

PROTECTIVE COVENANTS

SYBESMA SUBDIVISION TO THE CITY OF LUVERNE, ROCK COUNTY, MINNESOTA

WHEREAS, the Luverne Economic Development Authority (hereinafter the "Declarant") is the owner of certain real property located in the City of Luverne, County of Rock, State of Minnesota, comprising and consisting of Blocks 1, 2, 3 and 4, Sybesma Subdivision (hereinafter the "Subdivision") to the City of Luverne, Rock County, Minnesota, for the purpose of maintaining fair and adequate property values, maintaining and continuing the primary use of the Subdivision as a residential area, and in consideration of the mutual interests of owners of the real estate described herein, desire to subject the Subdivision to the covenants, restrictions and easements hereinafter set forth, each and all of which are for the benefit of said property and for each owner thereof and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest of any owner thereof;

NOW, THEREFORE, Declarant declares that the real property in the Subdivision is and shall be held, transferred, sold, conveyed and occupied subject to the covenants and restrictions hereinafter set forth.

ARTICLE I

Covenants to Preserve the Residential Character of the Subdivision

Single Family Residential Restrictions.

Section 101. Lots One (1) through Fifteen (15) in Block One (1), Lots One (1) through Fourteen (14) in Block Two (2) and Lots One (1) through Six (6) in Block Three (3), shall be used exclusively for private residential purposes. No dwelling erected or maintained within these lots shall be used or occupied for any purpose other than for single-family dwelling except Lots Eight (8) through Fourteen (14) in Block Two (2) will be allowed to have twin homes or duplexes located on them if each unit meets all sections of these covenants.

Section 102. No structure shall be erected or occupied on Lots Sixteen (16) in Block One (1), Lots Seven (7) and Eight (8) in Block Three (3), and Lot One (1) in Block Four (4), that is not permitted by Luverne City Code Sec. 11.13, R-2 Multi-family Residential District, as amended, without permission of the Approving Authority.

Section 103. No structure shall be erected on the lots referred to in Section 101 except single-family dwellings, other than the exceptions stated in Section 101, and those accessory buildings and accessory structures which have been approved by the Approving Authority. No structure other than a single-family dwelling, no structure, trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes.

Section 104. No tent, tree house, barn, other temporary living or camping quarters or other temporary structures shall be placed on any lot at any time without written permission of the Approving Authority.

Section 105. All construction shall be new. No building previously used at another location may be moved onto any lot or building site.

Section 106. No building materials shall be stored on any lot except temporarily during continuous construction of a building or its alteration or improvement.

Section 107. The exterior of all buildings or other structures must be completed within one (1) year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, or national emergency. If not so completed, or if construction shall cease for a period of sixty (60) days without permission of the Approving Authority the unfinished structure or unfinished portion thereof shall be deemed a nuisance and shall be removed forthwith by and at the cost of the owner.

Section 108. Temporary buildings for construction or administration purposes or for sales offices may be erected only by written permission of the Approving Authority. Model homes may be used and exhibited only with the written permission of the Approving Authority.

Section 109. No derrick or other structure designed for use in or used for boring or drilling of water, oil or natural gas shall be permitted upon or above the surface of said property.

Section 110. No soil may be removed without permission of the Approving Authority, and there shall be no material change in grade levels, slope, pitch or drainage patterns as they now exist without the permission from the Approving Authority. Any such excavation or grading shall be maintained at all times so as to divert surface waters away from buildings but shall not be done in such a manner so as to unreasonably divert surface water onto the property of an adjoining lot.

Restrictive Covenant Area.

Section 115. Lots One (1) through Seven (7) in Block Three (3) shall include a (30') "Restrictive Covenant Area" as shown on the Plat duly filed in the office of the Rock County Recorder. The Restrictive Covenant area shall serve the purpose of buffering the Subdivision from the commercial property located adjacent thereto. The Developer shall plant trees, shrubs, etc. within the Restrictive Covenant Area within one year of the filing of the Plat of the Subdivision to provide a buffer from surrounding property. The Restrictive Covenant Area shall be maintained by the property owner of said lots, including mowing, weed control, trimming and removal and replacement of damaged or dead trees, shrubs, etc. No trees, shrubs, etc. shall be removed, replaced, or planted, within the Restrictive Covenant Area, without the permission of the Approving Authority.

