

58-98

RATIFICATION
OF
PROTECTIVE COVENANTS

For good and valuable consideration receipt of which is hereby acknowledged, the undersigned, being the owner of the property described in Exhibit "A" which is attached hereto and incorporated herein by said reference, hereby ratifies and agrees to abide by the terms and provisions of the Amended Protective Covenants recorded on June 19, 1991 as Instrument No. 91-19187 in the Office of the Register of Deeds of Lancaster County, Nebraska, and any future amendments. A copy of said Amended Protective Covenants are attached hereto and incorporated herein by said reference. The undersigned further agrees that said Amended Protective Covenants may be filed along with this ratification, upon the property described in Exhibit "A".

WTK Co., Inc., a Nebraska Corporation

BY:

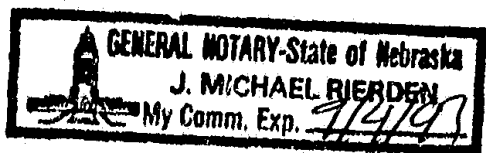
William T. Kimball Jr.
Its President

STATE OF NEBRASKA)

) ss.

COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 24th day of November, 1993, by William T. Kimball, Jr., President of WTK Co., Inc., a Nebraska corporation, on behalf of said corporation.



[Signature]
Notary Public

My Commission Expires:

9/4/97

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AMENDED PROTECTIVE COVENANTS
1991

The undersigned (Owners) are the Owners of the property described following their respective names and signatures and the real estate described on Exhibit "A" attached to this Amendment to Protective Covenants and incorporated herein by this reference. The undersigned represent at least two-thirds of the Lots and living units subject to the Protective Covenants, the whole of such lots and living units being hereinafter referred to as the "Properties" and are listed on Exhibit "A" hereto, including those legal descriptions whose owners have not signed this Amendment.

Capitol Beach Community Association, Incorporated (Corporation) has been incorporated in Nebraska for the purpose of enforcing said Protective Covenants, which were filed for record on the 28th Day of January, 1986 as Instrument No. 86-2301 and amended the 4th day of JUNE 1990 as Instrument No. 90-15873.

The undersigned, in accordance with the provisions of said Protective Covenants, do hereby amend said Protective Covenants, in their entirety, to now read as follows:

1. Lots abutting Capitol Beach Lake shall be used only for residential purposes with single-family residence and may not be a townhouse or be used for other than single-family use, as defined under zoning regulations applicable to Lincoln, Nebraska real estate. No such residence may share a common wall with another residence. Such dwellings may be no more than two stories in height. No single-family residence shall be constructed having a ground floor or first

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floor living area, exclusive of terrace, patio, porches and garages of less than 1400 square feet in the case of a one-story dwelling; nor less than a combined total of 1400 square feet on the first floor or main living area and upper area for a raised-ranch, split-entry or tri-level dwelling; nor less than 1800 square feet combined total for a one and one-half story or two-story dwelling. Current dwelling units on lots now subject to these Protective Covenants which were completed prior to June 1, 1991, and which do not meet the construction restrictions herein shall be excepted, provided that no additions to such dwellings, or reconstruction of such dwellings after a more than 50% destruction thereof, may be made without compliance with the restrictions contained herein except to restore the dwelling to its state as of June 1, 1991.

2. Any building placed or constructed upon any lot within the properties shall be completed within six months after the commencement of construction.

3. All buildings within the properties shall be constructed in conformity with the requirements of the applicable building codes of the City of Lincoln, Nebraska.

4. 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 residence.

5. No noxious or offensive activity shall be conducted or permitted upon any lot within the properties, nor shall anything be allowed which is or may become an annoyance or nuisance to the neighborhood or which endangers the health or unreasonably disturbs

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the quiet of the occupants of adjoining lots.

6. No advertising signs, billboards, or other advertising devices shall be permitted on any lot within the properties. However, the Owner may erect signs advertising lots for sale within the properties, and a sign advertising a single lot for sale may be erected upon any lot.

7. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot within the properties for any commercial purpose.

8. No trailer, double-wide, mobile home, prefabricated structure, or structure built by assembling structural prefabricated parts (except trusses and beams) thereof shall be permitted on any lot subject to these protective covenants.

9. Every lot or living unit subject to these Protective Covenants shall also be subject to the Policies, Regulations, Bylaws and Articles of Incorporation of Capitol Beach Community Association, Incorporated. Membership in the Corporation and the rights and privileges of membership shall be as provided in said Bylaws.

10. The Corporation shall have two classes of membership:

- (a) Regular membership shall include all members of the Corporation who are title holders of a fee or undivided fee interest in a lot or living unit abutting any retaining wall, beach or shoreline of Capitol Beach Lake.
- (b) Non-voting membership shall include all members of the Corporation except the regular members.

Each regular member and each non-voting member shall be entitled to such rights of membership and to such voting rights as provided for

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each class in these covenants and in the Bylaws of the Corporation. However, no more than one vote shall be cast with respect to any lot or living unit.

