

*Return recorded document to:
BARTLING & HINKLE, P.C.
5801 S. 58th St., Suite B
Lincoln, NE 68516*

RESTRICTIVE COVENANTS

Evergreen Place - Bennet

KNOWN ALL PERSONS BY THESE PRESENTS:

That the undersigned, EVERGREEN DEVELOPMENT, INC., a Nebraska corporation, of Lincoln, Lancaster County, Nebraska, hereinafter known as “Developer”, is the titleholder of the following described real estate:

Lots 5, Evergreen Place Addition, Bennet, Lancaster County, Nebraska

Lots 1-16, Block 1; Lots 1-15, Block 2; Lots 1-11, Block 3; Outlots A and B; Evergreen Place 1st Addition, Corrected Replat, Bennet, Lancaster County, Nebraska

That the undersigned, RICHMOND HILL HOMES, INC., a Nebraska corporation, is the titleholder of Lots 1-2, Evergreen Place Addition, Bennet, Lancaster County, Nebraska, and the undersigned, MICHALEK RESIDENTIAL CONSTRUCTION, LLC, a Nebraska limited liability company, is the titleholder of Lots 3-4, Evergreen Place Addition, Bennet, Lancaster County, Nebraska,

The above listed properties hereinafter are collectively referred to as “the Properties”; and

Evergreen Place Bennet Homeowners Association (“Corporation”) has been or is in the process of being incorporated by Developer in Nebraska for the purposes of enforcing the Restrictive Covenants established upon the Properties and administering and maintaining the Commons.

These Restrictive Covenants are established upon the Properties.

1. **USE:** No lot within the Properties shall be used other than for single-family Residential purposes, except as set forth herein. Subdivision of any Lot is prohibited. No more than one single-family residence and two accessory structures thereto may be erected or constructed on any Lot.

2. **COMPLETION OF CONSTRUCTION:** Any building placed or constructed upon any lot within the Properties shall be completed within twelve (12) months after the commencement of construction. If construction is not complete after twelve months, Developer may cause completion and charge assessments for the same against the lot owner. Lot owner shall install 4’ wide sidewalk across entire front of lot before occupancy shall be approved for any dwelling. Such sidewalk shall be completed no later than 24 months after purchase of lot from Developer. If sidewalk construction is not complete after such 24 months, Developer shall have the right to enter upon the Lot and cause its completion. Developer may assess the actual costs of such services, plus a 10% administrative charge against the Lot. If no paid when due, said assessments shall bear interest at the rate of 12% per annum, and when filed of record, shall be a lien upon the Lot assessed.

3. **ANTENNAS:** No wiring or antenna for electrical power, telephone, television radio, or any other use shall be permitted above ground, except within a building. One small satellite dish shall be permitted subject to the requirements of the general standards below.

4. **APPROVAL OF PLANS:** Plans for any dwelling structure to be placed or Constructed upon any Lot shall be submitted to Developer and shall show the design, size, and exterior material for the building or improvement and the plot plan for the Lot. One set of plans

shall be left on permanent file with the Developer. Construction of the building or improvement shall not be commenced unless written approval of the plans has been secured from the Developer. Written approval or disapproval of the plans shall be given by the Developer within 30 days after receipt thereof. Approval of the plans shall not be unreasonably withheld and, upon disapproval, a written statement of the grounds for disapproval shall be provided. The Developer shall have the exclusive right to disapprove the plans if, in the Developer's opinion, then plans do not conform to the general standards of the development in the Properties. The rights and duties of the Developer under this paragraph, except as to Lots of which the Developer is the titleholder, may be assigned by the Developer in writing to the Corporation at any time.

5. GRADING PLAN: Developer or its assignees shall have the exclusive right to establish grades and slopes for all lots within the Properties and to fix the grade at which any building or other improvement shall be placed or constructed upon any lot, in conformity with the general plan for development of the Properties. Once such grades, slopes and/or contours have been established by the Developer, they shall not be changed in connection with the construction of any building or other improvement on a Lot without written permission from the Developer, but in no event will any such Lot be graded or sloped so as to change the flow of surface waters to or from adjoining Lots.

