

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
UNIVERSITY VILLAGE
Kearney, Buffalo County, Nebraska

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
UNIVERSITY VILLAGE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of the 19th day of November, 2019, by the Board of Regents of the University of Nebraska, a public body corporate and governing body of the University of Nebraska at Kearney ("Declarant" or "University").

WITNESSETH:

WHEREAS, Declarant is the owner in fee of that certain real property located in Buffalo County, Nebraska, more particularly described in Exhibit A and depicted on Exhibit B (collectively "University Village" or the "Property"), upon which Declarant intends, but is not obligated, to develop a multiuse community to be known as University Village;

WHEREAS, Kearney University Village Development Corporation ("KUVDC") is the master lessee of University Village; and

WHEREAS, this Declaration is made to ensure that University Village is utilized in the best interests of the University for purposes of developing and operating University Village in a manner that will be a continuing asset to the University, and to this end, Declarant desires to subject University Village, together with such additions as may hereafter be made thereto to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

NOW THEREFORE, Declarant hereby declares that all of University Village and such additions thereto as may hereafter be made pursuant to Section 3 hereof, shall be held, conveyed, leased, rented, used, occupied, and improved, subject to the following covenants, conditions, restrictions, easements, charges and liens (the "Restrictions"). The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns and upon the parties having or acquiring any interest in University Village or any part or parts thereof, and shall inure to the benefit of Declarant and its successors in title to University Village or any part or parts thereof.

1. **Definitions.**

- 1.1. "Architectural Control Committee" means that entity established pursuant to Section 12 hereof for the purposes therein stated.
- 1.2. "Board of Directors" means the governing body of KUVDC.
- 1.3. "Capital Assessment" means the assessment levied by the Corporation pursuant to Subsection 11.3 for the purposes of therein stated.
- 1.4. "Commercial Unit" means any structure or portion thereof situated upon a Lot which is designed and intended for use and occupancy for such non-residential purposes as are permitted under these Restrictions. A Commercial Unit may be a condominium unit.
- 1.5. "Common Areas" means any part of University Village that is not designated on a Plat as a Lot, or Improvements owned by the Declarant or the Corporation designated as Common Areas,

and shall include any Improvements, Paths, non-recreational water features, Detention Areas, Retention Areas, and Common Parking Facilities there located.

- 1.6. "Common Parking Facility" means any parking lot owned, managed, and maintained by the Corporation.
- 1.7. "Corporation" means KUVDC, its successors and assigns.
- 1.8. "Curb strip" means the area between a roadway or street and the sidewalk and may be planted with grass and/or plants, including trees.
- 1.9. "Declarant" means the Board of Regents of the University of Nebraska, a public body corporate and governing body of the University of Nebraska at Kearney.
- 1.10. "Design Guidelines" means the design criteria for University Village, which may be revised or amended from time to time by the Corporation or Declarant, and which shall be provided by the Corporation upon request.
- 1.11. "Detention Area" means an area depicted on the Master Plan which has been engineered to accommodate from time to time surface water drainage.
- 1.12. "General Assessment" means all sums lawfully assessed against each Responsible Party within University Village pursuant to Subsection 11.1.
- 1.13. "Improvement(s)" shall mean any building or permanent structure constructed on a Lot within University Village, including, but not limited to, the main facility, any outside facility including patios and dining areas, and all retaining walls constructed on a Lot.
- 1.14. "Improvement Owner" means a Person who at the time has or is acquiring legal title to an Improvement on a Lot except a Person who has or is acquiring such title merely as security for the performance of an obligation.
- 1.15. "Infrastructure" means the fundamental facilities and systems serving University Village for public and private use and provided for by the Corporation, including but not limited to streets, sidewalks, and irrigation systems.
- 1.16. "KUVDC" means Kearney University Village Facility Development Corporation, a Nebraska non-profit corporation.
- 1.17. "Living Unit" means a room or combination of rooms designed for year-round habitation, containing a bathroom and kitchen facilities, and designed for or used as a permanent residence by at least one Person.
- 1.18. "Lot(s)" means any plot of land intended as a building site shown upon a recorded Plat, any part of University Village designated in a recorded instrument as a "Lot."

- 1.19. "Maintenance Costs" means all of the costs necessary to keep Common Areas operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or part of any such Common Area, payment of all insurance premiums for public liability, casualty and other insurance maintained with respect thereto, all utility charges relating to such facilities, all taxes imposed on the facility, leasehold, easement, or right-of-way, and any other expense related to the continuous maintenance operation, or improvement of the Common Area.
- 1.20. "Master Plan" means the master site plan of University Village.
- 1.21. "Parcel" means each platted subdivision or neighborhood of University Village as may be depicted on the Master Plan, consisting of one or more Lots that are subject to the same Supplemental Declaration or are declared by Declarant or the Corporation to constitute a "Parcel." One or more Lots may be included in more than one Parcel.
- 1.22. "Parcel Assessment" means an assessment made pursuant to Subsection 11.1.5 of this Declaration.
- 1.23. "Paths" means those walkways and/or bikeways installed pursuant to Section 6.
- 1.24. "Person" means an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.
- 1.25. "Plat" means a secondary plat of a portion of University Village subdividing the land and depicting Lots, executed by the Declarant or the Corporation and recorded in the office of the Buffalo County Register of Deeds.
- 1.26. "Proposed Plans" means any site plans, grading and utility plans, landscaping plans, sign and sign allocation plans, floor plans and building elevations, and materials plans, demolition plans, and such other plans and specifications as may be appropriate and any other data or information that the Architectural Control Committee may request with respect to the improvement or alteration of a Lot or the construction or alteration of any Improvement thereon.
- 1.27. "Responsible Party" means the owner or ground lessee of a Lot within University Village.
- 1.28. "Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Design Criteria, as the same may be amended from time to time.
- 1.29. "Retention Area" means an area depicted on the Master Plan which has been engineered to maintain a permanent pool of water and to hold storm water runoff.
- 1.30. "Senior Housing" means congregate housing for the elderly, including associated Living Units the owners or occupants of which have the benefit of access to goods and services provided by the operator of the congregate care facility.

