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**EVANDALE ESTATES, EVANDALE ESTATES
FIRST & SECOND ADDITION
Restatement of Protective Covenants**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, certain covenants and restrictions have been recorded applicable to a tract of real estate that is more particularly described herein and hereinafter known as Evandale Estates and those covenants and restrictions were recorded on July 20, 1994 as Instrument No. 33178 in the office of the Register of Deeds in Lancaster County, Nebraska, and;

WHEREAS, the covenants and restrictions recorded in Instrument No. 33178 were amended by action of the Evandale Estates Homeowners Association, Inc., (hereinafter referred to as the "Corporation"), a Nebraska Non-profit Corporation on April 22, 1996 when those covenants and restrictions for the real estate known as Evandale Estates were amended and recorded as Instrument No. 96-011773 in the office of the Register of Deeds of Lancaster County, Nebraska, and;

WHEREAS, additional covenants and restrictions have been recorded applicable to a tract of real estate that is more particularly described herein and hereinafter known as Evandale Estates First Addition and these covenants and restrictions were recorded on August 3, 1999 as Instrument No. 99-042789 in the office of the Register of Deeds in Lancaster County, Nebraska, and;

WHEREAS, further additional covenants and restrictions have been recorded applicable to a tract of real estate that is more particularly described herein and hereinafter known as Evandale Estate Second Addition and these covenants were recorded on June 26, 2001 as Instrument No. 2001-034941 in the office of the Register of Deeds of Lancaster County, Nebraska, and;

WHEREAS, Evandale Estates Homeowners Association, Inc., (hereinafter referred to as the "Corporation"), a Nebraska Non-Profit Corporation, was established on January 1, 1995 to promote the health, safety and welfare of residents living within the real estate known as Evandale Estates, Evandale Estates First Addition and Evandale Estate Second Addition, and;

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WHEREAS, the Corporation was further organized to own, acquire, construct, operate and maintain common areas and recreational facilities; to establish, levy, assess and collect assessments for the purposes set forth herein; to enforce any and all covenants and restrictions applicable to said Property (as hereinafter defined); and to do and perform any and all other acts and duties permissible or required under the laws of the State of Nebraska for the purposes hereinabove set forth; and;

WHEREAS, pursuant to the Covenants created and established hereinunder, the Corporation acknowledges its power to establish and maintain a uniform plan for the residential development of the Property and provide for the maintenance, preservation of, and snow removal of the Common Areas located on the Property.

NOW THEREFORE, the Corporation does hereby amend and restate the covenants and restrictions pertaining to the real estate described in paragraph 1(A) below and located in Evandale Estates, Evandales Estates First Addition and Evandale Estates Second Addition to be binding upon all subsequent owners thereof:

1. DEFINITIONS:

- (A) As used herein the term "Lot", or "Lots", shall be deemed to mean all single family and multi-family Lots now or hereafter located on the Property in the following subdivisions:
- (i) Evandale Estates: Block 1, Lot 1 through and including Lot 3; Block 2, Lot 1 through and including Lot 6; Block 3, Lot 1 through and including Lot 3; and Block 4, Lot 1 through and including Lot 13, which are shown on the Final Plat for Evandale Estates; which has been filed with the Register of Deeds of Lancaster County, Nebraska.
 - (ii) Evandale Estates First Addition: Block 1, Lot 1 through and including Lot 10; Block 2, Lot 1 through and including Lot 10; and Block 3, Lot 1 through and including Lot 22, which are shown on the Final Plat for Evandale Estates First Addition, which has been filed with the Register of Deeds of Lancaster County, Nebraska.
 - (iii) Evandale Estates Second Addition: Block 1, Lot 1 through and including Lot 10; Block 2, Lot 1 through and including Lot 10; Block 3, Lot 1 through and including Lot 7; Block 4, Lot 1 through and including Lot 7, which are shown on the Final Plat for Evandale Estates Second Addition, which has been filed with the Register of Deeds of Lancaster County, Nebraska.

- (B) The term, "Board" shall be deemed to mean the Board of Directors of Evandale Estates Homeowners Association, Inc.
- (C) The term, "Commons", and "Common Area", shall be deemed to mean all Common Pedestrian Walkways which abut two or more Lot Lines, all ponds and all green areas, as shown on any Final Plat of all or any portion of the Property; provided that said Final Plat has been filed with the Register of Deeds of Lancaster County, Nebraska.
- (D) The term, "Lot Owner", shall be deemed to mean the owners of record of any Lot.
- (E) The term, "Property", shall be deemed to mean the real property contained within Evandale Estates, Evandale Estates First Addition, Evandale Estates Second Addition as described hereinabove.
- (F) The term, "Corporation", shall be deemed to mean Evandale Estates Homeowners Association, Inc., a Nebraska Non-profit Corporation.
- (G) The term, "Front Lot Line", shall mean the portion of any Lot Line that abuts a street which has been dedicated to the City of Waverly; the term, "Rear Lot Line", shall mean the portion of any Lot Line which is opposite the portion of the Front Lot Line that abuts a street which has been dedicated to the City of Waverly if such Front Lot Line is determinative of the street address for such Lot; the term, "Side Lot Line", shall mean any portion of any Lot Line that is not a Front Lot Line nor a Rear Lot Line.

