125% of the aggregate dues charged in the previous calendar year.

**ARTICLE VI
HOMEOWNERS' ASSOCIATION**

SECTION 1. THE ASSOCIATION. Declarant has caused the incorporation of Newport Vista Homeowners Association, Inc., a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Newport Vista Subdivision, including:

- (a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of the Common Area and the Common Facilities thereon, for the general use, benefit and enjoyment of the Members and their guests. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and non-dedicated roads, pathways and green areas (including landscaping); mailboxes, and signs and entrances for Newport Vista. Common Facilities may be situated on the Common Area, on property owned or leased by the Association, on park ground within Newport Vista, on private property subject to an easement in favor of the Association, on public property, or on property owned by a Sanitary and Improvement District.
- (b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of the Common Area and the Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Area and Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Area and Common Facilities.
- (c) The exercise, promotion, enhancement and protection of the privileges and interests of the residents of the Newport Vista Subdivision; and the protection and maintenance of the residential character of the Newport Vista Subdivision.
- (d) The enforcement of the Covenants against any person or Owner who is in violation of such Covenants including, but not limited to, bringing the appropriate action in law or equity to enforce the Covenants and to enjoin any violation of these Covenants.

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- (e) To permanently and continuously own Outlots A through F and be a party to a Maintenance Agreement with the City of Bennington and 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 A through F and any other common areas, including all storm water basins (temporary and permanent), trails, subdivision signs, entrance signs, fencing, and related fixtures, and including all landscaping and related fixtures, within the Newport Vista Subdivision, which permanent and continuous ownership and maintenance obligations shall survive and shall continue after annexation by the City of Bennington, however, notwithstanding the foregoing, SID 594 may provide the maintenance of Outlots A, B, C and E which contain stormwater drainage and post-construction stormwater management features through June 30, 2025, at which time the Association shall then maintain such Outlots and the stormwater drainage and post-construction stormwater management features thereon.

SECTION 2. MEMBERSHIP AND VOTING. Membership and voting in the Association shall be as set forth in Article IV of these Covenants. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration.

Declarant anticipates that additional phases of Newport Vista will be developed by Declarant or other developers. From time to time, without the consent or approval of an Owner or Member, the Association may, with Declarant's approval, be expanded to include additional residential lots in any subdivision which is contiguous to any of the Lots, or which is developed as a phase of the Newport Vista Subdivision. Such expansion(s) may be effected from time to time by recordation with the Register of Deeds of Douglas County, Nebraska, of a Declaration of Covenants, Conditions, Restrictions and Easements, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration"), provided that if the Subsequent Phase Declaration is recorded by a person or entity other than Declarant, the inclusion of additional residential lots in the Association must be approved by Declarant. Upon the recordation of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes of Article IV and the Declaration, and the owners of the additional residential Lots shall be members of the Association with all rights, privileges and obligations accorded or accruing to members of the Association.

SECTION 3. PURPOSES AND RESPONSIBILITIES. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

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- (a) The acquisition, development, maintenance, repair, replacement, operation and administration of the Common Area and Common Facilities, and the enforcement of the rules and regulations relating to the Common Area and Common Facilities.
- (b) The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks, public property, boulevards, walking trails, Common Area, or park ground within or near Newport Vista.
- (c) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.
- (d) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering the Common Area and any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.
- (e) The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.
- (f) The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.
- (g) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.
- (h) The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.
- (i) General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.
- (j) The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.
- (k) The enforcement of these Covenants, including, but not limited to, the bringing of the appropriate action in either law or equity to enforce the Covenants and to enjoin the violation of any of the Covenants by way of a

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temporary restraining order, temporary injunction, permanent injunction and/or mandatory injunction, all parties agreeing that in the event of a violation of the Covenant, the Association shall have no adequate remedy at law, and any and all other rights and remedies provided by law, including an action for damages.

