

3824 DON CLARK  
REGISTER OF DEEDS  
SAUNDERS CO. NEBR.

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BOOK 217 PAGE 65  
OF 650 INST# 165

*Don Clark*

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THESE DECLARATIONS, made on the date shown on the close of this instrument, by the party or parties hereto who are, at the close of this instrument, described as "Declarant",

WITNESSETH:

WHEREAS, Declarant, whether one or more, are the owners of certain property in Saunders County, Nebraska, more particularly described as follows:

Lots 1 through 15, and Sublot A, Oxbow Addition being a part of the East 596.30 feet of the Southeast Quarter of Southeast Quarter of Section 35, Township 13, Range 9, Saunders County, Nebraska, which tracts shall be designated to consist of 15 lots for the purpose of this agreement,

And a tract of land in the Southeast Quarter of the Southeast Quarter of Section 35, Township 13, Range 9, Saunders County, Nebraska, described as commencing at the Northeast corner of said Southeast Quarter Southeast Quarter, thence N89 57'58"W (assumed bearing) 596.30 feet to the place of beginning; thence S00 00'46"W 596.3 feet west of and parallel with the east line said Southeast Quarter Southeast Quarter 826.80 feet; thence N89 55'40"E, 400.20 feet to the east line of Tract 1, Lot 9, Steffens Addition to the City of Ashland, Nebraska; thence N00 02'12"W along the east line said Tract 1, Lot 9, 181.63 feet to the Northeast Corner said Tract 1, Lot 9, thence N00 05'15"W 645.93 feet along the east line of Lots 1 thru 8 said Steffens Addition to the Northeast corner of said Lot 8 on the north line of said Southeast Quarter Southeast Quarter; thence S89 57'58"E along said north line 401.50 feet to the place of beginning and together with the north 50.00 feet of Tract 1, Lot 9, Steffen's Addition to the City of Ashland, Saunders County, Nebraska, and a tract of land described as commencing 596.30 feet West and 826.8 South of the Northeast corner of the Southeast Quarter of the Southeast Quarter Section 35, Township 13, Range 9, Saunders County, Nebraska, thence West 310.02 feet, thence South 81.7 feet, thence East 310.26 feet, thence North 81.7 feet, to the place of beginning, which tracts shall be designated to consist of 4 lots for the purpose of this agreement.

WHEREAS, Declarant desires to make all of the above said property, together with such additions thereto as may hereafter be brought within the jurisdiction of the Association, subject to the covenants, conditions and restrictions hereinafter set forth,

NOW THEREFORE, Declarant hereby declares 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

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with all of said real property and shall be binding on all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.  
DEFINITIONS

Section 1. "Association" shall mean and refer to the OXBOW HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Owner" shall mean and refer to:

- (a) The record owner, whether one or more persons or entities of fee simple title to any parcel or Lot which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation, and
- (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a parcel or Lot, under which Seller retains title solely as security for the performance of the purchaser's obligation under the contract.

Section 3. "Properties" shall mean and refer to Lots 1 through 15, and Sublot A, Oxbow Addition being a part of the East 596.30 feet of the Southeast Quarter of Southeast Quarter of Section 35, Township 13, Range 9, Saunders County, Nebraska,

And a tract of land in the Southeast Quarter of the Southeast Quarter of Section 35, Township 13, Range 9, Saunders County, Nebraska, described as commencing at the Northeast corner of said Southeast Quarter Southeast Quarter, thence N89 57'58"W (assumed bearing) 596.30 feet to the place of beginning; thence S00 00'46"W 596.3 feet west of and parallel with the east line said Southeast Quarter Southeast Quarter 826.80 feet; thence N89 55'40"E, 400.20 feet to the east line of Tract 1, Lot 9, Steffens Addition to the City of Ashland, Nebraska; thence N00 02'12"W along the east line said Tract 1, Lot 9, 181.63 feet to the Northeast Corner said Tract 1, Lot 9, thence N00 05'15"W 645.93 feet along the east line of Lots 1 thru 8 said Steffens Addition to the Northeast corner of said Lot 8 on the north line of said Southeast Quarter Southeast Quarter; thence S89 57'58"E along said north line 401.50 feet to the place of beginning and together with the north 50.00 feet of Tract 1, Lot 9, Steffen's Addition to the City of Ashland, Saunders County, Nebraska, and a tract of land described as commencing 596.30 feet West and 826.8 South of the Northeast corner of the Southeast Quarter of the Southeast Quarter Section 35, Township 13,

