

Mary Kean

RESTRICTIONS AND COVENANTS
FOR WESTLAKE SOUTH ESTATES SUBDIVISION
COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA

Declarant is the owner of all of the lots of Westlake South Estate Subdivision, a subdivision located in the City of Council Bluffs, Pottawattamie County, Iowa and does hereby adopt the following restrictions and covenants, to-wit:

1. As used herein the following definitions shall apply:

- A. Architectural Control Committee shall mean the Developer or a committee appointed by the Developer or a committee appointed by the Owners Association should the Developer delegate such authority to the Owners Association.
- B. Assessment shall be divided into two categories:
 - 1. Ordinary assessments shall be for ordinary maintenance charges, snow removal, lawn mowing and other reoccurring expenses.
 - 2. Special assessments shall be for the replacement costs of the road, rip-rapping, power poles and other assessments for capital expenditures as determined by the Board of Directors of Westlake South Estates Subdivisions Owners Association
- C. Association shall mean the Westlake South Estates Owners Association.
- D. Board shall mean the Board of Directors of Westlake South Estates Owners Association.
- E. Common area shall mean all of the property within Westlake South Estate Subdivision except for building lots 1

through 8. Common area shall include the private road and private pressure sewer system as well as the state controlled water shown as an out lot on the plat.

F. Declarant shall mean West Manawa Development Co., Inc., its assigns and successor developer.

G. Developer shall mean West Manawa Development Co., Inc., its assigns and successor developers who purchase more than one lot for development in West Lake South Estates Subdivision.

H. Lagoon or canal shall mean that body of water shown as an out lot on the plat of Westlake South Estates Subdivision together with that portion of Lake Manawa State Park consisting of a body of water located to the west of West Shore Drive in Lake Manawa State Park.

I. Lake shall mean that body of water located to the east of West Shore Drive in Lake Manawa State Park and designated on the plat of Westlake South Estates Subdivision as Lake Manawa.

J. Lot shall mean and refer to any plat of land shown upon the recorded plat of the addition.

K. Owner or lot owner means:

1. Any person, including Declarant, who holds fee simple title to any lot in the subdivision which is at any time subject to the provisions of this Declaration.
2. Any person or legal entity who has contracted to purchase fee simple title to a lot pursuant to a written agreement in which case the seller under said agreement shall cease to be the Owner while said agreement is in effect.

3. Any person or legal entity who has commenced legal proceedings to forfeit a contract of sale or foreclose a mortgage on any lot or serves as a court appointed receiver to manage said lot or serves as a Trustee under the bankruptcy law.

L. Residence shall mean custom built single family detached dwellings.

2. The Subdivision shall be subject to the control of the following architectural control covenants.

A. Scope of Architectural Control. No building, fence, wall or other structure, shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition to, change or alteration therein, be made until the plans, specifications, and plat plan showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to the surrounding structures and topography by the Developer, or by an architectural control committee appointed by said Developer. In the event the Developer or its designated committee fails to approve or disapprove in writing such design and location within thirty days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. All such plans and specifications shall be submitted to the Developer at its Council bluffs, Iowa office.

B. Reason for Architectural Control. The addition is composed of in part 8 building lots which have been developed expressly for residential purposes and the construction of Residences. The primary purpose of architectural control

is to protect and preserve the value of the Residences in the Addition for the benefit of both the individual lot owners and the public in general. This control is not to be viewed as a means for suppressing expressions of individuality nor as a mere land restriction. The secondary purposes of the architectural control are:

- a. To protect the Developer's financial investment in the unsold lots.
- b. To give the lot owners essential information regarding the Addition.
- c. To offer advice related to design and location problems so as to insure the best possible design and aesthetic results for all parties concerned.

c. Guidelines for Architectural Control. The following statements regarding design, location and construction of Residences are intended to be merely guidelines, not absolute criteria, that the Developer or the Architectural Control Committee will use in granting architectural approval. Deviations from the guidelines will be made in order to protect the unique topography and existing timber and other native growth that are essential elements to both the nature and character of the Addition.