- (l) To permanently and continuously own Outlots A through F and be a party to a Maintenance Agreement with the City of Bennington and 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 A through F and any other common areas, including all storm water basins (temporary and permanent), trails, subdivision signs, entrance signs, fencing, and related fixtures, and including all landscaping and related fixtures, within the Newport Vista Subdivision, which permanent and continuous ownership and maintenance obligations shall survive and shall continue after annexation by the City of Bennington, however, notwithstanding the foregoing, SID 594 may provide the maintenance of Outlots A, B, C and E which contain stormwater drainage and post-construction stormwater management features through June 30, 2025, at which time the Association shall then maintain such Outlots and the stormwater drainage and post-construction stormwater management features thereon.

SECTION 4. MANDATORY DUTIES OF THE ASSOCIATION. The Association shall:

- (a) Maintain and repair the signs which have or will be installed by Declarant at the residential entrances along Bennington Road, 168th Street and elsewhere, in good repair and neat condition;
- (b) Maintain, repair, and replace as necessary all fences and trees, shrubs, and other natural barriers and green areas constructed on and along the Lots and on and along the Common Area, so that such are in good repair and neat condition;
- (c) In the event any Owner of a Lot shall fail to perform and fulfill his obligations and responsibilities under this Declaration, and if such failure continues for thirty (30) days after written notice to the Owner from the Association, the Association shall perform or have performed such obligation or responsibility. If the Association undertakes to perform or have performed the responsibilities of the Owner, the cost of such performance plus a fifteen percent (15%) administrative charge shall be assessed against the Owner, and the Owner shall be obligated to promptly pay such sums to the Association. Assessment of such costs shall be made by written demand from the Association for payment by the Owner. If such assessment is not paid within thirty (30) days after written demand from the Association, such assessment shall constitute a lien on the Lot, which lien shall attach, have the priority and be enforceable by the

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Association in the same manner as liens for assessments and dues as provided in this Declaration;

- (d) Maintain, repair, construct, and replace, as necessary the irrigation systems constructed by Declarant.
- (e) Permanently and continuously own Outlots A through F and be a party to a Maintenance Agreement with the City of Bennington and 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 A through F and any other common areas, including all storm water basins (temporary and permanent), trails, subdivision signs, entrance signs, fencing, and related fixtures, and including all landscaping and related fixtures, within the Newport Vista Subdivision, which permanent and continuous ownership and maintenance obligations shall survive and shall continue after annexation by the City of Bennington, however, notwithstanding the foregoing, SID 594 may provide the maintenance of Outlots A, B, C and E which contain stormwater drainage and post-construction stormwater management features through June 30, 2025, at which time the Association shall then maintain such Outlots and the stormwater drainage and post-construction stormwater management features thereon.

ARTICLE VII ARCHITECTURAL CONTROL AND PLAN AND IMPROVEMENT APPROVAL

SECTION 1. GENERAL. No residence, building, fence (other than fences constructed by Declarant), wall, pathway, driveway, patio cover enclosure, deck, swimming pool, pool house, flag pole, or other external improvement, above or below ground structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration therein be made, nor shall any trees, shrubs, or plantings be planted or maintained upon the Properties (hereinafter referred to as an "Improvement"), until the plans and specifications therefore, showing the nature, kind, shape, height, materials, color and location of the same (the "plans") shall have been submitted to and approved in writing, pursuant to Article VIII hereof, as to their complying with these Covenants, as to harmony of external design and location in relation to surrounding structures and topography, and in relation to trees, shrubs and plantings, by the Declarant, or the person(s), entity or committee designated by Declarant to review and approve the plans pursuant to this Declaration (the "Plan Reviewer"). Written Notice of any approval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans pursuant to Article VIII hereof. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant or the Plan Reviewer. Submissions of plans and specifications for all Improvements, and commencement of construction shall be subject to the following;

- (a) An Owner desiring to erect an Improvement on any Lot shall transmit an electronic set of construction plans, detailed landscaping plans which

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includes the sodding and seeding areas pursuant to Article VIII (o) hereof, and plot plans (herein collectively referred to as the "plans") to the Declarant or Plan Reviewer. Such plans shall include a description of the type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant or Plan Reviewer of the Owner's mailing address.