11. Each regular member of the Corporation shall have the right to use and enjoy the property of the Corporation, including the Lake, and shall have an easement upon the property for the use thereof, which shall be appurtenant to the interest requisite for membership. Each non-voting member shall have the use of the easement granted in Paragraph 14 herein. Non-voting members shall not have any right of access to nor right to use the Lake property of the Corporation.

12. 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 Corporation's property (commons or facilities) and to mortgage the commons. In the event of default, the mortgagee's rights shall be limited to 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 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 one year for any infraction of the published rules and regulations governing the use of the facilities.
- D. The right of the Corporation to dedicate or convey all or any part of the commons to any public entity. Any dedication or conveyance shall be approved by the affirmative vote of two-thirds of each class of members

entitled to vote, present in person or proxy, at a regular meeting of the members or at a special meeting of the members, if notice of the proposed dedication or conveyance is contained in the notice of the special meeting.

- E. The right to the use and enjoyment of the corporate properties shall be suspended, together with the suspension of any obligation to pay dues or assessments, during such period as a lot remains vacant of a single family dwelling after its initial 12 months of being subject to the Bylaws and Protective Covenants provided that in the event of the partial or total destruction of a dwelling so as to cause it to be uninhabitable under Lincoln building codes, then such suspension shall be for the period that no habitable dwelling exists on the lot after 6 months from the event causing the destruction, such dwelling to comply with these covenants. Upon commencement of construction of a single family dwelling, such suspension of use, rights and obligations shall be lifted unless such residence is not completed within six months of commencement, at which time the suspension shall be reimposed until a certificate of occupancy is issued.
- F. The right to the use and enjoyment of the corporate properties shall be suspended, together with suspension of any obligation to pay dues or assessments during such period as a dwelling is not in compliance with these covenants.
- G. Upon the termination of any suspension hereunder, the member shall be required to pay such lot's pro-rata share of any special assessments that were assessed during the suspension.

13. The Corporation covenants and each regular member of the Corporation, by the acceptance of a deed or other instrument by which the interest requisite for membership is acquired, shall be deemed to covenant to maintain the commons, other than the portion of the commons governed by Paragraph 14, which covenants by the regular members shall be satisfied by the payment of annual and special assessments for the administration, maintenance or improvement of the commons. Annual and special assessments shall be uniform as to each lot or living unit assessed. Each assessment shall be the personal obligation of the member who is, or was, the titleholder of the lot or

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living unit assessed at the time of the assessment, and shall bear interest at the rate of 12 percent per annum until paid and, when shown of record, shall be a lien upon the lot or living unit assessed.

14. Each member of the Corporation, who is the titleholder of a lot or living unit which has access to a street by way of a private roadway, shall have an easement upon such private roadway for ingress and egress from and to the street, which shall be appurtenant to the interest requisite for membership. The Board of Directors may impose an additional annual assessment against lots abutting a private roadway for its repair, alteration and maintenance.

15. The Corporation covenants to maintain each private roadway and street lights serving three or more lots or living units. Each member of the Corporation, who is the titleholder of a lot or living unit which has access to a street by way of a private roadway, shall be deemed to covenant to maintain the private roadway and street lights. The covenant by such members may be satisfied by the payment of annual and special assessments for the maintenance of private roadways and street lights. Each assessment shall be the personal obligation of the member who is, or was, the titleholder of the lot or living unit assessed at the time of the assessment, shall bear interest at the rate of 12 percent per annum until paid and, when shown of record, shall be a lien upon the lot or living unit assessed.

16. Each regular member of the Corporation shall be deemed to covenant to maintain any retaining wall, beach or shoreline of Capitol Beach Lake abutting the member's lot. Each member may install with Board approval and maintain with Board approval a temporary dock and

boat lifts on the shoreline of Capitol Beach Lake abutting the lot in accordance with the published rules and regulations governing the use of the commons, but shall not otherwise install improvements which encroach on the commons.

The Corporation may maintain any retaining wall, beach or shoreline of Capitol Beach Lake abutting a lot within the properties and shall have the right to enter upon any lot at reasonable times, to perform maintenance. The Corporation may remove any dock or boat lift or structure which does not conform to the published rules and regulations governing the use of the facilities, and may remove any other improvement which encroaches on the commons and may further remove posts or damaged docks on the commons. The cost of any maintenance or removal shall be added to the next assessment against the lot or living unit.

17. The lien of any annual or special assessment shall be subordinate to the lien of any mortgage placed upon the lot against which the assessment is levied.

18. Annual and special assessments may be levied by the Board of Directors of the Corporation.

19. The Corporation shall accept additional members of the Corporation and the addition of additional real estate to the properties, at any time, upon the application to the titleholder of a lot or living unit within Capitol Beach East First Addition, Lamont 4th Addition, Irregular Lots 239, 249, in Section 22, Township 10 North Range 6 East of 6th P.M., Lancaster County, Nebraska, Capitol Beach West 2nd Addition including Outlots A and B, Irregular Lots 69

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and 76, Section 15, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska; provided that such title holders must execute and record protective covenants upon the additional real estate, making the addition subject to these Protective Covenants and provided further that all dwelling units on the additional real estate, existing, under construction or to be constructed, must meet the restrictions imposed by these Covenants. The class of membership of the new member shall be that for which the title holder's lot or living unit qualifies hereunder. The Board of Directors may not waive any part of these covenants with regard to such additional members and additional property.