6. EROSION CONTROL: Each member of the Corporation shall be responsible for implementing and maintaining adequate erosion control measures on its Lot. The adequacy of erosion control measures on a Lot shall be subject to continual review during construction and until sod or seeding has been established on the Lot as required by paragraph 7.e. Developer shall have the right to require any member to maintain silt fences, straw bales or other additional measures if soil is observed to be eroding onto abutting Lots, sidewalk or into any street, Commons or storm sewer swale. In the event any member fails or refuses to perform any required implementation or maintenance of erosion control measures, the Developer or Corporation after twenty-four hours (24) notice to the member in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance, together with a 10% administrative fee, shall be the personal obligation of the member who is or was the owner of the Lot failing to perform their obligations, and shall bear interest at the rate of 14% per annum and shall be a lien upon the Lot assessed.

7. GENERAL STANDARDS FOR DWELLING STRUCTURES: The following general standards of development shall guide the Developer in review of any plans for dwelling structures submitted for approval within the Properties. These standards shall not be relied upon, interpreted or applied as absolute requirements for plan approval. The Developer shall have the right, in its sole and absolute discretion, to modify the application and interpretation of these standards when exercising its plan approval authority.

a. Minimum Floor Area. The minimum floor area for any dwelling exclusive of basements, garages, porches, patios, decks or enclosed decks shall be as follows:

- | | |
|------------------------------|---------------|
| i. Single story ranch style: | 1,350 sq. ft. |
| ii. Two story: | 1,850 sq. ft. |
| iii. Multi-level/split entry | 1,750 sq. ft. |

b. Setbacks. Setbacks of dwellings from the lot lines are established as follows:

- i. Interior Lots: 25 feet from front lot line, 9 feet from side lot line; except for Lot 6 and 9 of Block 3 which are 20 front and 9 side
- ii. Corner Lots: 25 feet from front lot line and other street side and 9 feet from side lot line; except Lots 4 and 11, Block 3 which are 25' front and 20' side to North and 9' South and front must face Cottonwood Ct.

c. Exterior Finish.

- i. Approval. All exterior finish materials and colors except earth tones shall be approved by Developer. Brick, natural stone, stucco or stucco-type product, concrete, steel, or vinyl siding are the preferred siding materials.
- ii. Front Elevation. The front elevation of any dwelling shall be faced with a minimum of 50% brick, natural stone, stucco or stucco-type product.

However, 100% of the front elevation siding and 0% sides is permissible in lieu of percentages listed above. It is agreed that 'front' means all siding surfaces between left and right front corners. Roof pitches shall be a minimum of 4:12, or as may be dictated by a unique architectural style.

- iii. Basement. All dwelling structures shall have a full basement or walkout basement where topography permits.
 - iv. Exposed Foundation. Exposed foundation walls other than the front elevation shall not exceed an average of 24 inches and shall be painted or sided to match the exterior color scheme of the dwelling. Foundations less than 12 inches do not apply.
 - v. Roofing Materials. Roofing materials shall be equal or better than an architectural-grade shingle which provides an appearance of depth such as the Horizon shingle.
 - vi. Exclusions. No log homes, dome homes, earthen homes, A-frame homes, or mobile homes shall be permitted.
- d. Attached Garage. All dwellings shall have at least a full size, two stall attached garage which shall not exceed the height of the dwelling.
 - e. Solar Panels. Any active solar panels shall be flush with the roof or side wall of a dwelling and shall not be located in any yard or upon any accessory structure.

8. GENERAL STANDARDS FOR IMPROVEMENTS AND STRUCTURES OTHER THAN DWELLINGS. The following general standards shall be satisfied in the construction and installation of improvements and structures other than the dwellings. Written approval for other improvements and structures is not required but shall comply with these standards. The Corporation and members of the Corporation shall have the right to enforce these standards.