- (b) The Declarant or Plan Reviewer shall review such plans in light of the conditions and restrictions in Article VII and VIII of this Declaration and in relation to the type and exterior of improvements which have been constructed, or approved for construction, on the Lots. In this regard, the Declarant intends that the Lots shall be developed as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by the Declarant or Plan Reviewer in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within the Newport Vista subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. Unusual designs, improvements and home designs such as, but not limited to, dome houses, A-frame houses and log cabins will not be approved unless the Declarant or Plan Reviewer determines that construction of these improvements will not be materially inconsistent with the scheme of development contemplated by this Declaration. If the Declarant or Plan Reviewer determines that the external design and location of the proposed Improvement does not conform with the standards or requirements of this Declaration, does not conform with the surrounding improvements and topography or will not protect and enhance the integrity and character of all the Lots and neighboring lots, if any, as a quality residential community, the Declarant or Plan Reviewer may refuse approval of the proposed Improvement. The Declarant shall have the right to terminate the Plan Reviewer and appoint another Plan Reviewer or review and approve the plans itself pursuant to this Declaration. The plan review fee in an amount established by the Declarant or the Association must be paid to the Plan Reviewer or the Declarant, as the case may be, at the time of submitting such plans and specifications to the Plan Reviewer or the Declarant.
- (c) Following approval of the submitted Improvement plans and prior to obtaining the executed surveyor certificate from the Declarant's surveyor and commencement of the construction of the dwelling on any Lot, a refundable \$500.00 Construction Impact Deposit shall be made payable to Midwest Title Company, or a title company determined by Declarant, or its assigns and shall be held in reserve until completion and occupancy of such dwelling. The Declarant or the Association shall have the authority to deduct from the Construction Impact Deposit any and all expenses incurred for necessary corrective action as the result of the Owner or Owner's contractor not completing the Improvement pursuant to approved plans and specifications and this Declaration.

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- (d) An Improvement made after occupancy of the dwelling on a Lot (“Additional Improvement”) requires approval from the Declarant or Plan Reviewer of the plans and specifications for the Additional Improvement pursuant to Articles VII and VIII hereof. The Owner, or its contractor, shall submit the plans and specifications for the Additional Improvement to the Declarant or Plan Reviewer, as the case may be, for approval, along with the plan review fee in an amount established by the Declarant or the Association, and a refundable \$500.00 Construction Impact Deposit made payable to Midwest Title Company, or a title company determined by the Declarant, or its assigns, and shall be held in reserve until completion of the Additional Improvement. The Declarant or the Association shall have the authority to deduct from the Construction Impact Deposit any and all expenses incurred for necessary corrective action as a result of the Owner or the Owner’s contractor not completing the Additional Improvement pursuant to the approved plans and specifications and the terms of this Declaration.

**ARTICLE VIII
GENERAL RESTRICTIONS, COVENANTS AND OTHER PROVISIONS**

SECTION 1. RESTRICTIONS. Every Owner shall have full rights of ownership and full use and enjoyment of his or her Lot, subject to the following restrictions:

- (a) No single-family residential dwelling shall be created, altered, placed, or permitted to remain on any lot other than one detached single family residential dwelling which does not exceed 2-1/2 stories in height with a minimum of an attached three (3) car garage. No structure, building or porch shall be constructed, erected, installed, or situated within 25 feet of the front lot boundary of a Lot, and all improvements on the Lot shall comply with all other setback requirements of the Bennington, Nebraska Zoning Ordinance. Minimum main level floor areas for residential dwellings shall be required as follows:

Single story ----- 1,300 square feet
Story and one half ----- 1,200 square feet
Two story ----- 1,000 square feet

Accessory structures shall be regulated by the Bennington, Nebraska Zoning Ordinance.