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Range 9, Saunders County, Nebraska, thence West 310.02 feet, thence South 81.7 feet, thence East 310.26 feet, thence North 81.7 feet, to the place of beginning, or any part thereof sold as a parcel thereof, in Saunders County, Nebraska, as surveyed, platted and recorded, together with any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any part or parcel of said Properties as surveyed and plotted. There are currently nineteen lots designated on said property.

Section 5. "Improved Lot" shall mean and refer to any Lot included within the Properties, upon which shall be erected a dwelling, the construction of which shall be at least 80 percent completed, according to the plans and specifications for construction of said dwelling, the construction of which shall be less than 80 percent completed, according to the plans and specifications for construction of said dwelling, shall be defined as "Unimproved Lots".

Section 6. "Declarant" shall mean and refer to William D. Sapp and Lucille M. Sapp, and David N. Lutton and Susan M. Lutton.

ARTICLE II.  
PROPERTY RIGHTS

Section 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 guests or tenants of such Owner, or the published rules and regulations of the Association.

ARTICLE III.  
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to any assessment.

Section 2. The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

CLASS A: Class A Members shall be all Owners, with the exception of Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however, that the vote for such Lot shall be exercised as such persons or entities or both, shall

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determine, but in no event shall more than one vote be cast with respect to any one Lot.

CLASS B: Class B Member shall be Declarant, which shall be entitled to two votes for each Lot owned. The Class B membership shall terminate and be converted into Class A membership upon the occurrence of the first of the following dates:

(a) The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding the Class B membership, or

(b) January 1, 2008.

ARTICLE IV.  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each improved Lot, according to the plans and specifications which is at least 80 percent completed and owned within the Properties, hereby covenants, 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) Annual assessments or charges, and
- (2) Special assessments for capital improvements,

such assessments to be established and collected as hereinafter provided. The annual and special 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 person, persons, or entity who, or which, was the Owner of the Property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title, unless expressly assumed by such Owner's successors.

Section 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, maintenance of the Oxbow Lake, Lake Trail and surrounding land within the property and other matters as more fully set out in Article V herein.

Section 3. Maximum Annual Assessment. Until January 1, 2000, there shall be no annual assessment for regular maintenance of the property, including all items listed in Article V hereafter set forth.

(a) From and after January 1, 2000, the annual assessment may be assessed at an amount set by the Board of Directors based upon the actual cost of maintenance of the property including all items listed in Article V hereafter set forth. Said annual assessment may be increased each year thereafter by not more than the greater of: (1) Five percent (5%) or (2) the percentage rise in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the month of October preceding the subject year, over the month of October one year prior to that, all without a vote of the membership.

(b) From and after January 1, 2000, the annual assessment may be increased over and above the amount permitted under the preceding paragraph (a), by a vote of not less than two-thirds (2/3) of all Members who are voting, in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessment for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, and for the cost of maintenance, as set out in Article V herein, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of members who shall vote, in person or by proxy, at a meeting duly called for such purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or under Section 4 shall be sent to all Members not less than 30 days nor more than 60 days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of all the votes of each class of membership 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 meetings shall be held within 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments, with respect to all improved Lots, shall be uniform in amount, and shall be collected on an annual basis.

Section 7. Date of Commencement of Annual Assessments; and Due Dates. The annual assessments provided for herein shall commence as to each improved Lot on January 1, 2000, or the first day of the month following the conveyance of such improved Lot from Declarant to an owner whichever is later. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against such improved Lot not less than thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The dates payments are 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 the assessment on a specified improved Lot has been paid. A properly executed certificate of the Association as to the status of assessments on a particular improved Lot shall be binding upon the Association as of the date of its issuance by the Association.

