

ARBOR HEIGHTS CIRCLE HOMEOWNERS ASSOCIATION SECOND AMENDEND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

These declarations, made on the date indicated on this instrument, by the parties hereto described as "Declarant". Further these covenants, conditions and restrictions revoke all other previously filed covenants, conditions and restrictions.

WITNESSETH

Whereas, Declarant, whether one or more, is the owner of certain property in Washington County, Nebraska, more particularly described as follows:

Lots, 2,3,4, and 5 in Arbor Heights, an addition to the City of Blair, Washington County, Nebraska

Whereas, the real estate owners (hereafter owners) desire to make all of the above said property, subject to the covenants, conditions and restrictions hereinafter set forth,

Now, Therefore, the owners hereby declare that all of the property hereinabove described shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with all of said real property and shall be binding on all parties having any rights, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

- 1.1 "Association" shall mean and refer to Arbor Heights Circle Homeowners Association, its successors and assigns.
- 1.2 "Owner" shall mean and refer to:
 - (a) The record owner, whether one or more persons or entities, of a fee simple title to any Lot or portion thereof which is a part of the properties, but excluding those having such interest merely as security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner, and
 - (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the Seller retains title solely as security for the performance of the purchasers obligation under the contract.

2009 AUG -3 PM 4:30
 FILED
 KAREN A. MADSEN
 WASHINGTON COUNTY
 REGISTER OF DEEDS
 BLAIR, NE

200903591
 WASHINGTON COUNTY, STATE OF NEBRASKA
 RECORDED August 3, 2009 AT 4:30pM.
 BOOK 544 PAGE(S) 402-412
Karen A. Madsen
 REGISTER OF DEEDS

Recorded	<input checked="" type="checkbox"/>
General	<input checked="" type="checkbox"/>
Numerical	<input checked="" type="checkbox"/>
Photostat	<input type="checkbox"/>
Proofed	<input checked="" type="checkbox"/>
Scanned	<input type="checkbox"/>

1.3 "Properties shall mean and refer to :

Lots 2, 3, 4, and 5 in Arbor Heights, an addition to the City of Blair, Washington County, Nebraska, as surveyed, platted and recorded

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

1.4 "Lot" shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties or one of two parcels resulting from a Lot split of a lot.

1.5 "Improved Lot" shall mean and refer to any platted Lot included within the Properties, upon which shall be at erected a dwelling, the construction of which shall be at least 80% completed, according to the plans and specifications for construction of said dwelling. All other Lots, which shall be vacant or upon which shall be erected a dwelling, the construction of which shall be less than 80% completed, according to the plans and specifications for construction of said dwelling, shall be defined as "unimproved Lots".

1.6 "Declarant" shall mean and refer to all real estate owners signing this instrument.

ARTICLE II

PROPERTY RIGHTS

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

2.2 Parking Rights. Ownership of any Lot shall entitle the Owner or Owners thereof to such parking rights as shall be available upon such Lot subject to City Ordinances.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

3.1 Every Owner of a Lot which is subject to assessment shall be a member of the Association. Each Lot Owner is empowered to enforce the covenants. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to any assessment.

3.2 In order to ensure that a quorum is present for all meetings of the members, and to allow for orderly management of the Association's affairs, it shall be the duty of each member to personally attend such meetings.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants for each Improved Lot which has 100% of the exterior construction completed and owned with the Properties, and each Owner of any other Lot, by acceptance of a deed therefore, or by entering into a contract for the purchase thereof, whether or not it shall be so expressed in such deed or in such contract, is, and shall be, deemed to covenant and agree to pay to the Association:

- (1) Special assessments for capital improvements, and
- (2) Monthly assessments for maintenance and other operational expenses as deemed necessary by the Association,

As such assessments shall be established and collected as hereinafter provided. The special assessments and monthly assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment shall be made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner of the property at the time when the assessment came due. The personal obligation for delinquent assessments shall pass to the Owner's successors in title, unless expressly waived by them.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, recreation, and welfare of the residents in the properties and for exterior maintenance and other matters, as more fully set out in Article V herein.

4.3 Monthly Assessments. As the need may arise in the future, the Board of Directors shall have the authority to levy and assess any monthly maintenance assessment and determine the provisions for the payment of any future monthly assessments.