- a. Trees over six inches in diameter (measured at a point two feet above ground level) may be removed from the Lots with the approval of the Developer. The plans submitted to the Developer pursuant to the provisions of Article

II, Paragraph A above, must identify each tree proposed to be removed.

- b. The drainage system (including, but not limited to, silt basin facilities) designed in the approved plat or as may be installed may not be altered or interfered with in any manner.
- c. The provisions of the Municipal Code of the City of Council Bluffs, Iowa, will govern the setback requirements for the Lots in the Addition, subject to the approval of the Architectural Control Committee or Developer. Side and rear setbacks shall not be less than 15 feet; furthermore, side and rear setback variances will be granted only in the event that it is necessary to achieve reasonable and proper slope control, drainage, and preservation of existing trees and other native growth. Provided, however, said side and rear setback variances will not be granted if to do so would produce undesirable design, location, scenic or aesthetic results.
- d. Each Residence shall include at least an attached, double car garage.
- e. Should an unattached maintenance structure be desired on the Lot, it shall be of the same design and construction as the accompanying Residence and prefabricated or metal structures will not be approved. Furthermore, unattached maintenance structures

shall not be within 30 feet of an adjoining Lot.

- f. No Lot shall be further subdivided and each Lot is limited to the construction of one Residence.
- g. Fences and walls will be permitted if they do not obstruct the scenic view of any lot and then only with the approval of the Developer or Architectural Control Committee.
- h. All foundation walls of any Residence* which face any adjoining street shall be covered with either brick or siding in harmony with the design and construction of the Residence. The exterior surface of all other foundation walls will be designed and finished to compliment the design and construction of the Residence.
- i. Areas which will be used to store, repair or routinely park recreational vehicles, or other vehicles will be designed to include a reasonable screening device to insure where appropriate that the contents of said area cannot be seen from any adjoining street or lot.
- j. Residences designed for construction on Lots in the Addition will be required to have the following square footage, whenever practicable in light of the unique topography, existing trees and other native growth, and the other provisions of these

covenants, conditions and restrictions, to-wit:

1. One Story and One and One-Half Story Residences: 1800 square feet will be required on the ground level.
2. Two Story Residences: 2400 square feet will be required above the basement level, with at least 1400 square feet required on the first floor.
- c. Bi-Level, Split-Level, Residences: 2400 square feet of finished living area will be required.
- d. Split-Entry Residences: A minimum of 2400 square feet of finished living area will be required.
- e. The above square footage requirements shall not include the attached car garage.
- k. The design and location of each Residence will be in harmony with the design and location of existing Residences.
- l. Each individual lot owner is to take all steps necessary to reasonably and adequately regulate the drainage from his Lot and to control unreasonable and undesirable erosion.
- m. No residence shall be designed or be converted for the use of more than one family.
- n. The side yard, front yard and rear yard setback law shall not apply to open patios or uncovered porches.
- o. To the extent possible the architectural control shall prohibit structures that will obscure or obstruct the view of the

lagoon or lake or detract from the symmetry of the lagoon frontage.

p. No lot shall be subdivided.

3. The construction and landscaping of each residence shall be completed within 18 months from the date the construction of the residence's foundation is commenced. Excess dirt resulting from excavation done on any lot shall be hauled from the lot or used in landscaping the lot within the construction time period. All excavation or alteration of the existing topography and native growth will be done in a manner such that the natural drainage or designated drainage is not altered to such an extent that unreasonable or undesirable drainage or erosion results. Improvements not so completed, or upon which construction has ceased for 90 consecutive days, or which have been partially or totally destroyed and not rebuilt within 12 months shall be deemed nuisances. Declarant or the Association may remove any such nuisance or repair or complete the same at the costs of the owner.

4. Material and equipment used during the construction and landscaping process will be stored and maintained on the lot in an orderly manner and discarded materials, rubbish and unneeded equipment will be removed from the lot weekly.

5. Construction and landscaping activities will be confined to the lot on which the construction is in

process. The individual lot owner is responsible for any expenses related to providing natural gas to the residence. All utility services will be carried underground including but not limited to cable t.v. and electricity.