Density and Quality standards

Section 121. No owner shall attempt to subdivide, replat, or otherwise partition any property into a lot smaller than is currently provided by the plat of Sybesma Subdivision provided, however, that property owners may acquire land from adjacent lots for the purpose of increasing the size of their individual property, but any such lot so increased in size shall be restricted to one single family dwelling or, in the cases specifically provided, two-family or multiple-family residence structures.

Section 122. No dwelling shall be erected which, exclusive of basements, porches, patios, decks and other storage areas, has a gross livable floor area of less than 1000 square feet with a minimum dimension from front to back of twenty eight (28') feet and a minimum dimension of thirty six (35') feet from side to side, or less than 1800 square feet of livable floor area in a multi-level dwelling.

Section 123. No dwelling shall be more than two (2) stories in height, except with prior written permission of the Approving Authority.

Section 124. No dwelling shall have a roof with less than a 6:12 pitch.

Section 125. All dwellings shall have an attached double garage at least 480 square feet in size with minimum dimension of twenty (20') feet on the entrance side of the garage.

Section 126. Any accessory building or structure shall harmonize in appearance with the dwelling situated on the same lot.

Section 127. Each owner shall maintain the exterior of the dwelling, any accessory building, and all other structures, lawns and landscaping, walks and driveways, in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surfacing becomes weather-beaten or worn off.

Living Environment Standards

Section 131. Each owner shall prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or in the specific area. No building material shall be stored on any lot, except temporarily during continuous construction of a building, unless enclosed out of view in a service yard or within a building.

Section 132. All maintenance equipment shall be stored in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets.

Section 133. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material, or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or street, except during refuse collections.

Section 134. No offensive or hazardous activities may be carried on, on any lot or in any living unit. No annoying lights, sound or odors shall be permitted to emanate from any living unit.

Section 135. No exterior speakers, horns whistles, bells or other sound devices, except security devices shall be located, or used on any structure or within any building site.

Section 136. Within six (6) months after completion of dwelling, all yards and open spaces shall be landscaped and thereafter maintained in lawn or landscape.

Section 137. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats or other household pets may be kept provided that the same not be kept, housed, bred or maintained on any said property for commercial purposes.

Section 138. No change may be made in the original finished grade at the lot lines nor a material change in the ground level, slope, pitch, or drainage patterns of any lot as fixed by the original finish grading except after first obtaining the prior written consent and approval of the Approving Authority. Grading shall be maintained at all time so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture.

Section 139. No stripped down, partially wrecked, inoperable or junk motor vehicle or sizable part thereof, shall be permitted to be parked on any street or on any lot in such manner as to be visible at ground level from any neighboring property or street.

Architectural Control by the Approving Authority

Section 141. No structure shall be commenced, erected, placed, moved onto or, permitted to remain on any lot or altered in any way so as to change materially its exterior appearance, except in accordance with plans, specifications and other information submitted to the Approving Authority and approved by the Approving Authority in writing not more than (2) years before start of the construction, alteration or installation. Matters which require the approval of the Approving Authority include but are not limited to: exterior appearance, material, height, location of each structure, drive, walk and fence and grading of site. In granting or withholding approval the Approving Authority shall consider among other things: the adequacy of the materials for their intended use, the harmonization of the external appearance with the surroundings, the proper relation of the structure to the environment and to surrounding uses, the degree, if any, to which the proposed structure will cause intrusions of sound, light or other effect on neighboring sites beyond those reasonably to be expected in an urban residential area from considerate neighbors.

Section 142. All plans, samples and other materials shall be submitted to the Approving Authority. The minimum scale of such plans shall be 1/20th inch equals 1 foot. The plot plan in said minimum scale shall show the location of all buildings, drives, walks, fences and any other structures. Proposed new contours throughout the lot and abutting the street elevations on all sides shall be shown. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used.

Section 143. A written statement of the approval or disapproval or other action of the Approving Authority shall establish the action of the Approving Authority and shall protect any person relying on the statement. If the Approving Authority does not execute and acknowledge such a statement within twenty (20) days after delivery of all required materials to the members of the Approving Authority the material so delivered shall stand approved for the purpose of these covenants. The Approving Authority may charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to this Declaration, exclusive of reimbursement to the members of the Approving Authority for their services.