1.31. "Site Furniture and Facilities" means any furniture, trash containers, artwork, sculptures, or other furniture, fixtures, light fixtures, equipment, or facilities constructed, installed, or placed in University Village by Declarant or KUVDC and intended for the common use or benefit of some, if not all, Responsible Parties, sub-lessees, owners of Improvements, tenants, and occupants.

1.32. "Supplemental Declaration" means any supplemental declaration of covenants, conditions, or restrictions, or any declaration of horizontal property regime which may be recorded and which extends the provisions of this Declaration or any previously recorded Supplemental Declaration to a Platted neighborhood and contains such complementary or supplementary provisions for such Platted neighborhood as are required or permitted by this Declaration.

1.33. "University" means the University of Nebraska.

1.34. "University Village" means the land described in Exhibit B and such other real estate may from time to time be included therewith under the provisions of Section 3.

2. **Declaration.** Declarant hereby expressly declares that University Village, as described in Exhibit A and depicted on Exhibit B, and any additions thereto, pursuant to Section 3 hereof, shall be held, transferred, and occupied subject to the Restrictions. The Restrictions shall be administered and applied by the Corporation, all Responsible Parties, and any Improvement Owner, sublessee, tenant, or occupant of any Improvement on any Lot subject to these Restrictions, (i) by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase or lease thereof, whether from Declarant, the Corporation, a Responsible Party or Improvement Owner, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Responsible Party and Improvement Owner acknowledges the rights and powers of Declarant and the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, Responsible Parties, and current and subsequent Improvement Owners to keep, observe, comply with and perform such Restrictions and agreement. The Corporation shall have complete authority to approve, reject, or require modification to any plan or design proposal for development or construction and to establish the Design Guidelines.

3. **Subsequently Acquired Property/Additions to University Village.** In order to ensure the continued vitality and quality of University Village, the Declarant shall have the right to bring within the scheme of this Declaration and add to University Village real estate that is contiguous to University Village. In determining contiguity, public rights of way and waterways shall not be considered.

The additions authorized under this section shall be made by the filing of record of this Declaration or one or more Supplemental Declarations with respect to the additional real estate and by filing with the Corporation any revisions to the Master Plan necessary to reflect the scheme of development of the additional real estate. Unless otherwise stated therein, such revisions to the Master Plan shall not bind Declarant to make the proposed addition. For purposes of this Section 3, a Plat depicting a portion of University Village shall be deemed a Supplemental Declaration.

4. **Permitted Uses.**

4.1. University Village is an urban mixed-use community, and each Lot within University Village may be developed for residential, commercial, recreational, University, and other similar uses, or a mix thereof, subject to the remaining provisions of the Declaration, any Supplemental Declarations, and Design Guidelines.

4.1.1. Permitted residential uses are:

4.1.1.1. Single-family housing, including townhomes and condominiums.

4.1.2. Permitted commercial uses are:

4.1.2.1. Leisure, including public houses offering food service, brewpubs, restaurants, bakeries, creameries, movie theaters, and cafes;

4.1.2.2. Retail, including retail stores and shops;

4.1.2.3. Services, including finance, insurance, and real estate;

4.1.2.4. Office, including office buildings, serviced offices, and medical facilities;

4.1.2.5. Multifamily residential housing including apartments; and

4.1.2.6. Research and development.

4.1.3. Recreational uses include indoor or outdoor athletic facilities or playfields, playgrounds, parks, and any associated amenities.

4.1.4. University uses include student and faculty housing and any use in furtherance of Declarant's or University's mission of education, research, and service to the State of Nebraska and its people.

4.2. Permitted uses by neighborhood.

4.2.1. Lots located within the Loper Commons neighborhood of University Village may be developed for commercial and University uses.

4.2.2. Lots located within the Village Center neighborhood of University Village may be developed for commercial and University uses.

4.2.3. Lots located within the In the East Village Neighborhood of University Village may be developed for residential, commercial, and University uses.

4.2.4. Lots located within the West Village Neighborhood of University Village may be developed for residential and commercial uses.

4.2.5. Lots located within the Recreational Complex neighborhood of University Village may be developed for recreational uses.

4.3. Tenant approval by the Corporation. All ground level commercial tenants, lessees, or sub-lessees shall be subject to approval by the Corporation. A ground level tenant shall not sublet, license, assign, transfer or convey their interests to a new tenant which has not been approved by the Corporation. Notwithstanding the foregoing, it is agreed that the terms "sublet" or "license" as used herein pertain only to a direct transfer or conveyance of tenant's interest in real property or a sublease of the tenancy.