2. No Lot nor any dwelling hereafter placed or constructed on any Lot shall be used for any purpose other than for residential purposes. Any residence constructed on any Lot shall be completed within one (1) year after the commencement of construction. No residence or attached garage shall be located on any Lot, to-wit: (i) within 25 feet of the Front Lot Line; (ii) within 7.5 feet of any Side Lot Lines; nor (iii) within 25 percent of the Lot depth from the Rear Lot Line. No storage shed or other outbuilding of any type shall be located in the area between a Front Lot Line and the residence and garage constructed on any Lot, nor within 7.5 feet of any Side Lot Line.

3. Non-permanent sheds and outbuildings may be placed closer to the Side or Rear Lot Line than 7½ feet if permission is received from the Owner of the Lot next to which the building is being placed. If Lot Owner granting permission or any subsequent Owners of the Lot rescinds permission, the building must be moved to meet the 7½-foot setback requirements.

4. All residences much have an established grass lawn within 18 months of completion of residence. Issuance of occupancy permit shall constitute completion of residence for the purposes of establishing the date for lawn completion only.

5. The Corporation reserves to itself and its assigns, the exclusive right to establish all grades and slopes upon all Lots, Commons and Roadways and to fix the grade at which any dwelling shall be placed or constructed upon any Lot in conformity with the general plan for the development of the Property. Plans for any dwelling to be placed or constructed upon any Lot shall be submitted to the Corporation for approval prior to construction, and shall show the size, exterior material and exterior color, design and plot plan for the building; provided, however, that any residence constructed on any Lot shall meet the following minimum standards:

- (A) Minimum square footage requirements for any residence constructed on the Property shall be as follows: (i) 1500 square feet (exclusive of any basement area) in the case of a one-story, ranch-style residence without a fully exposed rear walkout basement; (ii) 1800 square feet (exclusive of any basement area) in the case of a one-and-one-half story or split-level residence without a fully exposed rear walkout basement; (iii) 2000 square feet (exclusive of any basement area) in the case of a full two-story residence without a fully exposed rear walkout basement; (iv) 2000 square feet, including the basement area, in the case of a one-story ranch-style residence with a fully exposed rear walkout basement; (v) 2500 square feet, including the basement area, in the case of a one-and-one-half or split level residence with a fully exposed rear walkout basement, and; (vi) 2500 square feet in the case of a full two story residence with a fully exposed rear walkout basement. The term, "fully exposed rear walkout basement", as used herein, shall be deemed to mean a lower level, at least 33% of the which is at or above the grade along the rear wall of the residence, and which contains a walkout to the rear yard. The minimum square footage requirements set forth herein shall be calculated exclusive of all terraces, patios, porches and garages.

One set of such plans shall be left on permanent file with the Corporation. The construction of any dwelling or other structure on any Lot shall not be commenced unless and until written approval of the plans for the building have first been obtained from the Corporation. Written approval or disapproval of such plans shall be given by the Corporation within twenty-one (21) days from and after the receipt thereof. Approval of such plans shall not be unreasonably withheld. In the event of the disapproval of such plans, a written statement of the grounds for such disapproval shall be given. The Corporation, however, reserves to itself and its assigns the exclusive right to approve or disapprove any such plans if in its sole opinion either the size, material or exterior plan

do not conform to the general design standard, and overall development characteristics of the Property. Residences shall be traditional in design and no residence which is not of a similar design to those already approved shall be approved. The written approval by the Corporation, or its assigns, of any plans shall be binding upon all Lot Owners.

6. All dwellings located on any Lot shall be constructed in conformity with the requirements of the applicable building codes of the City of Waverly, Nebraska. Public sidewalks and street trees shall be installed as required by the City of Waverly by Lot Owners other than the Corporation.

7. Any and all fences must comply with all applicable codes or ordinances and are subject to the following additional restrictions: must be constructed with good quality, generally accepted fencing materials (no poultry fence, livestock gates, snow fence, etc.); no fence shall be located within the 25' setback from any street; and further, no fence shall be placed in front of the centerline of the side wall of a house or garage; no fence shall exceed six feet (6') in height. If the construction of any fence at the centerline of a house is not feasible, a variance may be requested by the Lot Owner to the Board of Directors or subject to approval by the Corporation. Fencing shall be maintained to appropriate and acceptable condition and appearance.