All minimum main level floor areas as outlined in this paragraph shall be exclusive of garages, basements, breeze-ways, patios, etc.

- (b) Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. Any project under construction that needs an extension to the 1 year is to be submitted to the Declarant or Plan Reviewer for approval.

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- (c) All foundations shall be constructed of cast-in-place concrete, concrete blocks, brick or stone. The front walls of a dwelling directly facing the fronting street on any Lot shall be covered with not less than 1/4 masonry, brick, stone, tile or stucco/EIFS (stucco board siding does not apply). This minimum requirement may be waived during the plan review by the Declarant, or Plan Reviewer per the exterior design and style of the proposed dwelling or Improvement as may require. Side or rear facing exposed foundation walls that face a street, such as the street side foundation walls on a house on a corner lot, must be constructed of or faced with brick, stone, tile or stucco/EIFS (stucco board siding does not apply). In the event that a wood-burning fireplace and/or flue is constructed as part of the dwelling or Improvement on a Lot in a manner so as to protrude beyond the outer perimeter of the front of the dwelling, the enclosure of the fireplace and flue (chimney) shall be constructed of or finished with, brick or stone.
- (d) Roof shingles shall be a heritage type with a minimum 30 year rating, or another type of shingle approved by the Declarant or Plan Reviewer. Approved colors shall be weathered wood or black. No three-tab roof shingles shall be permitted. All exterior colors must be submitted for approval to and approved in writing by the Declarant or Plan Reviewer. Only exterior colors of certain earth tone hues will be acceptable.
- (e) The location of any exterior air condensing unit(s) are encouraged to be placed in the rear yard, or if located in any side yard, shall be screened from the right-of-way public view.
- (f) No awnings or sunscreens of any type shall be affixed to any dwelling or structure on any Lot without the written consent of the Declarant or Plan Reviewer.
- (g) No basketball goal shall be attached to the dwelling or any structure. No exterior television or radio antenna shall be erected on any Lot within the Properties; provided however, that with the written approval of the Declarant or Plan Reviewer, a satellite dish of reasonable, minimal dimensions may be affixed to the dwelling so long as such satellite dish is hidden from the right-of-way public view as best as possible.
- (h) Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.
- (i) All driveways and approaches shall be constructed of concrete. Should repair or replacement of a driveway be necessary, the repair or replacement shall be of concrete and be made by the Owner. No asphalt overlay of driveways or approaches will be permitted.
- (j) A public sidewalk shall be constructed of concrete five (5) feet wide and at least four (4) inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed six (6) feet six (6) inches

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back of the street curb line (per City of Bennington sidewalk requirements) and shall be constructed by the Owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Bennington.

- (k) No more than one flagpole not exceeding 25 feet in height with one flag no larger than 3 feet x 5 feet shall be permitted on a Lot.
- (l) Fescue grass has been planted in the Common Areas to minimize storm water soil erosion. It shall be the Association's responsibility to maintain and repair this type of seeded grass application as an integral method of minimizing storm water runoff. An Owner shall not modify or alter any portion of the Common Area.
- (m) The Declarant has established a water drainage plan by grading the Properties and installing improvements and easements for storm drainage in accordance with generally accepted engineering principles. No excavation of soil shall be spread across any Lot in such fashion as to materially change the grade, contour, or significantly alter the natural storm water drainage patterns of any Lot, unless approved by the Declarant or Plan Reviewer.
- (n) Improvements on any Lot shall include the use of siltation fences or erosion control devices and measures where necessary to minimize soil erosion to neighboring Lots & common areas. Furthermore, the Declarant does hereby reserve unto itself the right to require the installation and maintenance of siltation fences or erosion control devices and measures in such locations, configurations and designs as it may determine appropriate in its sole and absolute discretion.
- (o) No grass, weeds or other vegetation shall be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees shall be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of soils or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.
- (p) At least one tree with at least a 2 1/2 inch diameter caliper shall be placed in the front yard of the Lot prior to construction completion of the dwelling on the Lot. If such tree is not planted prior to occupancy of the dwelling, then the Declarant or the Association shall have the right to plant and invoice the Owner for the cost of purchasing and planting such trees, or obtain payment for such tree and tree planting from the Construction Impact Deposit for such Lot. No tree(s) shall be planted in the dedicated street right-of-way, located between the end of the street paving and the front property boundary. All yards shall be sodded, landscaped and the required