5. **Prohibited Uses.** The uses of Lots shall be consistent with this Declaration and consistent with the Permitted Uses. Notwithstanding anything herein to the contrary, none of the following uses or operations shall be conducted or permitted on or with respect to all or any part of the Lots unless otherwise approved by the Corporation in its sole discretion:

5.1. Any public or private nuisance;

5.2. Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;

5.3. Any use which emits or results in strong, unusual or offensive odors (but not such odors as shall normally emit from restaurants), fumes, dust or vapors, creates a hazardous condition, or is used in whole or in part, for warehousing or dumping or disposing of garbage or refuse, other than in enclosed receptacles intended for such purpose;

5.4. Any use which emits an excessive quantity of dust, dirt or fly ash;

5.5. Any use which could result in, or cause fire, explosion or damaging or a dangerous hazard, including the storage, display or sale of explosives or fireworks;

5.6. Any operation primarily used as a storage facility, or assembly, manufacture, distillation, refining, smelting, agriculture or mining operations;

5.7. Any mobile home or trailer court, auction house, labor camp, junkyard, mortuary, funeral home, stock yard, or animal raising;

5.8. Any automobile, truck, trailer, or recreational vehicle sales, rental, leasing, or body and fender repair operation;

5.9. Any flea market and/or swap meet or second hand or surplus store;

5.10. Any commercial endeavor which conducts, markets, promotes, or sells items or activities of a sexually oriented nature;

5.11. Any gas or service station or automobile service facility or car-washing establishment;

5.12. Any establishment selling illegal drug related paraphernalia or paraphernalia related to the use or consumption of products containing or derived from plants of the Cannabis genus;

- 5.13. Any central laundry, dry cleaning plant, or laundromat;
- 5.14. Any gambling facility or operation;
- 5.15. Any nightclub, standalone bowling alley, cigar bar, vape shop, tobacco store, payday lender, or retail establishment that predominantly sells prepackaged alcoholic beverages or products containing or derived from plants of the Cannabis genus;
- 5.16. Any stand-alone outdoor advertising signs or billboards shall not be permitted upon any property in University Village, except monument or directional signage as determined by the Corporation; or
- 5.17. Any establishment providing the same or similar educational or academic services Declarant or of the University of Nebraska at Kearney, or directly or indirectly engaged in postsecondary education.
6. **Common Areas.** Title to all Common Areas is held by the Declarant. The Corporation shall be responsible for maintaining all Common Areas and the Maintenance Costs thereof shall be assessed as a General Assessment against each Responsible Party. The Corporation may, but is not obligated to construct, install, or place civic buildings, parks, recreational facilities, underground utility facilities, Site Furniture and Facilities, Paths and path lighting, planting structures, Common Parking Facilities, fountains or other non-recreational water features, Detention Areas, or Retention Areas on Common Areas as it deems desirable and necessary. Any such Improvement made to or installed on a Common Area shall be a Common Area. The use of Common Areas shall be subject to such reasonable rules, regulations, and use fees as the Corporation may impose which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.
- 6.1. **Common Parking Facilities.** The Corporation shall maintain any Common Parking Facilities located in University Village, including any exterior and interior landscaping, and the Maintenance Costs thereof shall be assessed as a Capital and Infrastructure Assessment.
- 6.2. **Paths and Path Lights.** The Corporation may, but is not obligated to, install Paths and path lights at the approximate locations depicted in the Master Plan, Design Guidelines, or Plat and may reserve easements for such purpose over and across Lots. If installed, the Corporation shall operate and maintain the Paths and path lights and the Maintenance Costs thereof shall be assessed as a General Assessment against all Responsible Parties. The Board of Directors of the Corporation may adopt such rules and regulations with respect to the use of the Paths as it may deem appropriate including but not limited to the prohibition of the use of all or some of the Paths by bicycles, skateboards and/or motorized or non-motorized vehicles.
- 6.3. **Non-recreational water features, Detention Areas, and Retention Areas.**
- 6.3.1. **Development.** Declarant reserves the right to develop any non-recreational water feature, Detention Area, or Retention Area located within the University Village development area, including the right to alter the size and configuration thereof (as a result of which, the non-recreational water features, Detention Areas, and Retention

Areas may vary from that depicted on the General Plan of Development attached as Exhibit B hereto).

6.3.2. Maintenance. The Corporation shall be responsible for maintaining all non-recreational water features, Detention Areas, and Retention Areas. The Maintenance Costs of any non-recreational water features and Detention Areas shall be assessed as a General Assessment against all Responsible Parties.

6.3.3. Use. No boats shall be permitted upon any non-recreational water feature, Detention Area, or Retention Area except if and to the extent authorized by the Corporation and then subject to such rules and regulations as may be adopted by the Corporation. No dock, pier, wall or other structure may be extended into any non-recreational water feature, Detention Area, or Retention Area. No swimming or fishing will be permitted in any non-recreational water feature, Detention Area, or Retention Area. Each Responsible Party, Improvement Owner, sublessee, tenant, occupant shall indemnify and hold harmless Declarant, the Corporation and other Responsible Parties or Improvement Owners against all loss or damage incurred as a result of injury to any person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a non-recreational water feature, Detention Area, or Retention Area. Declarant and the Corporation shall have no liability to any person with respect to any non-recreational water feature, Detention Area, or Retention Area, the design, depth, pool level, water quality or use thereof or access thereto, or with respect to any damage to any Lot resulting from a non-recreational water feature, Detention Area, or Retention Area or the proximity of a Lot thereto, including loss or damage from erosion.

7. Design Guidelines. All new Improvements or material modifications to existing Improvements located on any Lot within University Village shall comply with the Design Guidelines and these Restrictions.