6. Each lot owner shall furnish and install at owner's cost a grinder pump station on the improvements on the lot before any connection is made to the private pressure sewer system of the subdivision according to the specifications and details adopted by the Architectural Control Committee or Developer. The initial specifications and details as adopted are from H-T-M Sales, Inc. under letter dated December 6, 1989 captioned Detailed Specifications No. 4 - Grinder Pump Stations and consisting of pages D54-1 through D54-6. The owner shall continually operate and maintain the grinder pump station at owner's cost after its installation while the sewer on the lot is connected to the pressure sewer system of the subdivision. Each lot owner shall connect to the private pressure sewer system and shall pay the assessments levied for the private pressure sewer system. All material placed in the private pressure sewer system shall comply with the laws of the State of Iowa and the ordinances of the City of Council Bluffs, as they currently exist and may hereafter be amended and the owner shall be responsible for all damages and expenses caused by failure to comply with this requirement.

7. No hazardous conditions or equipment shall be acquiesced to or maintained by the lot owner during construction or any other time without reasonable and proper warnings and safeguards.

8. No lot owner shall use, suffer or permit any person or persons in any manner whatsoever, to use his lot for any purpose in violation of the laws and regulations of the United States, the laws and regulations of the State of Iowa, or the ordinances and regulations of the City of Council Bluffs, Iowa, or any other lawful authority. No lot owner shall use, suffer or permit any person or persons in any manner whatsoever, to use his lot for any purpose which will constitute an unreasonable and improper invasion upon the quiet use and enjoyment of any other lot owner's property. Each lot owner shall maintain his lot in a clean and wholesome condition and all health and police regulations shall in all respects and at all times be fully complied with by the lot owner so as to prevent noxious and offensive activities or conditions which could constitute a public or private nuisance.

No animals or poultry of any kind other than household pets shall be kept on any part of the lot and all household pets shall be confined to the owner's lot and not allowed to run at large.

9. No billboards or any other unsightly objects will be erected, placed or maintained on any lot. No advertising signs will be allowed on any lot; provided, however, one "For Sale" sign of not more than 5 square feet may be placed or maintained on a lot. Notwithstanding the foregoing provisions, this paragraph shall not restrict the business activities, advertising, signs and billboards, or the construction and maintenance of structures by the Declarant, its agents and assigns, during the construction and sale period of this addition.

10. No boat, camping trailer, auto-drawn trailer of any kind, mobile home, truck, motorcycle, van, aircraft, grading or excavating equipment, or any other portable vehicle shall be stored, repaired, or routinely parked on the streets of the addition as shown by the plat. Each lot owner shall provide off-street parking to adequately meet his or her needs and, in any event, off-street parking for two automobiles shall be provided in addition to the attached double car garage space.

11. No incinerator or trash burner shall be allowed on any lot, no fuel tank shall be permitted to remain outside of any residence, and, except on pick-up days, no garbage or trash shall be permitted outside of any dwelling unless within an area that is fully screened from view from any adjoining street or lot as shown on the plat.

12. Maintenance of Lots. All lots and parcels, whether occupied or unoccupied, and any improvements placed thereon shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, Declarant or the Association shall have the right, through its agents and employees, to do so, the cost of which shall be added to and become a part of the annual assessment to which such lot is subject. Neither Declarant, the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work as performed.

13. Ditches Culverts and Swales. Each owner shall keep drainage ditches, culverts and swales located on his lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon his lot as may be reasonably required for proper drainage.

14. Ownership of Lakefront Lots. The boundary of any lot shown on the plat as being contiguous to the lagoon shall be the shoreline thereof as said shoreline would be if the water level in said lake were one vertical foot above the normal lake pool elevation of 967.5 feet.

15. Right to Remove Accretions. Declarant or the Association, or their designee shall have the right at any time to dredge or otherwise remove any accretion or deposit from any lakefront lot in order that the shoreline of the

lake to which said lot is contiguous may be moved inland toward or to the boundary of said lot.

16. Responsibility for Damages. Neither Declarant nor the Association shall be liable for damages caused by erosion, washing or other action of the water of any lake or stream.