- a. Fencing. Fencing shall not be constructed closer to the street than the front elevation of the dwelling and shall be constructed with the finished side facing the lot line. In addition, on any corner Lot where the dwelling on an adjacent Lot does or will set perpendicular to the dwelling on the corner lot, fencing along the rear and street side of the corner Lot shall not be constructed within the 25 feet street yard setback unless approved by Developer. No livestock-type fencing material shall be used for construction of a fence within the Properties.
- b. Accessory Structures. No structure of any kind shall be constructed on any Lot prior to construction of a dwelling. Any accessory structure greater than 200 square feet, or any addition of any size, shall require submitted plans and written approval from Developer or the Corporation prior to commencement of construction. No accessory structure shall have a floor area exceeding that of the dwelling structure, nor shall it have a height greater than that of the dwelling structure. All accessory structures shall be (i) constructed of compatible and similar materials and design with the dwelling, (ii) compatible with the quality of the overall development, and (iii) maintained in good order and an attractive condition. Construction of any accessory structure or addition shall be completed within six months of its commencement.
- c. Dog Kennels. Any dog run or kennel shall be adequately screened from view and shall not be located in the front yard or within 9 feet of any lot line. Dog runs and kennels shall not be located in the front yard or side yard setback.
- d. Satellite Dish. Any satellite dish shall not be larger than 18 inches in diameter and shall be located and screened so as to be as unobtrusive as is reasonably possible.
- e. Landscaping. All front, side, and rear yard areas shall be seeded or sodded within six months after completion of any dwelling constructed upon a Lot. Within one year of occupancy of the dwelling on a Lot, the lot owner shall plant at least 1 tree, with a minimum of 2 ½ inch trunk diameter and 6 feet in height, in the front yard. Corner lots also require two additional trees in the side yard facing the street.

9. CITY REQUIREMENTS: All buildings within the Properties shall be constructed in conformity with the requirements of the applicable building codes of the Village of Bennet. All dwelling opening elevations shall comply with the minimum elevation established for each individual Lot as required by the Village of Bennet. Public sidewalks and street trees shall be installed by the lot owner during the construction of the dwelling as required by the Village of Bennet and once planted must be maintained by the lot owner.

10. TEMPORARY STRUCTURES: No partially completed dwelling or temporary building and no trailer, tent, shack, or garage on any lot within the Properties shall be used as either a temporary or permanent structure or residence.

11. NUISANCE: No noxious or offensive activity shall be conducted or permitted upon any lot within the Properties, nor anything which is or may become an annoyance or nuisance to the neighborhood or which endangers the health or unreasonably disturbs the quiet of the occupants of adjoining lots.

10. SIGNS: No signs, billboards, advertising devices or unsightly objects shall be erected, placed or permitted on any lot within the Properties except one sign per Lot consisting of not more than 6 square feet advertising (i) a lot as "For Sale", or (ii) a "Garage Sale" on a Lot, no more than one time per year. In addition, Developer may erect signs of any size advertising Lots for sale within the Properties. This provision shall not prohibit any object or sign from being placed on any Lot that is required by a governmental entity, builder, contractor, subcontractor or tradesman as part of the home marketing and construction process.

11. ANIMALS: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot within the Properties for any commercial purpose. Pet owners shall be responsible for prompt cleanup after their pets. No dog breeding establishments (4 or more dogs) are allowed.

12. RECREATIONAL VEHICLES: No recreational vehicle, trailer, boat, machinery, or inoperable vehicle, as defined by the Village Zoning Code, shall be parked or stored upon any Lot, street, or right-of-way within the Properties, except within an enclosed structure. Recreational vehicles may be temporarily parked or stored upon a Lot for a period of time not to exceed 14 days per year.