8. For corner lots only, fences over three feet (36") may not extend past the twenty-five-foot (25') setback. Fences in front of the 25' setback must be a decorative-type fence and no closer than seventeen feet (17') from the curb.

9. Fences must be built with the posts facing the fence's builder (posts must be toward the builder's side of the fence).

10. No partially completed dwelling or temporary building and no tent or shack on any Lot located on the Property shall be used as either a temporary or permanent residence.

11. No wires, antennas, satellite dishes, or other equipment for electric power or electronic communications shall be permitted on any Lot, except underground or within a building.

12. Satellite dishes of 40" diameter or less shall be permitted with the following restrictions: all satellite dishes must be mounted on or in the house or garage such that no part of the dish mounting or accessories is above the roof ridge line; may not be located above a doorway, and may not be located on the front of the house or garage.

13. Flagpoles shall be limited to three poles on any Lot and must be constructed and designed for the purpose of a flagpole. Poles cannot be over 25 feet tall and no larger than 2.5 inches in diameter. The flagpole will have a 7.5-foot setback from any side or back line and be 5 feet from the front sidewalk.

14. No noxious or offensive activity shall be carried on or permitted upon any Lot; nor shall anything be done thereon which is or may become an annoyance or nuisance to the adjoining Lots or endanger the health or unreasonably disturb the quiet of the Owners or occupants of adjoining Lots.

15. If, by a majority vote of the Board of Directors, any Lot Owner is found to be in violation of these covenants, the following steps will be followed: The Lot Owner will be verbally notified that they are in violation and will have five (5) days from notification to correct the violation. If no action is taken by the Lot Owner, written notification of the violation will be given to the Lot Owner. If violation is not corrected within ten (10) days of the written notice date, a fine of \$20 per day will be levied against the Lot Owner until the violation is corrected. Under extenuating circumstances, the Lot Owner may come to the Board to apply for an extension of the 15-day grace period.

16. The Commons and all utilities located within the Commons shall be permanently repaired and maintained by the Corporation.

17. No advertising signs, billboards, or other advertising device shall be erected, placed or permitted on any Lot; provided, however that the Corporation may place signs advertising Lots for sale, and provided further, that a sign advertising a single Lot for sale may be placed on such Lot by the Lot Owner.

18. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot for any commercial purpose; provided, however, that if, in the sole opinion of the Board of Directors of the Corporation, any animal is deemed to be offensive or an annoyance of any other Lot Owner, the Lot Owner keeping such animal may be required to remove the same from the Property.

19. Any Lot Owner, except for the Corporation, of a Lot which abuts or is adjacent to a public sidewalk, as shown on the Final Plat of all or any portion of the Property, shall install and maintain such sidewalk. Sidewalks shall be constructed and paid for by such Lot Owner upon the latter date of: (i) the construction of a single family residence on such Lot, or; (ii) whenever required by the Corporation, whichever is first.

20. No recreational vehicle, as defined by the Waverly Municipal Code, as the same may hereafter be amended, shall be parked or stored on or in front of any Lot, except within an enclosed structure; provided, however, that recreational vehicles may be temporarily parked on or in front of a Lot for a period of time not to exceed 48 hours and no more than that 21 days per year.

21. Motorized vehicles will be allowed to park only on the Lot Owner's designated concrete driveways, in garages or outbuildings, or on the street.

22. All residences shall have an attached garage with a minimum of two (2) stalls. All sheds, outbuildings and garages shall have a similar style, construction material and color as the residence. No plastic or metal structures other than deck storage trunks/chests are allowed. All buildings are to be of wood frame construction with shingles and siding of similar color to the house.

23. Any Lot Owner of any Lot on which a landscape screen is required to be installed by the City of Waverly, Nebraska, whether such landscape screen is composed of structural or live plant material, shall continuously maintain such landscape screen.

24. Every person or entity who is or shall become a record owner of a fee or undivided fee interest in any Lot shall be a member of the Corporation; provided, however, that any such person or entity who holds an interest merely as a security for the performance of an obligation shall not be a member.

25. The Corporation shall have one class of Membership. All Members of the Corporation shall be entitled to all the rights of Membership and to one vote for each Lot in which the interest requisite for Membership is held; provided, however, that no more than one vote shall be cast with respect to any such Lot.

26. Each Member of the Corporation shall have the right to use and enjoy the Commons and shall have an easement over and upon the Commons for the use and enjoyment thereof, which shall be appurtenant to and shall pass with the interest requisite for Membership held by such Member; provided, however, that no Lot Owner shall construct any structures, nor plant any plants on the Commons without the prior written consent of the Corporation.