4.4 Special Assessments for Capital Improvements. In addition to the monthly assessments authorized in Section 4.3 above, the Association may levy special assessments for the purpose of meeting the requirements of Article V herein for exterior maintenance, and, in addition may levy in any year, a special assessment applicable to that year only, for the purpose of defraying,

in whole or in part, the cost of any construction, reconstruction, or repair or replacement of any capital improvements, including fixtures and personal property related thereto, and for the cost of exterior maintenance, provided that any such assessment shall have the consent of two-thirds(2/3) of the votes of each owner at a meeting duly called for such purpose.

4.5 Notice and Quorum for Any Action Authorized. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or Section 4.4 shall be sent or delivered to all Members not less than 10 days nor more than 30 days in advance of such meeting. At the first such meeting called, the presence of more than 50% of the owners entitled to vote shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Any such subsequent meeting shall be held within 30 days following the preceding meeting.

4.6 Uniform Rate of Assessment. Both special assessments for capital improvements and monthly assessments, with respect to all Improved Lots, shall be uniform in amount, and may be collected on a monthly basis by the Association. The Board of Directors of the Association shall fix the amount of the monthly assessment against each Improved Lot. Written notice of the monthly assessment shall be sent to every Owner subject thereto. The dates of payments due shall be established by the Board of Directors. The Association shall upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether or not all assessments on a specified Improved Lot have been paid. A properly executed Certificate of the Association as to the status of assessments, on a particularly Improved Lot shall be binding upon the Association as of the date of its issue by the Association.

4.7 Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within thirty day after the due date shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Nebraska. Should any assessment remain unpaid more than sixty days after the due date, the Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the property through proceedings in any Court having jurisdiction of actions for the enforcement of such liens. No owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

ARTICLE V

EXTERIOR MAINTENANCE

The Association may provide exterior maintenance upon each Improved Lot which is subject to monthly and special assessments as set forth hereinafter.

5.1 Monthly Assessments. Monthly assessments may be assessed for, but not limited to, the following:

- (a) Maintenance and replacement of trees, shrubs, lawns and mailboxes located in the front of the units may be the responsibility of the Association as determined at a meeting of the Association. All trees, shrubs and landscaping located in the side yard and back of the unit shall be repaired and replaced by the unit owners. If the Owner does not comply, the Owner agrees to allow the Association to remove or replace such dead trees, shrubs and landscaping at the expense of the Owner of record at the time of the replacement and the Owner shall reimburse the Association on demand. Failure to pay on demand shall invoke Article IV. All trees, shrubs or landscaping must be approved by the Association prior to planting.
- (b) Operation and maintenance of an underground watering system.
- (c) Snow removal as to be determined by the guidelines set forth by the Board of Directors.
- (d) Maintenance of the lawns
- (e) Cleaning of gutters

5.2 Special Assessments. Special Assessments may be assessed for, but not limited the following:

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

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration therein be made, nor shall any trees,

shrubs, or plantings be planted or maintained upon the Properties, until the plans and specifications therefore, showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography, and in relation to other trees, shrubs and plantings, by the Board of Directors of the Association. Failure of the Board to act on such plans as submitted within 30 days after the date of submission shall be deemed to be approval of such plans, and the Owner may proceed in accordance with such plans and specifications. All such improvements shall also be subject to the applicable Arbor Heights Covenants affecting the properties.

ARTICLE VII

GENERAL RESTRICTIONS AND OTHER PROVISIONS

7.1 Restrictions. Every Owner shall have full rights of Ownership and full use and enjoyment of his Lot subject to the following restrictions:

- (a) No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on any Lot within the Properties, unless such fences or enclosures shall have first be authorized in writing by the Association. No clothes line or clothes hanger shall be constructed or utilized on any Lot or used on any Lot outside of a building located thereon.
- (b) The general restrictions of the Arbor Heights Covenants are hereby adopted by reference
- (c) No awnings or sun screens of any type shall be affixed to any building or structure on any Lot without the written consent of the Association and subject to the provisions of Article VI.
- (d) No grills shall be used on any deck of any building or structure.

ARTICLE VIII

ACCESS

The Associations, its officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement for such purpose.

ARTICLE IX

INSURANCE

It shall be the responsibility of the Owner of Record of each unit to provide a statement of "Proof of Insurance" of Comprehensive Home Owners Insurance to the Association Board of Directors annually at a date no later than January 31st. If the Owner of Record does not supply this statement and it is determined by the Board of Directors that no insurance exists, the Board may purchase Comprehensive Home Owners Insurance and the Owner of record at the time agrees to reimburse the Association for the cost of this insurance on demand. Failure to pay shall invoke Article IV.