13. CONSTRUCTION VEHICLES AND REFUSE SERVICE: Developer may designate and enforce locations through and over which all construction vehicles shall enter and exit the Properties during development. Developer shall also have the exclusive right to designate a single provider of roll off and refuse service within the Properties. The cost of the service shall be paid for by each member to the Corporation, or the Developer may direct that payment be made directly to the designated refuse service provider. The purpose of designating a single provider is to limit and control the number of service trucks operating within the Properties. The rights of the Developer under this paragraph to designate a refuse service provider may be assigned to the Corporation when residences shall have been placed or constructed upon all of the lots within the Properties and Developer no longer has any interest in any of the Properties.

14. HOMEOWNERS ASSOCIATION: Every person or entity who owns a lot within the Properties ("Lot Owner") shall be a member of the Corporation. However, any person or entity who holds such interest merely as security for the performance of an obligation shall not be a member.

15. MANAGING AGENT. The Developer or the Corporation may contract for the performance of any of the Corporation's rights, obligations or responsibilities with any entity or individual ("Managing Agent"). The Managing Agent shall exercise such authority which may be granted by the Developer or Corporation. The fee charged by the Managing Agent shall be a common expense of the members.

16. MEMBERSHIP: The Corporation shall have two classes of membership:

Class A membership shall include all members of the corporation except the

Developer and any successor in interest. Each Class A member of the Corporation shall be entitled to all the rights of membership and to one (1) vote for each lot.

Class B membership shall include only the Developer and any successor in interest. The Class B member shall be entitled to fifteen (15) votes for each lot. However, the Class B membership shall be converted to Class A membership when the total number of votes entitled to be cast by Class A members equals the total number of votes entitled to be cast by the Class B members.

17. CONVEYANCE OF COMMONS: The Commons shall include all pedestrian Walkways that abut two or more lots, drainage ways, ponds and open space, as shown on any final plat of all or any portion of the Properties; provided that such final plat has been filed with the Lancaster County Register of Deeds. Commons shall also include any pump station and force main that provides sanitary sewer service to the Properties, if applicable.

18. CONVEYANCE AND USE OF COMMONS: Each member of the Corporation shall have the right to use and enjoy the Commons as established by the rules, regulations and requirements of the Corporation and shall have an easement upon the Commons for the use thereof, which shall be appurtenant to the interest requisite for membership. Developer shall convey any Commons to the Corporation, free from encumbrance, but subject to easements and restrictions then of record and any requirements of the Village within one year after the conversion of Class B membership to Class A membership. The conveyance shall further reserve to the Village of Bennet a permanent right to enter upon the Commons to maintain the Commons in the same manner as required of the Corporation in the event the Corporation dissolves and the Lot Owners fail to perform said maintenance.

19. RIGHTS IN COMMONS: The rights and easements of the members of the Corporation shall be subject to:

- a. The right of the Corporation to borrow money for the purpose of improving the Commons and to mortgage the Commons. In the event of default, the mortgagee shall have the right, after taking possession of the Commons, to charge admission and other fees as a condition of the continued use of any recreational facilities within the Commons by the members, and to open the facilities to a wider public until the mortgage debt is satisfied. Any mortgage of the Commons shall be approved by the affirmative vote of two-thirds of each class of 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, if notice of the proposed mortgage is contained in the notice of the special meeting.
- b. The right of the Corporation to take any steps reasonably necessary to protect the Commons against foreclosure.
- c. The right of the Corporation to suspend the enjoyment of the facilities by any member for any period during which an assessment remains unpaid, and for a period not to exceed 30 days for any infraction of the published rules and regulations governing the use of the facilities.
- e. The right of the Corporation to charge reasonable admission and other fees for the use of the facilities.
- f. The right of the Corporation to dedicate or convey all or any part of the Commons to any public entity.
- g. The right of the Village of Bennet to enter upon the Commons to maintain the Commons in the same manner as required of the Corporation in the event the Corporation fails to perform said maintenance or the Corporation dissolves and the Lot Owners fail to perform said maintenance.