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tree(s) planted prior to occupancy and the release of the Construction Impact Deposit.

- (q) No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line unless otherwise approved by the Declarant or Plan Reviewer. Produce or vegetable gardens may only be planted and maintained in rear yards, and the size of such garden shall not exceed ten (10%) percent of the total lot size.
- (r) All utility service lines from each utility pedestal or transformer to a dwelling or other Improvement shall be buried underground.
- (s) No fence or wall may be installed without the prior written approval of the Declarant or Plan Reviewer. Fences and walls shall not extend beyond the front line of the main residential dwelling on a Lot and shall be maintained in a structurally sound and attractive manner. In all events, installed fences and walls must comply with applicable set back, height and other fence requirements imposed by the Bennington, Nebraska Zoning Subdivision and Building Ordinances. All fences shall be decorative black steel or powder coated aluminum which does not exceed six feet in height. There shall be no chain link, wire fences, privacy fences, or any material attached to a fence to provide screening.
- (t) No outdoor swimming pool may extend more than one foot above ground level and shall be enclosed with a 6' high fence in full compliance with all applicable ordinances as defined within the Bennington, Nebraska Municipal Code. A swimming pool may be considered in-ground if approximately 50% of the pool edge is at finish grade. Retaining walls may be utilized to compensate for variations in undulating topography, and such shall be screened accordingly with appropriate landscaping. All outdoor pool designs shall be submitted to and approved by the Declarant or Plan Reviewer prior to construction.
- (u) No recreational courts (tennis, basketball, etc.), shall be allowed on any residential lots without the prior written approval of the Declarant or Plan Reviewer.
- (v) No clothesline or clothes hanger, doll houses, fuel tank, sheds, tree houses, windmills, or other similar structures shall be permitted on any Lot or used on any Lot outside of a dwelling.
- (w) No noxious, offensive, or illegal activity shall be carried on upon the Properties, 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.
- (x) No incinerator or trash burner shall be permitted on any Lot. No garbage, trash receptacle, or trash container shall be permitted outside, except for

pickup purposes. The Declarant or the Association may specify one trash collection service company to be used by all property owners, with the cost of such trash collection service to be paid by the property owners. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, ditch or Lot.

- (y) No advertising signs, streamers, posters, banners, balloons, exterior illumination, billboards, or other rallying devices or unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising the Lot/residence "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner(s) of any Lot or any resident thereof. No business activities of any kind shall be constructed within any Lot except for home office usage. The foregoing restriction in this Article shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by the Declarant, or its agents and assigns, during the development and sale of Lots.
- (z) No trailer, basement, tent, shack, garage, barn, or other outbuilding shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. Provided, however, nothing contained herein shall restrict the Declarant or its assigns from locating, constructing, or moving a temporary real estate and/or construction office on any building site in the Properties to be used during the period of construction on and sale of the Lots within the Properties. The Declarant or its assigns may also erect and maintain model homes for sales purposes, and rental and lease purposes, and may operate such office or offices therein for so long as it deems necessary for the purpose of selling, renting, or leasing the Properties.
- (aa) The use of private barbecue grills and the outside use or storage of barbecue grills on any Lot may be subject to written regulations, restriction, or exclusion by the Association.
- (bb) No repair of any boats, automobiles, motorcycles, trucks, campers, or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.
- (cc) No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more

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than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semi tractors/trailers shall be stored, parked, kept, or maintained in any yards, driveways or streets. However, this shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other Improvements during the period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable Bennington, Nebraska Zoning Ordinance.