Section 8. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest at 14 percent per annum. Should any assessment remain unpaid more than sixty (60) 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 of 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.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, and the holder of any first mortgage on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association. Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessment on any Lot as to which the first mortgage thereon is in default, if such Board of Directors determines that such lien has no value to the Association.

ARTICLE V.  
EXTERIOR MAINTENANCE

The Association shall provide maintenance upon subplot A and all areas on the included property that are not improved lots and owned by the Declarant as follows:

(a) Maintain trees and shrubs, lawns, walks, and other exterior landscapes and improvements, including areas on said property surrounding Oxbow Lake. This shall include mowing, fertilizer, chemicals, snow removal and other necessary maintenance.

(b) Operation, maintenance and replacement of the underground well system located on Sublot A.

(c) Maintenance, repair and replacement of Oxbow Lake trail, including repairs and overlayment of asphalt surface and lighting surrounding the lake.

(d) Maintenance of Oxbow Lake itself including well, fish stocking, and other necessary maintenance.

(e) Maintenance repairs and replacement of dock and structures on Oxbow Lake.

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(f) Operation, maintenance and replacement, including cost of electricity, for all electrical lighting and electrical connections and operations of the well on said property.

Notwithstanding the foregoing, in the event the need for maintenance or repair of any of the foregoing 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 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 on the Properties, nor shall any exterior addition or change or alteration therein be made nor shall any trees, shrubs or plants be planted or maintained on 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, or by an architectural committee composed of

three (3) or more representatives appointed by said Board of Directors.

ARTICLE VIII.  
GENERAL RESTRICTIONS AND OTHER PROVISIONS

Section 1. Restrictions. Every Owner shall have full rights of ownership and full use and enjoyment of his or her Lot and Sublot A, subject to the following restrictions:

(a) No noxious, offensive or illegal activity shall be carried on upon the Properties, nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any Lot, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood. No outside above-ground trash receptacles or incinerators shall be permitted on any Lot.

(b) No advertising signs or billboards shall be permitted on any Lot with the exception of "for sale" or "for rent" signs, which shall not exceed four square feet in size. Nothing herein contained shall prevent the use of any Lot by Lutton as a sales and rental office, or as a model home or both, and while any Lot is so used, it shall have the right, for itself, or its nominee to place signs of the premises advertising such office or model home, or both.

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(c) No trailer, tent, shack, barn or other outbuilding shall at any time be used for human habitation, either temporarily or permanently. This shall not prevent the location of a temporary real estate and/or construction office on any Lot in the Properties for use during the period of construction and sale of the Properties.

(d) The use of private barbecue grills and the outside use or storage of barbecue grills on any Lot shall be subject to written regulation, restriction or exclusion by the Association.

(e) No awnings or sun screen of any type shall be affixed to any building or structure on any Lot without the written consent of the Association.

(f) All gardens are subject to regulation and possible prohibition by the rules of the architectural committee.

(g) No vehicles may be parked outside of the garages or left unattended for longer than 24 hours, including residential vehicles, boats, trailers or any other vehicle or accessory thereto.



ARTICLE IX.  
INSURANCE

Section 1. The Association shall purchase and provide comprehensive general liability coverage insurance against any other hazards and in such amounts as shall be determined from time to time by the Board of Directors of the Association. The Association, in addition to the foregoing, shall provide directors and officers liability coverage insurance for the Association and for its officers and Board of Directors. Finally, if the Association has any employees, the Association shall purchase and provide workmen's compensation insurance for all employees who may come within the scope of the Nebraska Workmen's Compensation laws.