8. Improvements.

8.1. Design and Plan Approval. No improvement shall be constructed, erected, expanded, or altered on any Lot or portion thereof until the plans and specifications for the same (including suite layout, exterior building materials and colors, landscaping and parking layouts) have been approved in writing by the Architectural Control Committee and all required permits have been obtained. Except as detailed in this Declaration, all buildings shall be designed so that the exterior elevation for each shall be architecturally and aesthetically compatible. The design and construction on all Lots shall be in accordance with the Proposed Plans approved by the Architectural Control Committee and in complete and full compliance with (i) any and all governmental requirements and all applicable ordinances, (ii) all restrictive covenants of record, and (iii) the Design Guidelines. Each Responsible Party agrees to cause its respective architect to work in good faith with the Architectural Control Committee so that the buildings to be erected and constructed will have an overall cohesive and related architectural continuity and will be in harmony with the Design Guidelines.

8.2. Screening. Any rooftop equipment shall be screened from public view from adjacent public streets and in a manner satisfactory to the Architectural Control Committee. Any trash facility

shall be screened from public view from adjacent streets on all four sides in a manner satisfactory to the Architectural Control Committee.

- 8.3. Signs. All signs shall be subject to the approval of the Architecture Control Committee and shall be in compliance with the signage criteria set forth in the Design Guidelines and in all events shall comply with any and all governmental requirements and applicable ordinances.
9. **Grant of Easements**. Subject to the terms of this Declaration, Declarant hereby grants and conveys the following non-exclusive easements appurtenant in, to, over, and across the Common Areas for the benefit and use of all Responsible Parties:
 - 9.1. Parking Easements. A nonexclusive easement in, to, over, and across the portions of Common Areas developed as Common Parking Facilities for the vehicles of owners, tenants, and invitees. Shared parking areas shall be subject to such reasonable rules and regulations as the Corporation may impose with respect thereto.
 - 9.2. Access Easements. A nonexclusive easement in, to, over, and across the Common Areas, including driveways, perimeter roads and access ways for vehicular and pedestrian ingress and egress, and access and the right of access over established circulation elements between the public streets and perimeter roads and access ways and any Lot.
 - 9.3. Access Easements – Signage. A nonexclusive easement in, to, under, over, and across the Common Areas, for the installation and maintenance of pylon or monument sign structures to be located on the Lots pursuant to the Design Guidelines.
 - 9.4. Utility Easements. A nonexclusive easement in, to, over, and across the Common Areas for the benefit of and appurtenant to each other for the purposes of installation of sewer, water, gas pipes and systems, electrical power conduits, telephone conduits, lines and wires, and other public utilities below the ground surface at a location or locations reasonably approved in writing by the Architectural Control Committee.
 - 9.5. Drainage. A nonexclusive easement in, to, over, and through the drainage patterns and systems for reasonable surface drainage purposes. Declarant shall have the right to designate and change the location or nature of any Detention Area. Declarant hereby declares, creates, and establishes a perpetual, non-exclusive right-of-way and easement to dispose of storm water to and through the point of entry onto the City right-of-way or to any subsequent locations.
10. **Maintenance and Management of University Village**.
 - 10.1. Maintenance Obligations of the Corporation. The Corporation shall be responsible for the landscaping and maintenance, including mowing any grass, of all Common Areas and the Curb Strip portion of each Lot, in good and clean condition and repair, to the same extent as a Responsible Party as provided in sub-paragraphs 10.2.1 through 10.2.9, with the exception of watering the Curb Strip portion of each Lot. All Maintenance Costs shall be assessed as a General Assessment against all Responsible Parties.

10.2. Responsible Party Maintenance Obligations. Responsible Parties shall be responsible at all times to maintain their Lot in good and clean condition and repair, including, without limitation, the following:

- 10.2.1. Maintaining, repairing and resurfacing, when necessary to ensure functionality and safety, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; and restriping, when necessary, to maintain clearly visible parking stall and traffic control lines;
- 10.2.2. Removing all papers, debris, filth and refuse from the Lot and washing or thoroughly sweeping such property to the extent reasonably necessary to keep such property in a clean and orderly condition;
- 10.2.3. Removing snow and ice from sidewalks and within 24 hours following the end of snowfall. Placing snow on any street, sidewalk, or right-of-way is prohibited;
- 10.2.4. Placing, painting, maintaining, and replacing and repainting, as and when necessary to ensure safety, all directional signs, markers, striping and pedestrian crossings;
- 10.2.5. Operating, maintaining, repairing and replacing, when necessary to ensure full functionality and safety, such artificial lighting facilities as shall be reasonably required, including, but not limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks, and contacts;
- 10.2.6. Maintaining all landscaped areas, excluding any curb strip; watering all landscaped areas to include any curb strip; maintaining, repairing and replacing, when necessary to ensure full functionality, automatic sprinkler systems and water lines; replacing shrubs and other landscaping as necessary to maintain aesthetics, function, and safety;
- 10.2.7. Maintaining, repairing and replacing, when necessary to ensure full functionality and to maintain aesthetics and safety, all fences, walls or barricades;
- 10.2.8. Maintaining, repairing and replacing, when necessary to ensure full functionality, all storm drains, sewers, lift stations and other utility lines not dedicated to or maintained by the Corporation, or by the public or conveyed to any public or private utility which are necessary for the operation of the improvements located in University Village;
- 10.2.9. Maintaining in full force and effect commercially reasonable insurance; and
- 10.2.10. Supervising traffic at entrances and exits if necessary as conditions reasonably require in order to maintain an orderly and proper traffic flow.

