

**When Recorded, Return To:**

Jon E. Blumenthal  
c/o Baird Holm LLP  
1500 Woodmen Tower  
Omaha, Nebraska 68102

**FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS OF THE ARMBRUST ACRES  
SUBDIVISION, DOUGLAS COUNTY, NEBRASKA**

This First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements (this "Declaration") is made and entered into effective as of this 4<sup>th</sup> day of July, 2008, by and between the undersigned owners of lots (each, a "Lot") in Armbrust Acres, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska (collectively, the "Owners"), and the Armbrust Acres Homeowners Association, a Nebraska nonprofit corporation (the "Association").

WHEREAS, Maenner Acres One, Ltd., a Nebraska limited partnership ("Declarant") entered into those certain Declaration[s] of Covenants, Conditions, Restrictions and Easements (i) for the First Addition dated April 19<sup>th</sup>, 1979, recorded April 24, 1979 in the office of the Register of Deeds of Douglas County, Nebraska in Book 613, Page 458 (the "First Addition"); (ii) for the Second Addition dated August 24, 1981, recorded August 26, 1981 in the office of the Register of Deeds of Douglas County, Nebraska in Book 658, Page 281 (the "Second Addition"); (iii) for the Third Addition dated May 13, 1983, recorded May 20, 1983 in the office of the Register of Deeds of Douglas County, Nebraska in Book 689, Page 552 (the "Third Addition"); and (iv) for the Fourth Addition dated September 3, 1985, recorded September 5, 1985 in the office of the Register of Deeds of Douglas County, Nebraska in Book 750, Page 455 (the "Fourth Addition"), regarding certain real property located in Douglas County, Nebraska, and legally and collectively described on Exhibit "A", attached hereto and incorporated herein by this reference (the "Subdivision"), and

WHEREAS, such Declaration[s] of Covenants, Conditions, Restrictions and Easements for the First Addition, Second Addition, Third Addition, and Fourth Addition are hereinafter collectively referred to as the "Initial Covenants", and

WHEREAS, the Initial Covenants imposed certain restrictions and conditions upon the development and use of the Subdivision, and

WHEREAS, the Owners wish to collectively amend and restate the terms and conditions of the Initial Covenants set forth in the First Addition, Second Addition, Third Addition and Fourth Addition, as permitted therein, and

WHEREAS, on or about November 22, 1983, the Association was formed as a non-profit corporation in the State of Nebraska, for the purposes of, without limitation, maintaining the character, integrity and value of the Subdivision, according to the bylaws of the Association, in accordance with and pursuant to the terms and conditions of the Initial Covenants.

WHEREAS, Declarant's power to amend the Initial Covenants has vested in the Owners, pursuant to the terms and conditions of the Initial Covenants.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owners hereby amend and restate the Covenants, in their entirety, as follows:

ARTICLE I  
RESTRICTIONS AND COVENANTS

1. Each Lot, with the exception of any outlots being used as a park as of the date hereof, shall be used exclusively for single-family residential purposes.

2. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, basketball backboard, dog house, tree house, antenna, satellite receiving stations ("discs") (other than DIRECTTV or similar such discs), flag pole, solar heating or cooling device, tool shed, storage shed, potting shed, wind mill or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by the Association as follows:

a. An owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans, fencing plans and plot plans to the Association (herein collectively referred to as the "plans"). Such plans shall include a description type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Association of the Owner's mailing address.

b. The Association shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by the Association. In this regard, the Association intends that the Lots shall be developed residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by the Association to promote development of the Lots and to protect the values, character and residential quality of all Lots. If the Association determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, the Association may refuse approval of the proposed Improvement.

c. A Notice of Approval of the proposed improvement by the Armbrust Acres Board of Directors must be received by the owner before commencement of the project. If the owner does not receive a Notice of Approval nor a Notice of Denial within forty five

(45) days after the date of submission of the plans then the owner can consider them approved.

d. No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by the Association, or to control, direct or influence the acts of the Association with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon the Association by virtue of the authority granted to the Association in this section, or as a result of any act or failure to act by the Association with respect to any proposed Improvement.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height.