27. The rights of the Members of the Corporation in and upon the Commons shall be subject to the following:

- (A) All easements shown upon any Final Plat of any portion of the Property recorded with the Register of Deeds of Lancaster County, Nebraska;
- (B) The right of the Corporation, as provided in its Articles of Incorporation and By-laws to suspend the use of the Commons by any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any other infraction of the published rules and regulations governing the use and maintenance of the Commons;
- (C) The right of the Corporation to dedicate or transfer all or any part of the Commons to any public agency, authority, or utility and subject to such conditions as may be agreed to by the Members; provided,

however, that any such dedication or transfer shall be approved by a majority vote at a regular meeting of the Members, providing notice of the proposed dedication or transfer be contained in the notice of such special meeting.

- (D) The dedication and transfer of the ponds, water detention areas, and green areas to the City of Waverly on behalf of the public;
- (E) The use of the Commons Pedestrian Walkways comprising a part of the Commons by the general public pursuant to a public easement granted or to be granted by the Corporation.

28. Except for the duty and obligation of each individual Lot Owner to maintain and repair the sidewalks abutting their respective Lots (as set forth at paragraph 19), the Corporation hereby covenants, and each member of the Corporation by the acceptance of a Deed by which the interest requisite for Membership in the Corporation is acquired, shall be deemed to covenant to maintain and repair the landscaping of the Commons, the ponds and water detention areas, and to remove snow from the Common Pedestrian Walkways comprising a part of the Commons. This covenant by the Members shall be satisfied by the payment of a general annual assessment and/or a general special assessment for the administration of the Corporation, and the maintenance and repair of the Commons. Such annual and special general assessments shall be a lien upon the Lot against which such assessments are made and shall also be the personal obligation of the Member who is, or was, the record owner of the Lot assessed at the time of such general assessment. Each Lot shall be equally liable for the total annual and special general assessments.

29. The lien of such annual and special general assessments shall be subordinate to the lien of any first mortgage or first Deed of Trust now or hereafter placed upon the Lot against which such assessment is made.

30. Annual general assessments shall be made by the Board of Directors of the Corporation for maintenance of the ponds and the water detention areas, and green areas comprising a part of the Commons, for the payment of taxes and special assessments levied against the Commons by the City of Waverly, Nebraska, subsequent to the execution and recordation of these Restated Protective Covenants, and for snow removal for the Common Pedestrian Walkways comprising a part of the Commons. Special general assessments for capital improvements of the ponds, the water detention areas, and green areas comprising a part of the Commons may be made by the Board of Directors; provided, however, that such assessments for capital improvements shall be approved by the affirmative vote of two-thirds of the Members entitled to vote, present in person or by proxy, at a regular meeting of the Members or at a special meeting of the Members, provided notice of such special general assessments shall be contained in the notice of such special meeting.

31. The Corporation shall provide for the landscaping upkeep and maintenance of the ponds and water detention areas, and green areas comprising a part of the Commons as may be determined by the Corporation to be in the best interest of the Corporation and the public, and shall annually assess the Lots and the Members for upkeep and maintenance of the ponds and water detention areas, and green areas, including the payment of taxes and special assessments levied by the City of Waverly or Lancaster County. Such general assessments shall be assessed by the Corporation to its Members and shall be a lien on the Lot and a personal obligation of the record title holders as set forth in paragraphs 28, 29 and 30, herein.

32. All Lot Owners and Members of the Corporation agree to abide by all rules and regulations promulgated by the Corporation.

33. These covenants and restrictions shall run with the Property and shall be binding upon and enforceable by the Corporation, all Members of the Corporation, any Lot Owner and their respective heirs, personal representatives, successors and assigns for a period of twenty-five (25) years from and after the date of recordation of these covenants and restrictions with the Register of Deeds of Lancaster County, Nebraska, and shall automatically extend for successive periods of ten (10) years thereafter, unless an instrument executed by the Corporation approved by a two-thirds (2/3) vote of the Membership of the Corporation shall have been recorded with the Register of Deeds of Lancaster County, Nebraska, agreeing to a termination or modification of these covenants. Any decision approved by a two-thirds (2/3) vote of the Membership of the Corporation concerning the interpretation of these covenants or the compliance or noncompliance with these Restated Protective Covenants or any structure placed on any Lot, shall be binding upon all Lot Owners.

34. The enforcement of these covenants and restrictions shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any provision hereof. Such proceedings may be to restrain such violation or to recover damages and, by the Corporation, to enforce the payment of any assessment or any lien or obligation created hereby. If any action is brought in any court to enforce the terms or provisions of any of these covenants, or to collect any unpaid assessment against any Lot, then if the person instituting such proceeding is successful, it, he or she shall also be entitled to an award of all costs and fees (including reasonable attorneys fees) incurred in connection with such proceeding.

35. Any instrument amending, modifying, abrogating or canceling these Restated Protective Covenants pertaining to the structure, existence or financing of the Corporation must be recorded before it shall be effective.

36. The invalidation of any one of the covenants and restrictions shall not affect the validity of the remaining provisions hereof which shall remain in full force and effect.