- 10.3. Duty to Maintain. Each Responsible Party shall be responsible for the maintenance, insurance and lighting of its Lot. In the event any Responsible Party defaults in the performance of such obligations, the Corporation shall have the right (but shall not be obligated), either itself or through a third-party contractor, to perform the obligations of the defaulting Responsible Party and bill the defaulting party for the expenses incurred. The Corporation, may but is not obligated to, offer and establish reasonable fees for the performance of all maintenance obligations of the Responsible Party and/or snow removal from the Lot of a Responsible Party.
- 10.4. Indemnity Against Liens. Each Responsible Party shall indemnify, defend, protect and hold all other Responsible Parties, Improvement Owners, sublessees, and tenants harmless for, from and against any and all claims in connection with any and all liens arising out of any work performed, materials furnished to, or obligations incurred by such Responsible Party in connection with the operation and maintenance of the Lot for which it is responsible.

11. Assessment and Assessment Liens.

11.1. General Assessments.

11.1.1. Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of Responsible Parties and occupants of units and for the improvement, maintenance, repair, replacement, and operation of Common Areas.

11.1.2. Basis for Assessment.

11.1.2.1. Residential Lots. Each residential Lot shall be assessed at a uniform rate without regard to whether a Living Unit or other Improvements have been constructed upon the Lot, except that if no Living Unit has been constructed on the Lot, the Corporation shall waive with respect to such undeveloped Lot that part of any assessment that is attributable to services that are provided only with respect to improved Lots.

11.1.2.2. Commercial Lots.

11.1.2.2.1. Each unimproved commercial Lot shall be assessed at a uniform rate without regard to whether a Commercial Unit, multifamily structure, or multiuse structure has been constructed upon the Lot, except that the Corporation shall waive with respect to such undeveloped Lot that part of any assessment that is attributable to services that are provided only with respect to improved Lots.

11.1.2.2.2. Each commercial Lot upon which a multifamily structure has been constructed shall be assessed at a rate equitably determined by the Board of Directors which takes into account the number of living units located on the Lot. The General Assessment for any such Lot shall not exceed the product of (A) the number of Living Units located on the Lot and (B) fifty percent of the amount of General Assessments for residential lots as provided in Subection 11.1.2.1, above.

- 11.1.2.2.3. Each commercial lot upon which one or more commercial units have been constructed shall be assessed at a rate equal to the product of (A) the result obtained by dividing the gross square footage of the commercial unit by two thousand five hundred (2,500) and (B) the amount of the general assessment established for residential lots on the basis set forth in Subection 11.1.2.1, above.
- 11.1.2.2.4. Each commercial Lot improved with a multiuse structure shall be assessed as follows: with respect to that part of the multiuse structure that consists of one or more Commercial Units, in the same manner as specified in subsection 11.1.2.2, above; and with respect to that part of the multiuse structure that consists of one or more Living Units, in the same manner as described in subsection 11.1.2.1, above.
- 11.1.2.3. Senior Housing. Each Lot used for Senior Housing shall be assessed at a rate equitably determined by the Board of Directors which takes into account the number of Living Units located on the Lot and the use made by the Responsible Parties or occupants of such Living Units. The General Assessment for any such Lot shall not exceed the sum of:
- 11.1.2.3.1. The product of (A) the number of detached or attached Living Units not incorporated in the congregate care facility and (B) an amount equal to the General Assessment for residential Lots established on the basis set forth in Subection 11.1.2.1, above; and
- 11.1.2.3.2. The product of (A) the number of Living Units located in the congregate care facility which are occupied by an individual who is less than 85 years old and (b) 25% of the amount of the General Assessment for residential Lots on the basis set forth in Subection 11.1.2.1, above; provided that only Living Units which are occupied shall be included in the calculation pursuant to this subsection.
- 11.1.2.4. Lots Used by Declarant or the Corporation. No Lot used by Declarant or the Corporation shall be assessed by the Corporation except such Lots as have been by the construction thereon of Living Units or Commercial Units, which improved Lots shall be subject to assessment as provided in subsections 11.1.2.1 and 11.1.2.2; provided however, Lots improved by the construction thereon of any Common Area shall in no event be subject to assessment.
- 11.1.2.5. Condominiums. Condominiums shall be separately assessed as a Lot applying the provisions of the foregoing subsections 11.1.2.1, 11.1.2.2, and 11.1.2.3. If a multiuse structure is a horizontal property regime, then each condominium therein shall be separately assessed applying the provisions of the foregoing subsections 11.1.2.1, 11.1.2.2, and 11.1.2.3.
- 11.1.2.6. Change in basis. The basis for assessment may be changed upon the recommendation of the Board of Directors if such change is approved by two-

thirds of the members who are voting in person or by proxy at a meeting of members duly called for this purpose.