20. MAINTENANCE OF LANDSCAPE SCREENS: Each member of the Corporation who is the titleholder of a Lot on which any landscape screen, whether composed of structural or live plant material, is installed as required by the Village, shall be deemed to covenant to maintain the screen.

21. GENERAL MAINTENANCE OBLIGATIONS: Each member of the Corporation shall be responsible for the proper storage and disposal of all construction debris and materials associated with the construction of any improvement upon their Lot. Lots shall be periodically mowed and loose debris and materials picked up and properly stored to prevent them from being spread and blown throughout the Properties. Each member shall be responsible for the enforcement and monitoring of these obligations for all contractors and suppliers performing work upon the Lot.

22. FAILURE TO MAINTAIN: In the event any member fails or refuses to perform any required maintenance and upkeep of any landscape screen or general maintenance obligations, the Developer or Corporation after seven (7) days' notice to the member in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance, together with a ten percent (10%) administrative fee, shall be the personal obligation of the member who is or was the owner of the Lot failing to perform their maintenance obligations, shall bear interest at the rate of fourteen percent (14%) per annum and shall be a lien upon the Lot assessed.

23. CORPORATION RESPONSIBILITIES: The Corporation, after any assignment of this right from Developer, shall provide such services to its members as they may determine. These services and responsibilities of the Corporation shall include, but are not limited to, the following:

- a. Maintenance of Commons. The Corporation covenants and each member of the Corporation, by the acceptance of a deed by which the interest requisite for the membership is acquired, shall be deemed to covenant to maintain the Commons to the extent not otherwise provided for by these Covenants, which Covenants by the members shall be satisfied by the payment of annual and special assessments for the administration, maintenance or improvement of the Commons. In the event the Corporation dissolves, the members shall remain jointly and severally liable for the cost of administration and maintaining the Commons.
- b. Refuse Services. The Corporation shall contract on behalf of each member for refuse collection services through a single designated provider. The cost of this service shall be paid for by the members directly to the designated provider as billed.

24. LIEN OF DUES AND ASSESSMENTS: The lien of any dues, refuse service charges, or special assessment shall, until shown of record, be subordinate to the lien of any mortgage placed upon the lot against which the assessment is levied.

25. ANNUAL ASSESSMENTS AND LIENS: Annual dues and special assessments, other than for capital improvements, may be levied by the Board of Directors of the Corporation. Any special assessment for capital improvements may be rejected at any time within 30 days of the notice of the levy by the vote of a majority of each class of members affected and entitled to vote, at a regular meeting of the members or at a special meeting of the members, if notice of a special assessment is contained in the notice of a special meeting.

The members shall pay annual dues and special assessments to the Corporation or Managing Agent as billed. Each member's dues shall be determined on an annual basis for each fiscal year, prorating a fractional year which may occur by issuance of a building permit for any dwelling. The amount of annual dues shall be based upon an estimate of the Corporation's costs for administration, maintenance and improvement of the Commons and each member shall pay the annual dues so established in advance. At the end of each fiscal year, a statement of the total year's Common's operating costs may be presented to the members of the Corporation and the members shall pay any excess charge to the Corporation within thirty (30) days of the statement.