ARTICLE II

Approving Authority

Section 201. The Luverne Economic Development Authority is hereby designated the approving authority with power to delegate or assign such capacity by written instrument signed and acknowledged by Luverne Economic Development Authority and filed for record with the Recorder of the County of Rock, State of Minnesota. For purposes of these covenants the Approving Authority shall have a committee of three individuals. The initial committee shall be composed of the Building, Zoning Safety Director for the City of Luverne, the Administrative Services Director for the Luverne Economic Development Authority, and the President of the Board of Commissioners of the Luverne Economic Development Authority. At such time as at least 75% of the lots affected shall be sold to persons other than the Luverne Economic Development Authority, the original committee shall dissolve. Thereafter the Committee shall be elected by a majority vote of the property owners with each lot being entitled to one vote. The committee shall be elected, by written ballot, within thirty (30) days of the sale of more than 75% of the lots by the LEDA. Each individual shall be elected for a three year term with the initial Committee being elected for a three, two and one year term respectively. Thereafter, a Committee person shall be elected each January.

ARTICLE III

General Provisions for Effect of the Covenants

Definitions

Section 301. The following words and expressions as used in these covenants have the meanings indicated below unless the context clearly requires another meaning:

Accessory Building: Detached garages, patios, swimming pools, and other buildings customarily used in connection with single-family residence.

Building Site: A lot as established by the recorded plat or combination of two or more lots or portions thereof as approved by Declarant.

These Covenants: This declaration and the provisions contained in it.

Lot: Each area designated as a lot in the recorded plat of the Subdivision.

Owner: Person having fee simple title to a lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an owner through such one of them as they may designate from time to time.

Structure: Any thing or device other than trees and landscaping the placement of which upon any building site might affect its architectural appearance including by way of illustration

and not limitation any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, fence, wall, or outdoor lighting.

Captions

Section 302. Captions, titles and headings in these covenants are for convenience only and do not expand or limit the meaning of the Section and shall not be taken into account in construing the Section.

Approving Authority Resolves Questions of Construction

Section 303. If any doubt or questions shall arise concerning the true intentment or meaning of any of these covenants the Approving Authority shall determine the proper construction of the provision in question and shall set forth in written instrument duly acknowledged by the Approving Authority and filed for record with the County Recorder of Rock County, the meaning, effect and application of the provision.

Covenants Run with the Land

Section 304. These covenants shall be deemed to be a mutual covenant running with the land and shall be deemed to be binding upon the parties hereto and upon their respective heirs, successors, personal representatives, and assigns. That all deeds executed hereinafter shall contain a provision indicating that the property is subject to the terms of these covenants.

Covenants are cumulative

Section 305. Each of these covenants is cumulative and independent and is to be construed without reference to any other provisions dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

These Covenants may not be Waived

Section 306. Except as these covenants may be amended or terminated in the manner hereinafter set forth they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these covenants. Every person bound by covenants is deemed to recognize and agree that it is not the intent of these covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing validity and that leniency or neglect in their enforcement shall not in any way invalidate these covenants or any part of them nor operate as an impediment to their subsequent enforcement and each such person agrees not to plead as a defense in any civil action to enforce these covenants have been waived or impaired or otherwise invalidated by a previous failure or neglect to enforce them.

Right to Enforce the Covenants

Section 307. These covenants are for the benefit of the Owners, jointly and severally, and of the Approving Authority and may be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, or the Approving Authority, or any combination of them. All costs, including reasonable attorneys' fees, incurred by the Approving Authority in connection with any successful enforcement proceeding initiated by the Approving Authority (alone or in combination with Owners or the Declarant) shall be paid by the party determined to have violated the covenants.

Duration of Restrictions

Section 308. Unless sooner terminated as provided in Section 309 the restrictions and other provisions set forth in these covenants shall remain in force until January 1, 2007, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument stating that an extension is not desired, signed the property owners of at least two-thirds (2/3) of the lots in the Subdivision.

Amendment, Termination and Extension

Section 309. From time to time any one Section of these covenants may be amended or one new Section may be added to these covenants by an instrument signed and acknowledged by the owners of at least two-thirds (2/3) of the lots in the Subdivision and filed for record with the County Recorder of Rock County, Minnesota.

Severability

Section 310. If any of these covenants shall be held invalid or become unenforceable the other covenants shall in no wise be affected or impaired but shall remain in full force and effect.

Action in Writing

Section 311. Notices, approval, consents, applications and other action provided for or contemplated by these covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, application other action.

Notices

Section 312. Any writing described in Section 311, including but not limited to any communication from the Approving Authority to an Owner, shall be sufficiently served if delivered by mail or otherwise: a) to the dwelling situated on the lot owned by that Owner; or b) if there is no dwelling, then to the address furnished by the Owner to the Approving Authority and if the Owner has not furnished an address, then to the most recent address of which the approving Authority has a record.