- 11.1.3. Method of Assessment. By a vote of a majority of the Board of Directors, the Board of Directors shall, on the basis specified in Subsection 11.1.2, fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration and all Supplemental Declarations upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.
- 11.1.4. Allocation of Assessment. Certain of the costs of maintaining, operating, restoring or replacing the Common Areas may be allocated among Responsible Parties on the basis of the location of the lands and improvements constituting the Common Areas and the intended use thereof. In determining the General Assessment, costs and expenses which in accordance with the provisions of this Declaration or a Supplemental Declaration are to be borne by all Responsible Parties shall first be allocated to all Responsible Parties. Costs and expenses which in accordance with the provisions of this Declaration or a Supplemental Declaration are to be borne by the Responsible Parties of certain Lots shall then be allocated to the Responsible Parties of such Lots, including the costs associated with the performance by the Corporation of a Responsible Party's maintenance obligations as provided by Subsections 10.2 and 10.3. The provisions of subsection 11.1.2 shall not be deemed to require that all assessments against vacant Lots or Lots improved with comparable types of Living Units or Commercial Units, multifamily structures, or multiuse structures be equal, but only that each Lot be assessed uniformly with respect to comparable Lots subject to assessment for similar costs and expenses. Costs of any services provided by the Corporation to individual Lots shall not be included in the General Assessment of any Lot the Responsible Parties of which has elected to obtain the same service directly from a service provider.
- 11.1.5. Parcel Assessments.
 - 11.1.5.1. Purpose of Assessments. Parcel Assessments shall be used for such purposes as are authorized by the Supplemental Declaration for such Parcel.
 - 11.1.5.2. Method of Assessment. An annual Parcel Assessment may be levied by the Corporation against Lots in a Parcel using the basis as may be set forth in any Supplemental Declaration for such Parcel, and collected and disbursed by the Corporation. The Board of Directors may fix in accordance with the provisions of any Supplemental Declaration the annual Parcel Assessment for each Parcel, the date(s) such Assessment shall become due, and the manner in which it shall be paid.
 - 11.1.5.3. Special Assessments. In addition to the annual Parcel Assessment, the Corporation may levy in any fiscal year a special Parcel Assessment against one or more of the Lots in a Parcel for the purpose of (A) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement upon the Parcel, including fixtures and personal property

related thereto, provided that any such assessment shall have the assent of a majority of the Responsible Parties in the Parcel who are voting in person or by proxy at a meeting of such Responsible Parties duly called for this purpose or (B) defraying any Maintenance Costs incurred in satisfying any requirements imposed on the Corporation by a Supplemental Declaration relating to a Parcel. Any special assessment pursuant to this subsection shall be allocated equally among all Lots in the Parcel.

- 11.2. Architectural Control Assessment. If any Responsible Party or Person acting for or on behalf of, or pursuant to the authorization or acquiescence of, a Responsible Party fails to comply with Design Guidelines or other requirements for construction of Improvements, landscaping, and other building activities or maintenance of a Lot (including the filing of a Proposed Plan) or any restrictive covenant or condition specified in a Supplemental Declaration for the Parcel in which such Responsible Party's Lot is located and/or the provisions of Sections 4, 5, or 12 of this Declaration, then the Corporation may levy against the Responsible Party's Lot an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) Five Hundred Dollars (\$500.00) for each day that such failure continues after written notice thereof is given by Declarant or the Corporation to such Responsible Party or (ii) One Hundred Thousand Dollars (\$100,000.00). Such assessment shall constitute a lien upon any Improvement or the leasehold interest of such Responsible Party and may be enforced in the manner provided in subsection 11.5. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant and/or the Corporation provided in this Declaration, at law or in equity in the case of the failure of a Responsible Party to comply with the provisions of this Declaration and all applicable Supplemental Declarations.
- 11.3. Capital Assessments. The Corporation shall have the right and power to assess Capital Assessments to construct, reconstruct, or replace Improvements in the Common Area or Infrastructure within University Village and to provide for the Maintenance Costs associated with the maintenance of Common Parking Facilities. Any such Capital Assessment shall be allocated to all Responsible Parties whose Lots derive a substantial benefit from the Capital Improvement or Infrastructure, as determined in the reasonable discretion of the Board of Directors, except that the Corporation may allocate a portion of the Maintenance Costs of Common Parking Facilities which serve another Common Area and the amount so allocated shall be a General Assessment against all Responsible Parties as determined pursuant to Subsection 11.1. All Capital Assessments shall become due and payable on such date or dates as designated in the written notice to the Responsible Parties.
- 11.4. Covenant to Pay Assessments. Each Responsible Party, by acquiring ownership of a Lot or executing a ground lease for a Lot, is deemed to covenant and agree to pay all assessments set forth in this Declaration.
- 11.5. Effect of Nonpayment of Assessment; Remedies. If any assessment or any installment of any assessment is not paid within thirty (30) days after the same is due, the Corporation, at its option, upon fifteen (15) days' prior written notice to the Responsible Party, may (a) declare the entire unpaid balance immediately due and payable, and (b) charge interest on the entire unpaid balance (or on an overdue installment alone, if it has not exercised its option to declare

the entire unpaid balance due and payable), at the highest rate of interest then permitted by law unless a lower rate is agreed upon in an existing ground lease with such Responsible Party.

- 11.6. Lien for Assessment. Assessments, together with interest and costs, shall be a charge and continuing lien in favor of the Corporation upon the leasehold interest in the Lot against which each such assessment is made. At any time after an installment of an assessment levied pursuant hereto remains unpaid for ten (10) or more days after the same has become due and payable, a certificate of lien for all or any part of the unpaid balance of that assessment, and interest and costs, may be filed against such leasehold interest with the Buffalo County Register of Deeds. The lien provided for herein shall remain valid until released or satisfied in the manner provided by law in Nebraska.
- 11.7. Non-Use. No Responsible Party may waive or otherwise avoid liability for the assessments provided for herein by non-use of the Common Area, or any part thereof, or by abandonment of its leasehold interest.