- a. Budgets. The Corporation or Managing Agent may prepare, and make available to each member a pro forma operating statement (budget) containing; (1) estimated revenue and expenses on an accrual basis; (2) the amount of any cash reserves of the Corporation currently available for replacement or major repair of the Commons and for contingencies; (3) an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of the Commons; and (4) a general statement setting forth the procedures used by the Corporation in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Commons.
- b. Additional Charges: In addition to any amounts due or any other relief or remedy obtained against a member who is delinquent in the payment of any dues, refuse service charges or assessments, each member agrees to pay such additional costs, fees, charges and expenditures (“Additional Charges”) as the Corporation, refuse service provider or Managing Agent may incur or levy in the process of collecting from each member monies due and delinquent. All Additional Charges shall be included in any judgment in any action brought to enforce collection of delinquent dues or assessments. Additional Charges shall include, but not be limited to, the following:
 - i. Attorney’s Fees: Reasonable attorney’s fees and costs incurred in the event an attorney(s) is employed to collect any dues, assessments or sum due, whether by suit or otherwise;
 - ii. Late Charges: A late charge in the amount to be fixed by the Corporation to compensate the Corporation for additional collection costs incurred in the event any dues, assessment or other sum is not paid when due or within any “grace” period. The late charge shall not exceed ten percent (10%) of the delinquent assessment or twenty dollars (\$20), whichever is greater;
 - iii. Costs of Suit: Costs of suit and court costs incurred as allowed by the court;
 - iv. Filing Fees: Costs of filing notice of lien in the Office of the Register of Deeds;
 - v. Interest: Interest on all dues and assessments at the rate of 14% per annum, beginning thirty (30) days after the assessment becomes due; and
 - vi. Other: Any other costs that the Corporation may incur in the process of collecting delinquent dues and assessments.
- c. Lien. The dues, refuse service charges, and assessments shall be the personal obligation of the member who is the owner of the lot assessed at the time of the assessment and when shown of record shall be a lien upon the lot assessed.
- d. Fines. The Corporation may create a schedule of fines for violation of Corporation governing documents, which shall include the Articles of Incorporation and Bylaws of the Corporation, these Restrictive Covenants, and any rules and regulations created by the Corporation, which fines shall be treated and billed as a special assessment to the offending member’s Lot.

26. ABATEMENT OF DUES AND ASSESSMENTS: Notwithstanding any other Provision of these Restrictive Covenants, the Board of Directors may abate all or part of the dues and assessments due in respect to any Lot, and shall abate all dues and assessments due with respect to any Lot during the period such Lot is owned by the Developer.

27. ADDITIONS: The Developer may add additional contiguous or adjacent real Estate to the Properties or the Commons, at any time, without the consent of the members of the Corporation. Additions shall be made by the execution and recordation of Restrictive Covenants or Supplemental Restrictive Covenants upon the additional real estate, making the addition subject to these Restrictive Covenants; provided any of the restrictions and requirements in these Restrictive Covenants may be reduced, increased or otherwise modified by the Developer within any such addition.

28. AMENDMENTS: These Restrictive Covenants shall run with the land and shall be binding upon and enforceable by the Developer and all persons claiming under the Developer. These Restrictive Covenants may be terminated or modified, in writing, by the owners of two-thirds of the lots within the Properties, at any time.

29. ENFORCEMENT: The enforcement of these Restrictive Covenants may be by proceedings at law or in equity against any person violating or attempting to violate any provision hereof. The proceedings may be to restrain the violation, or to recover damages by the Corporation, and designated refuse service provider, or Developer, may enforce any lien or obligation created hereby.

30. SEVERABILITY: The invalidation of any one of these Restrictive Covenants shall not affect the validity of the remaining provisions hereof.

Dated this _____ day of May, 2022.

“Developer” – EVERGREEN DEVELOPMENT, INC.

BY: _____
Mark T. Schmidt, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this the _____ day of May, 2022, by Mark T. Schmidt, President of Evergreen Development, Inc.

Notary Public

Dated this _____ day of May, 2022.

RICHMOND HILL HOMES, INC.

BY: _____
Paul Selivanoff, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this the _____ day of May, 2022, by Paul Selivanoff, President of Richmond Hill Homes, Inc.

Notary Public

Dated this _____ day of May, 2022.

MICHALEK RESIDENTIAL CONSTRUCTION, LLC

BY: _____
Michael R. Michalek

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this the _____ day of May, 2022, by Michael R. Michalek, on behalf of Michalek Residential Construction, LLC.

Notary Public