- (dd) No animals, livestock or poultry of any kind shall be raised or kept on any Lot in the Properties, other than non-exotic household pets. No such pets shall be kept, bred, or maintained for commercial purposes. No animals, livestock or poultry of any kind shall be raised or kept on any Lot in the Properties, other than household pets, which shall be limited to those numbers permitted under the laws and Bennington, Nebraska Municipal Code. All pets shall be confined to the Lot by fencing or leashed when outside the residential structure and patio area. All unpleasantries created by household pets shall be the responsibility of the Owner(s), and he or she shall be obligated to clean up after the animal. No Dog Runs shall be allowed.

ARTICLE X INSURANCE

The Association may purchase and provide insurance of the type(s) and in the amounts that the Board of Directors deem necessary.

ARTICLE XI ACCESS TO LOTS

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.

ARTICLE XII UTILITY METERS AND SERVICE LINES

In order to facilitate the installation, operation, maintenance and repair of an underground watering system for the Common Area, the Association may install a dual metering system from the Lots for water so as to permit the drawing of water for watering of the Common Area. It is understood that the amount of water metered for the residential use on any such Lot shall be paid by the Owner of each Lot and the amount of water metered for the Common Area use shall be paid by the Association.

ARTICLE XIII GENERAL PROVISIONS

SECTION 1. ADDITIONAL PHASES OF NEWPORT VISTA. Declarant anticipates that additional phases of Newport Vista will be developed by Declarant or other developers. From time to time, without the consent or approval of any Owners or Members, the Declarant, or its assigns, may expand these Covenants to include additional residential lots in any subdivision which is contiguous to any of the Lots, or which is developed as a phase of the Newport Vista Subdivision. Such expansion(s) may be effected from time to time by recordation with the Register of Deeds of Douglas County, Nebraska, of a Declaration of Covenants, Conditions, Restrictions and Easements, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration"). Upon the recordation of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes of the Covenants, and the owners of the additional residential Lots shall be members of the Association with all rights, privileges and obligations accorded or accruing to members of the Association.

SECTION 2. ENFORCEMENT. The Declarant, Association, or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration either to prevent or restrain any violation, or to recover damages or other dues for such violation. Failure of the Declarant, the 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 3. 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 4. TERM AND AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of twenty (20) years from the date of this Declaration. Thereafter the covenants, restrictions and other provisions of this Declaration shall automatically renew for successive ten (10) year periods unless terminated or amended by the Owners of not less than seventy-five percent (75%) of said Lots, which termination or amendment shall thereupon become binding upon all Lots. Notwithstanding anything contained in this Declaration to the contrary, for a period of twenty (20) years following the date hereof, the Declarant and its successors and assigns, shall have the sole, absolute and exclusive right to amend, modify or supplement all of any portion of the Declaration from time to time by executing and recording one or more duly acknowledged Amendments to the Declaration in the Office of the Register of Deeds of Douglas County, Nebraska. Thereafter, this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration as set forth above. Provided however, that no termination or amendment of any provisions of this Declaration regarding the maintenance or ownership of Outlots A through F, 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 A through F within the Newport Vista Subdivision, which permanent and contiguous

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ownership and maintenance obligations shall survive and shall continue after annexation by the City of Bennington.

SECTION 5. TERMINATION OF DECLARANT STATUS BY DECLARANT.

The Declarant, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, or at such time of Declarant no longer owning any Lots subject to this Declaration, the rights of the Declarant shall automatically transfer to the Association and the Association may exercise such rights or appoint another entity, association or individual to serve as Declarant with the same authority and powers as the original Declarant.