12. Architectural Control Committee.

- 12.1. Establishment. The Architectural Control Committee has been established and shall consist of three members. All members shall be appointed by the Corporation. Each member shall serve at the pleasure of the Corporation and may be replaced by the Corporation at any time upon notice to the remaining members. The Architectural Control Committee shall meet as required at such place and at such time as is mutually agreeable to the members thereof.
- 12.2. Purpose. The Architectural Control Committee shall regulate the external design, appearance, use, location, and maintenance of the University Village property, and all of the Improvements thereon in such manner as to preserve and enhance values, to maintain a harmonious relationship among structures, Improvements, landscaping, and topography, to implement the development standards and guidelines set forth in any zoning ordinance and to assure compliance with the Design Guidelines established by the Corporation and the Declarant.
- 12.3. Proposed Plans. Before commencing the construction, addition, installation, modification, demolition or alteration of any building, enclosure, landscaping, fence, parking facility, sign, light pole, fixture, or any other structure or temporary or permanent improvements within University Village (except for interior construction or remodeling), the Responsible Party for the Lot upon which such improvement is considered shall provide to the Architectural Control Committee for its approval the Proposed Plans. The Architectural Control Committee shall adopt, by majority vote, appropriate procedures for plan submission, review and approval. Approval of plans shall require the affirmative vote of two members of the Architectural Control Committee. The Architectural Control Committee shall apply the Design Guidelines in a fair, uniform, and reasonable manner and shall exercise discretion in the performance of their duties, consistent with the discretion inherent in the design review process. In disapproving any Proposed Plan, the Architectural Control Committee shall furnish the applicant with specific reasons for such disapproval and may suggest modifications to such plans which would render the Proposed Plan acceptable to the Board if resubmitted.
- 12.4. Consultants. The Architectural Control Committee may retain outside consultants to assist it in its activities, and may charge reasonable fees for plan review.

- 12.5. Waiver and Variance. A Responsible Party may petition the Architectural Control Committee to waive compliance with or grant a variance to any of the Restrictions set forth in Sections 3 through 6 of this Declaration. Subject to the limitations set forth below, and based on its reasonable discretion, the Architectural Control Committee is hereby given the power to waive or grant a variance to any such Restrictions upon such request and upon a finding by the Architectural Control Committee that such request is in conformity with the general scheme for the development of University Village. Such waiver or variance may be conditioned by the Architectural Control Committee upon the satisfaction of conditions or performance requirements set by the Architectural Control Committee. Such waiver or variance shall be effective only upon the unanimous consent of the Architectural Control Committee. Notwithstanding any other provision contained herein, if the Architectural Control Committee shall fail to approve or disapprove any such request for waiver or variance within ninety (90) days after such request has been submitted to the Architectural Control Committee, such request shall be deemed conclusively to have been disapproved unless or until the Architectural Control Committee takes further action on the same, if ever.
- 12.6. Appeal. A decision of the Architectural Control Committee, made pursuant to Subsections 12.3 and 12.5 may be appealed to the Board of Directors which may reverse or modify such decision by a majority vote of the Directors then serving.
- 12.7. Governmental Approvals and Permits. To the extent reasonable, the Architectural Control Committee shall assist any party whose proposed plan has been approved in obtaining required approvals and permits from any governmental authority. The Architectural Control Committee's approval of plans and specifications as described herein in no way relieves any party from obtaining any required approvals and permits from any governmental authority.
- 12.8. Liability of Committee. Neither the Architectural Control Committee or any member or agent thereof, nor Declarant shall be responsible for any defects in any plans, specifications, or other materials submitted to it, nor for any defects in any work done according thereto. The Architectural Control Committee does not make, and shall not be deemed by any approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.
- 12.9. Inspection. Members of the Architectural Control Committee or agents authorized by the Architectural Control Committee may inspect work being performed at any time to assure compliance with proposed plans, these Restrictions and any applicable regulations.
13. Enforcement and Remedies for Violation. Upon a violation or breach of any of the Restrictions set forth in this Declaration or of any Supplemental Declarations, the Declarant and the Corporation, shall have the right to enforce or compel, by proceeding at law or in equity, compliance with the terms hereof or to prevent the violation or breach of any of them. The failure promptly to enforce any of the Restrictions contained herein shall not bar their enforcement or be deemed a waiver of any future violations. Neither the Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions set forth in this Declaration or of any Supplemental Declarations.

14. **Interpretation.** The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural.
15. **Duration.** The Restrictions contained in this Declaration are for the mutual benefit and protection of the present and future Responsible Parties, Improvement Owners, the Corporation, and Declarant, and shall run with the land and bind any Responsible Party, Improvement Owner, sublessee, tenant, subtenant or occupant of any land subject to this Declaration, their respective successors and assigns, in perpetuity. It is expressly agreed that no breach of this Declaration shall (a) entitle any party to cancel, rescind or otherwise terminate this Declaration or (b) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of University Village.
16. **Waiver.** No delay or omission on the part of the Architectural Control Committee, Declarant, the Corporation, or a Responsible Party in exercising any right, power or remedy herein provided shall be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Architectural Control Committee, Declarant or the Corporation for or on account of its failure to bring any action on account of any breach under this Declaration.
17. **Severability.** Every one of the provisions of this Declaration is hereby declared to be independent of, and severable from, the remainder of the provisions and from every other one of the provisions. In the event any one or more of the provisions of this Declaration is declared for any reason by a court of competent jurisdiction to be null and void, the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of the other provisions herein, but all of the remaining provisions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.
18. **Amendment.** This Declaration may be amended at any time by written agreement of Declarant.