20. The sizes of all lots shall meet the minimum requirements of the Zoning Ordinance of the Lincoln Municipal Code and the Design Standards of the City of Lincoln. All lots having lake frontage shall have a minimum distance of 60 feet from side lot line to side lot line along that lot line which abuts the lake. This restriction shall apply to the replatting or subdividing of existing lots into lots having shorter than a 60 foot lot line on the lot line abutting the lake.

21. There will be no modification, alteration, interruption, breach or changes of any type to the existing beach or shoreline of the lake except that repairs and replacements of existing sea walls may be approved by the Board of Directors of the Corporation in accordance with existing rules and regulations adopted by said Board.

22. These Protective Covenants shall run with the land and shall be binding upon and enforceable by the Owners and the members of the

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Corporation and all persons claiming under the Owners or the members. These Protective Covenants may be terminated or modified, in writing, only by the consent of two-thirds of the regular members of the Corporation.

23. The enforcement of these Protective 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 and, by the Corporation, may be to enforce any lien or obligation created hereby.

24. The invalidation of any one of these Protective Covenants or any provision of these covenants shall not affect the validity of the remaining provisions.

Dated this 19th day of JUNE, 1991.

CAPITOL BEACH COMMUNITY
ASSOCIATION, INCORPORATED,
A Corporation

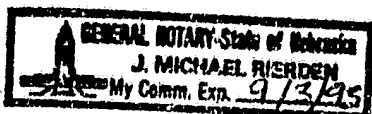
BY:

Richard Wiese
Its President

STATE OF NEBRASKA)
COUNTY OF LANCASTER)

ss.

The foregoing instrument was acknowledged before me this 19th day of JUNE, 1991, by Richard Wiese, President of CAPITOL BEACH COMMUNITY ASSOCIATION, INCORPORATED, a Nebraska Corporation, on behalf of the Corporation.



J. Michael Rierden
Notary Public

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LEGAL DESCRIPTION
TRACT ALONG CAPITOL BEACH LAKE
ON KIMBALL PROPERTY

A Legal Description of a tract of land located in parts of Lots 69, 239, and 249 Irregular Tracts and part of Capitol Beach West 2nd Addition, located in the Southwest Quarter of Section 15 and the Northwest Quarter of Section 22, Township 10 North, Range 6 East of the 6th P.M., to the City of Lincoln, Lancaster County, Nebraska and more particularly described by metes and bounds as follows:

Beginning at the Southeasterly Corner of Outlot "A" or the Northwesternly Corner of Outlot "B", Capitol Beach West 2nd Addition to the City of Lincoln, Lancaster County, Nebraska; Thence N 27°29'53" E, and on the Easterly Line of Outlot "A" or the Westerly Line of Outlot "B" of said Capitol Beach West 2nd Addition, a distance of 88.34 feet to a point on a curve to the left; Thence on a curve to the left, having a radius of 270.00 feet, an arc length of 26.73 feet, and a central angle of 05°40'22", with a chord bearing of N 85°31'39" E, a chord distance of 26.72 feet to the Point of Reverse Curvature; Thence on a curve to the right, having a radius of 330.00 feet, an arc length of 366.89 feet, and a central angle of 63°42'03", with a chord bearing of S 65°27'31" E, a chord distance of 348.28 feet to the Point of Tangency; Thence S 33°36'29" E, a distance of 850.00 feet to the Point of Curvature; Thence on a curve to the right, having a radius of 300.00 feet, an arc length of 120.48 feet, and a central angle of 23°00'34", with a chord bearing of S 22°06'12" E, a chord distance of 119.67 feet to the Point of Tangency; Thence S 10°35'55" E, a distance of 133.03 feet; Thence S 69°49'02" E, a distance of 60.00 feet; Thence S 20°10'58" W, a distance of 165.21 feet; Thence S 80°11'37" W, a distance of 137.01 feet; Thence N 10°35'55" W, a distance of 330.25 feet; Thence N 33°36'29" W, a distance of 641.63 feet; Thence N 46°28'46" W, a distance of 35.14 feet; Thence N 46°28'43" W, a distance of 478.77 feet to the point of beginning and containing a calculated area of 279,478.59 Square Feet or 6.416 Acres, more or less.

L69 SW 1/4 15 10-6
L239, 249 NW 1/2 22-10-6
Pt. DLA OLB CABEWEL

NO-
CABEWEL

LANCASTER COUNTY, NEB
D. M. H. L.
REGISTER OF DEEDS

56 50

DEC 17 11 28 AM '93

INST. NO 93 58098

58897

Exhibit A page 1

Recorder, James L. Lamm
Rt. 205 Miles Towne
6502 St
(08)