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Section 2. The Association is hereby irrevocably appointed as agent for each Owner of each and every Lot in the Properties and or the holder of any Mortgage on any Lot in the Properties, to adjust all claims arising under insurance policies purchased by the Association on the improvements on the Properties, and to execute and deliver releases upon payment of claims without joinder by any such Owner or mortgagee. All insurance proceeds shall be applied by the Association toward repairing the damage covered by such insurance, provided that reconstruction or repair shall not be compulsory where the damage exceeds two-thirds (2/3) of the value of all the buildings and improvements on all of the Lots covered by such insurance. The deductible portion of the applicable master insurance policy shall be borne by these lots which suffered the loss as determined by the Board of Directors. In such case, insurance indemnity, if any, shall be credited to each Owner in accordance with such Owner's prorata share of the loss sustained from the casualty for which the proceeds shall be payable and such sums shall be first applied toward satisfaction of any recorded first mortgage against such Lots, next toward satisfaction of junior recorded liens in order of their priority, next toward the cost of razing the improvements or any remnants thereof from said Properties, and the filling and leveling of any of said Lots, as needed, and the remainder shall then be paid to such Owner of such razed properties on a prorata basis. In case the insurance proceeds do not equal the cost of the repairs or rebuilding, the excess cost shall be considered a maintenance expense to be assessed and collected by the Association from the Owner of the damaged improvements. In any cases of over insurance, any excess proceeds of insurance received shall be credited to the working fund of the Association.

Section 3. Each Lot Owner should obtain insurance for the Owner's benefit at such Owner's own expense. Each Lot Owner should obtain insurance to cover specific improvements and betterments in the Owner's unit, personal liability,

specific personal property items, and insurance for full replacement cost of the improvements.

ARTICLE X.  
ACCESS

The Association, 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 purposes.

ARTICLE XI.  
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions covenants, reservations, liens and charges now or hereafter imposed by the provision of this Declaration. Failure of the Association or of 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.

Section 2. Severability. Invalidation of any one or more of these covenants or restrictions, by judgment or court Order, shall in no way affect any other provisions, which other provisions shall remain in full force and effect.

Section 3. Amendment. These Declarations may be amended at any time during the initial twenty (20) year term referred to in Section 4, hereafter by an instrument signed by the Owners of not less than eighty-five percent (85%) of the Lots then covered by these Declarations, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the lots then covered by these Declarations. Any such amendment shall be valid only upon its being recorded in the same manner as deeds shall be recorded at such time.

Section 4. Term. These covenants and restrictions contained in this Declaration shall run with the land, and shall be binding for an initial term of twenty (20) years from the date these Declarations are recorded, after which time they shall be automatically extended for successive period of ten (10) years each.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed these Declarations of Covenants, Conditions and Restrictions this 15<sup>th</sup> day of January, 1998.

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ATTEST:

William D. Sapp  
William D. Sapp

Lucille M. Sapp  
Lucille M. Sapp

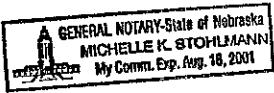
David N. Lutton  
David N. Lutton

Susan M. Lutton  
Susan M. Lutton

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF SAUNDERS )

Before me the undersigned, a notary public, personally came, William D. Sapp and Lucille M. Sapp, Husband and Wife, and David N. Lutton and Susan M. Lutton, Husband and Wife, to me personally known to be the identical persons who signed the above Declaration and they acknowledged the execution of the above to be their voluntary act and deed.

WITNESS my hand and notarial seal the day and year last above written.



Michelle K. Stollmann  
Notary Public

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed these Declarations of Covenants, Conditions and Restrictions this 15<sup>th</sup> day of January, 1998.

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ATTEST:

William D. Sapp  
William D. Sapp

Lucille M. Sapp  
Lucille M. Sapp

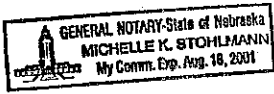
David N. Lutton  
David N. Lutton

Susan M. Lutton  
Susan M. Lutton

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF SAUNDERS )

Before me the undersigned, a notary public, personally came, William D. Sapp and Lucille M. Sapp, Husband and Wife, and David N. Lutton and Susan M. Lutton, Husband and Wife, to me personally known to be the identical persons who signed the above Declaration and they acknowledged the execution of the above to be their voluntary act and deed.

WITNESS my hand and notarial seal the day and year last above written.



Michelle K. Stollmann  
Notary Public

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