Exhibit A

Description of University Village Development Area

[To be added upon completion of plat]

Exhibit B

General Plan of Development

[To be added upon completion of plat]

Exhibit A [UPDATED]

Description of University Village Development Area

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 8 NORTH, RANGE 16 WEST OF THE 6TH P.M., BUFFALO COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 4, LINCOLN WAY VILLA PLOTS IN THE CITY OF KEARNEY, LOCATED 563.88 FEET WEST OF AND 33 FEET SOUTH OF THE NORTHEAST CORNER OF SECTION 3, TOWNSHIP 8 NORTH, RANGE 16 WEST OF THE 6TH P.M. BUFFALO COUNTY, NEBRASKA; THENCE S00°30'09"E ON THE WEST LINE OF SAID LOT 4, A DISTANCE OF 240.00 FEET; THENCE N89°31'12"E A DISTANCE OF 400.14 FEET TO A POINT ON THE EAST LINE OF LOT 1 OF SAID LINCOLN WAY VILLA PLOTS; THENCE S00°30'09"E, ON THE EAST LINE OF SAID LOT 1, A DISTANCE OF 77.14 FEET; THENCE S10°55'25"W A DISTANCE OF 121.14 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1; THENCE S19°36'49"W A DISTANCE OF 86.43 FEET TO A POINT 205 FEET WEST OF THE EAST LINE OF SAID NORTHEAST 1/4; THENCE S01°03'34"W A DISTANCE OF 572.63 FEET; THENCE S87°58'25"E A DISTANCE OF 45.01 FEET TO A POINT ON THE WEST LINE OF THE KEARNEY CANAL, SAID POINT BEING 160 FEET WEST OF THE EAST LINE OF SAID NORTHEAST 1/4; THENCE S00°58'17"W, ON SAID WEST LINE OF THE KEARNEY CANAL A DISTANCE OF 225.72 FEET; THENCE S06°06'03"W, ON SAID WEST LINE ON THE KEARNEY CANAL, A DISTANCE OF 100.76 FEET TO A POINT 170 FEET WEST OF THE EAST LINE OF SAID NORTHEAST 1/4; THENCE S00°56'19"W, ON SAID WEST LINE OF THE KEARNEY CANAL, A DISTANCE OF 745.38 FEET TO THE NORTH LINE OF NORTH RAILROAD STREET; THENCE S83°41'37"W, ON SAID NORTH LINE OF NORTH RAILROAD STREET, A DISTANCE OF 439.13 FEET; THENCE S83°41'25"W, OF SAID NORTH LINE OF NORTH RAILROAD STREET A DISTANCE OF 2048.24 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 3 SAID POINT BEING 95.0 FEET NORTH OF THE SOUTHWEST CORNER OF SAID NORTHEAST 1/4; THENCE N01°21'22"E, ON THE WEST LINE OF SAID NORTHEAST 1/4, A DISTANCE OF 1980.90 FEET TO A POINT ON THE SOUTH LINE OF LOT 24 OF SAID LINCOLN WAY VILLA PLOTS (NOW VACATED); THENCE S89°19'31"W, ON THE SOUTH LINE OF SAID LOT 24 (NOW VACATED), A DISTANCE OF 10.35 FEET TO THE SOUTHWEST CORNER OF SAID LOT 24 (NOW VACATED); THENCE N00°29'06"W, ON THE WEST LINE OF SAID LOT 24 (NOW VACATED), A DISTANCE OF 425.91 FEET, SAID POINT BEING 43.00 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 3; THENCE N89°32'52"E, 43 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SECTION 3, A DISTANCE OF 1,641.97 FEET TO THE NORTHWEST CORNER OF LOT 1 OF NEW VIAERO ADDITION TO THE CITY OF KEARNEY, BUFFALO COUNTY, NEBRASKA; THENCE S00°17'28"E, ON THE WEST LINE OF SAID NEW VIAERO ADDITION, A DISTANCE OF 232.83 FEET TO A CORNER OF SAID NEW VIAERO ADDITION; THENCE N89°30'43"E A DISTANCE OF 107.72 FEET TO A CORNER OF SAID NEW VIAERO ADDITION; THENCE S00°21'50"E A DISTANCE OF 66.48 FEET TO A CORNER OF SAID NEW VIAERO ADDITION; THENCE N89°50'26"E A DISTANCE OF 60.41 FEET TO A CORNER OF SAID NEW VIAERO ADDITION; THENCE N00°25'28"W A DISTANCE OF 66.57 FEET TO A CORNER OF SAID NEW VIAERO ADDITION; THENCE N89°55'39"E A DISTANCE OF 13.44 FEET TO A CORNER OF SAID NEW VIAERO ADDITION; THENCE N00°30'26"W A DISTANCE OF 243.22 FEET TO THE NORTHEAST CORNER OF SAID NEW VIAERO ADDITION, SAID POINT BEING 33.00 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 3; THENCE N89°31'49"E, 33.00 FEET SOUTH OF AND PARALLEL TO SAID NORTH LINE, A DISTANCE OF 258.36 FEET TO THE POINT OF BEGINNING CONTAINING 125.34 ACRES MORE OR LESS.

Updated Exhibit "A" Approval

Reed Miller, KUVDC 

Walter Carter, University 

10/05/2020

10/03/2020