4. The exposed front foundation wall as well as any foundation wall facing a street of all main residential structures must be constructed of or faced with brick or simulated brick or stone or stucco or other approved material. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete, brick, paving stone, asphalt or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with brick or other material approved by the Association. The roof of all Improvements shall be covered with wood shingles, provided, however, that other materials that have the look of wood, slate or tile (excluding asphalt) may be approved at the discretion of the Association, in compliance with the Association's roofing material approval guidelines. Newer forms of asphalt shingles will be considered for approval by the Association, in the Association's sole discretion.

5. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Further, no business activities of any kind whatsoever shall be conducted on any Lot.

6. No exterior television or radio antenna of any sort shall be permitted on any Lot.

7. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this section 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during

their period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Omaha, Nebraska. No dumpster shall remain on any lot for more than thirty (30) consecutive days without the prior consent of the Board, in the Board's sole discretion.

9. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted unless completely screened from view, except for pickup purposes. No garden lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garage, refuge, rubble or cutting shall be deposited on any street, road or Lot. No clothes line shall be permitted outside of any dwelling at any time except one umbrella-type clothes line per Lot.

10. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

11. No fence shall be permitted to extend beyond the front line of a main residential structure unless approval is first obtained from the Association. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. No fences or walls shall exceed a height of six (6) feet. All produce or vegetable gardens shall be maintained only in rear yards. Any fence shall be uniform in height and character.

12. No swimming pool shall be permitted which extends more than one foot above ground level.

13. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the contour of any Lot.

14. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each built upon Lot and upon the street side of each built upon corner Lot. The sidewalk shall be placed five (5) feet back of the street curb line and shall be constructed by the owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Omaha.

15. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

16. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except that a dog house constructed for one (1) dog shall be permitted; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by the Association if required by this Declaration. Dog runs and dog houses shall only be allowed at the rear of the building, concealed from public view.

17. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards so as not to be visible from public view. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

18. No residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, except if parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat.

19. No structure of a temporary character, trailer, basement, tent, skateboarding ramp, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. No structure of dwelling shall be moved from outside Armbrust Acres to any Lot unless the approval of the Association is first obtained.

## ARTICLE II EASEMENTS

1. The Easements, as set forth in the Initial Covenants, shall remain in full force and effect, according to the term and conditions set forth therein.

2. Other easements as granted and provided for in the final plat of Armbrust Acres Fourth Addition which have been filed with the Register of Deeds of Douglas County, Nebraska (Book 1736, Page 186) shall remain in full force and effect, according to the term and conditions set forth therein.

3. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

## ARTICLE III DUES AND ASSESSMENTS

1. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

2. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged, The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by

the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

3. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association as described in the bylaws thereof, and to otherwise accomplish the purposes of this Declaration.

4. Maximum Annual Dues. The aggregate dues which may become due and payable in any year shall not exceed the greater of:

(a) One Hundred Twenty-Five and 00/100 Dollars (\$125.00) per Lot; or

(b) In each calendar year beginning on January 1, 2009, one hundred ten percent (110%) of the aggregate dues charged in the previous calendar year.

5. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

6. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessments which is not paid by March 31 of each calendar year shall be delinquent and shall be a lien on the subject property. Delinquent dues or assessment shall bear interest from the due date at the rate of eight percent (8%) per annum, compounded annually. The Association may, but shall not be required to, bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of common areas or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

#### ARTICLE IV GENERAL PROVISIONS

1. The Association or any Owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants and restrictions shall run with and bind the land for a term of sixty (60) years from the date this Declaration is recorded. This Declaration may be amended by an instrument signed by the owners of not less than Sixty Percent (60%) of the Lots covered by this Declaration.

3. Invalidity of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Waiver of any covenant in any instance shall in no way constitute an ongoing waiver with respect to the same covenant in any other instance, or any other covenant.

4. For purposes of this Declaration, terms not otherwise defined herein shall have the meaning given to such terms in the initial recitals.

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IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the day and year first written above.

THE ARMBRUST ACRES HOMEOWNERS  
ASSOCIATION, a Nebraska nonprofit corporation

By: \_\_\_\_\_  
\_\_\_\_\_, Its President

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2008,  
by \_\_\_\_\_, as President of The Armbrust Acres Homeowners  
Association, a Nebraska nonprofit corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public



**HOMEOWNERS:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Address: \_\_\_\_\_  
Omaha, Nebraska 68130

\_\_\_\_\_  
[SPOUSE]  
Print Name: \_\_\_\_\_

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2008,  
by \_\_\_\_\_ and \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

EXHIBIT "A"

Legal Description

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