SECTION 6. ASSIGNMENT OF ARCHITECTURAL REVIEW AND

APPROVAL. The Declarant shall have the right to assign its authority as set forth in this Declaration for review and approval of building plans and improvements to the Board of Directors of the Association or to an Architectural Control Committee, and upon such assignment, such persons or entity shall have the authority to approve building plans and Improvements as set forth in this Declaration.

SECTION 7. ELECTRONIC VOTING. In addition to the standard method of voting, Electronic Voting may also be utilized as follows:

- (a) Amendments to the Declaration, or to the bylaws of the Association may be made by utilizing an electronic voting system. Election of board members of the Association and any other matters requiring a vote of the Owners also may be made by utilizing an electronic voting system.
- (b) The electronic voting system shall be procured from a commercial provider that is not under the control of any Lot Owners, an example of which is www.ElectionBuddy.com. The Declarant or the Association's board shall appoint an individual, who may be a board member, to administer the operation of the electronic voting system on behalf of the Declarant or the Association.
- (c) In order for an Owner to vote, the Owner(s) of each Lot must submit to the Declarant or the Secretary of the Association a notarized statement ("Appointment of Electronic Voting Designee"), signed by all owners of the Lot, appointing a person, by name, email address and text capable mobile telephone number, who shall be the sole individual ("Electronic Voting Designee") entitled to receive and cast an electronic vote on behalf of the Owner. The Appointment of Electronic Voting Designee shall be valid until a new Appointment of Electronic Designee is submitted or until ownership of the Lot is transferred to a third party. The failure of an Owner of any Lot to submit an Appointment of Electronic Voting Designee shall not be grounds to invalidate any vote that occurs utilizing electronic voting.
- (d) Electronic votes shall occur at times and in the manner established by the Declarant or the Association's board of directors, however, if an electronic vote on an amendment to the Declaration is (1) requested by a vote of a majority of Owners represented at an Annual or Special Meeting of

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Members or (2) requested by written petition of twenty-five percent of the Owners, the Association's board of directors shall cause an electronic vote on said amendment to occur within 60 days of that meeting or request.

- (e) Notice of an election shall be delivered to the Electronic Voting Designee via email and text, with at least one reminder notice also sent by email and text. The Declarant or the Association shall endeavor to cause notices to be sent to all Electronic Voting Designees, however, the failure of any Electronic Voting Designee to receive notice shall not be grounds to invalidate an action that otherwise receives a sufficient number of votes.
- (f) An amendment to the Declaration that is made utilizing electronic voting shall become effective upon recording in the office of the Register of Deeds of the text of the amendment along with a statement executed before a notary public by the Declarant or the President of the Association identifying (1) the electronic voting service utilized to receive and tabulate votes, (2) the date and time at which the election closed, (3) the lot number and name of each Electronic Voting Designee that voted in favor of the amendment. The recorded document shall include a statement by the individual appointed to administer the operation of the electronic voting system certifying that the statement accurately sets forth the results reported by the electronic voting service.
- (g) An amendment to the bylaws of the Association, or an election, or any other vote that does not require recording with the Registrar of Deeds shall become effective upon the issuance by the Declarant or the Association of a statement by the individual appointed to administer the operation of the electronic voting system setting forth the results reported by the electronic voting service.

(Signature page to follow)

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have executed this Declaration of Covenants, Conditions and Restrictions this 22 day of September, 2020.

**KREJCI DEVELOPMENT, LLC, a
Nebraska limited liability company**

By: Frank R. Krejci
Frank R. Krejci, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Before me the undersigned, a notary public, personally came Frank R. Krejci, personally known to me to be the Manager of KREJCI DEVELOPMENT, LLC, a Nebraska limited liability company, and acknowledged the execution of the above to be his voluntary act and deed on behalf of said company.

WITNESS my hand and notarial seal this 22 day of September, 2020.

Marilyn J. Ellingson
Notary Public