ARTICLE X

UTILITY METERS AND SERVICE LINES

In order to facilitate the installation, operation, maintenance and repair of an underground water system, such Lots as shall be designated from time to time by the Association, shall have a dual metering system for water, so as to permit the drawing of water for watering of the lawns, shrubs, trees and other vegetation located on the Lots. It is understood that the amount of water metered for the residential use on such Lot shall be paid for by the Owner of each Lot receiving water.

ARTICLE XI

GENERAL PROVISIONS

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

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

11.3 Amendment. These Declarations may be amended at any time, by an instrument signed by the Owners of not less than sixty-six percent (66%) of the Lots then covered by these Declarations, and thereafter by an instrument signed by the Owners. Any such amendment shall be valid only upon its being recorded in the same manner as Deeds shall be recorded at such time.

11.4 Term. These covenants and restrictions contained in this Declaration shall run with the land, and shall be binding for a term of twenty (20) years from the date these Declarations are recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

This document is hereby signed by the property owners who own the lots 2, 3, 4, and 5 contained in the Arbor Heights Subdivision which makes up the Arbor Heights Circle Homeowner's Association as of July 29, 2009. By signing this document, the real estate owners acknowledge that these covenants, conditions and restrictions, shall become legally effective upon the filing and recording with the Washington County Register of Deeds Office.

Judy K Myers
Judy Myers
2015 Arbor Circle

Date: 6-19-2009

Roger Lorsch
Roger Lorsch
2031 Arbor Circle

Date: 6/18/2009

Loren Cohrs
Loren Cohrs
2017 Arbor Circle

Date: 7-07-09

Marybeth Cohrs
Mary Beth Cohrs
2017 Arbor Circle

Date: 7-07-09

Elaine Konecky
Elaine Konecky
2033 Arbor Circle

Date: 7-24-09

Don Conrad
Don Conrad
2041 Arbor Circle

Date: 7-16-09

see attachment
Dana Wolf
2038 Arbor Circle

Date: _____

Judy Wolf
2038 Arbor Circle

Date: _____

John Abbott
John Abbott
2040 Arbor Circle

Date: 6-18-09

Connie Abbott
Connie Abbott
2040 Arbor Circle

Date: 6-18-09

Linda S. Harkey
Linda Harkey
2043 Arbor Circle

Date: 7-29-09

STATE OF NEBRASKA)
)ss:
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me on this 29th day of JULY, 2009 by Judy Myers, Roger Lorsch, Loren Cohrs, Mary Beth Cohrs, Elaine Konecky, Don Conrad, John Abbott, Connie Abbott and Linda Harkey.



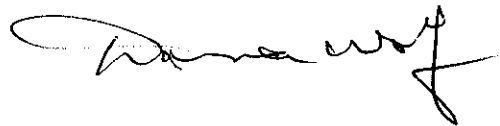
[Signature]
Notary Public

It is certainly not my intention to be contentious over the issue of homeowner rights, however, I do believe we, as townhome owners, have some rights as to what is done on our personal property. It is not common ground that belongs to all the group as a whole.

I am under the impression that the difference between a townhouse and a condo is that with a townhouse I own the land around my house. Under the rules proposed by the association I would have no rights to use the land to which I hold title. I realize the association has the right to set rules, particularly for the front of the homes that is in view of everyone, but I don't believe that right extends to the entire property. If I have no right to plant a flower in my back or side yard then why do I have to pay taxes on the property?

Even the front yards are not uniform now. Judy has roses around her mailbox, which I really like by the way, and some of the trees have hostas growing under them while others do not. The hostas that are growing under the trees are not the same variety, nor do I think they have to be. The front of the units look good without all being like peas in a pod.

If the entire properties are to be governed as common ground by a committee, then it is the association that should own the property and pay the taxes on it. Beyond setting general rules about the kind and size of plants I don't think a committee should have the power to force me to submit a detailed drawing of my plans to plant a hosta, rose, astilbe, or some other flower, and expect me to do this 30 days before the intended planting date. If I am shopping and see a plant that I like can I expect to see that plant in 30 days, or do you think it might be sold by then? If it is the intent of the association to turn the townhouses into condos where a committee has total control over all common ground surrounding the homes, then I suggest the appropriate legal action be taken to buy the properties and then sell them back as condos.

A handwritten signature in black ink, appearing to read 'Dana W. J.', with a stylized flourish at the end.