17. Docks, Piers, Sea Walls and Riprapped Shore-lines. No dock, pier, boat house, or other similar structure shall extend into the lake, nor shall any such structure be constructed without the express permission of the association. Each owner shall replace, repair and maintain in a safe and attractive manner the riprapped shoreline adjoining that owner's lot pursuant to the standards established by Declarant or the Architectural Control Committee. Each owner may, at the owner's expense, construct a sea wall pursuant to the standards established by Declarant or the Association and shall keep said sea wall repaired and maintained in a safe and attractive manner.

It is the intent of the Association to require uniform shoreline protection in design and appearance. National stone riprap shore protection, furnished by the developer, may be removed for construction of sea-wall construction, for boat dock use, for boat house or boat ramp construction, for beach construction or such other uses, all of which must be approved by the Architectural Control

Committee. Each property owner shall submit plans for these or any type construction use for approval by the Architectural Control Committee prior to removal of the riprap.

Each property owner is responsible for the maintenance of the shoreline protection on their own lot, whether it be riprap or other sea-wall construction.

18. General and Special Assessments. Pursuant to the powers granted to it in its Articles and By-Laws, the Association is hereby expressly authorized and empowered to levy ordinary and special assessments against all lots in the Development. Provided, however, except as may be otherwise indicated, no assessment shall be levied against lots owned by Declarant or any successor developer. The assessments shall be administered as follows, to-wit:

- a. Collection and liens. Notice of each assessment amount and the date for payment shall be given to each lot owner of record in the Pottawattamie County Auditor's office, addressed to such owner at the address of the lot and mailed to such owner by ordinary mail. The notice shall be deemed given when said notice is deposited in the United States Mail postage prepaid and addressed as herein provided. If the owner does not live on the lot then the address shall be the address as shown on the Pottawattamie County Treasurer's office records for the lot owner or such address as the lot owner may designate to the board in writing. The amount of the assessment levied by the Association shall be paid to it on or before the date or dates fixed by resolution of the Board. If not so paid, the amount of such assessment, plus any other charges

thereon, including interest at the maximum limit provided by law per annum from date of delinquency and costs of collection, including attorney's fees if any, shall constitute and become a lien on the lot so assessed. The Board may cause to be recorded in the office of the Pottawattamie County Recorder of Deeds, a notice of assessment which shall state the amount of such assessment and such other charges and description of the lot which has been assessed. Such notice shall be signed by the Secretary of the Association. Upon satisfaction thereof, the Board shall, within a reasonable time, cause to be recorded a further notice stating the satisfaction and the release of said lien.

- b. Priority of Lien. Conveyance of any lot shall not affect any lien for assessments provided herein. Such lien shall be prior to all other liens recorded subsequent to said notice of assessment. The assessment lien shall be a lien against the real estate and shall remain a lien on the real estate until paid.
- c. Enforcement. The lien provided for herein may be foreclosed by suit by the Association in like manner as a mortgage and, in such event, the Association may be a bidder at the foreclosure sale. The Association may also pursue any other remedy against any owner owing money to it which is available to it by law or equity for the collection of a debt.
- d. Proof of Payment. Upon request, the Association shall furnish a statement certifying that all assessments then due have been paid or indicating the amount then due.
- e. Suspension. The Association shall not be required to transfer membership on its books or to allow the exercise of any rights or privileges of membership

on account thereof to any owner or to any persons claiming under them unless or until all assessments and charges to which they are subject have been paid.

19. Reservations. The following easements over each lot or parcel and the right to ingress or egress to the extent reasonably necessary to exercise such easements, are reserved to Declarant and its licensees:

- a. Private Streets. An easement on, over and under all streets in the Development for the purpose of installing, maintaining and operating utilities thereon or thereunder, for the purpose of drainage control; for access to any lot or parcel; and for purposes of maintenance of said streets.
- b. Sewage Line Easement. A twenty (20) foot wide easement is reserved for construction and maintenance of sewer lines as shown on the plat. The pressure sewer system is a private system.
- c. Other Easements. Any other easements shown on the plat.
- d. Use of and Maintenance by Owners. The areas of any lots affected by the easements reserved herein shall be maintained continuously by the owner of such lot, but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of said easements for the purposes herein set forth. Improvements within such areas shall be maintained by the owner except those for which a public authority or utility company is responsible.
- e. A perpetual easement, ten (10) feet in width, is reserved over the lagoon side of each lot in the subdivision, and an easement of five (5) feet in width over

all other sides of each lot of the subdivision for the maintenance of utilities, which easement shall include the right to trim or remove trees, fences and other obstructions.

20. Liability for Use of Easements. No owner shall have any claim or cause of action against Declarant or its licensees arising out of the exercise or failure to exercise any easement reserved hereunder or shown on the Plat except in cases of willful or wanton misconduct.

If any owner in the subdivision or their heirs or assigns shall violate or attempt to violate any of the covenants or the restrictions contained herein, it shall be lawful for any other person or persons owning any other lots in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction and either to prevent him or them from doing so or to recover damages or both for such violations. It shall be the obligation and the duty of the Homeowners Association and the officers thereof to enforce these restrictions and covenants and to take appropriate action for enforcement thereof, in addition to the right of any owner in the subdivision to take action as provided herein.

21. Suspension of Privileges. The Board may suspend all voting rights, if any, and all rights to use the Association's Common Areas of any owner for any period

during which any Association assessment or other obligation remains unpaid, or during the period of any continuing violation of the provisions of this declaration by such owner after the existence thereof has been declared by the Board.

22. Cumulative Rights. Remedies specified herein are cumulative and any specifications of them shall be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision of this declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

23. Grantee's Acceptance. Each grantee or purchaser of any lot or parcel shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such lot or parcel, accept such deed or contract upon and subject to each and all of the provisions of these covenants upon and subject to each and all of the provisions of this declaration and to the jurisdiction, rights, powers, privileges and immunities of Declarant and of the association and shall be a member of the Association.. By such acceptance, such grantee or purchaser shall, for himself,

his heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with declarant and the grantee or purchaser of each other lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this declaration and the Articles, Bylaws, Rules and Regulations adopted by the Association or which may be hereafter adopted by the Association.

24. Permanent and Perpetual Easement for Ingress and Egress. There is hereby by these covenants a permanent and perpetual easement for ingress and egress to the property located in the Westlake South Estates Subdivision and over the road designated in the plat of Westlake South Estates Subdivision as Westlake Drive and in favor of each owner of lots in Westlake South Estates Subdivision a permanent and perpetual easement over Westlake Drive for purposes of ingress and egress to the lots of Westlake South Estate Subdivision. Since Westlake Drive, as located within the subdivision of Westlake South Estates, obtains access from another private road, assessment for the upkeep of Westlake Drive and the other private road may be assessed against each lot owner of Westlake South Estates Subdivision.

25. All common areas, roads and rights of the declarant will be deeded to the owners association upon the sale of all lots held for sale by declarant.

26. Amendment. The covenants, conditions and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the declarant, and any lot owner, their legal representatives, heirs, successors and assigns, subject to this declaration, for a period of twenty-one years from the date this declaration is filed in the Records of the County Recorder for Pottawattamie County, Iowa, after which time said covenants, conditions and restrictions may be automatically preserved and extended for successive periods of twenty-one years by at least one lot owner properly filing a claim once every twenty-one years. The covenants, conditions and restrictions of this declaration may be amended during the first twenty-one year period by an instrument signed by the owners of 100 percent of the lots as shown by the plat.

27. Severability Clause. In the event any portion of these restrictions and covenants shall, for any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of these restrictions and covenants are invalid, illegal or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable

then such provision shall be deemed to be written, construed and enforced as so limited.

Dated this 8 day of February, 1990.

WEST MANAWA DEVELOPMENT CO., INC.

BY: Herbert E. Anderson
HERBERT E. ANDERSON, President

"DECLARANT"

STATE OF IOWA)
COUNTY OF POTTAWATTAMIE) ss.

On this 8 day of February, 1990, before me, the undersigned, a Notary Public in and for said State, personally appeared Herbert E. Anderson to me personally known, who being by me duly sworn, did say that he is the President respectively, of said corporation executing the within and foregoing instrument; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said Herbert E. Anderson as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by them voluntarily executed.

Raymond E. Dodge
NOTARY PUBLIC IN AND FOR SAID STATE



