

**205289**

OFFICE OF LAND RECORDS  
ROCK COUNTY, MINNESOTA  
CERTIFIED, FILED AND/OR  
RECORDED ON  
11/14/2023 08:04 AM

RACHEL JACOBS  
ROCK COUNTY RECORDER

ELECTRONICALLY RECORDED

## **PROTECTIVE COVENANTS**

### **LOPAU SECOND ADDITION 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 and 3 of Lopau Second Addition (hereinafter the "Addition") 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 Addition as a residential area, and in consideration of the mutual interests of owners of the real estate described herein, desire to subject the Addition to the covenants, restrictions and easements herein 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 real property in the Addition is and shall be held, transferred, sold, conveyed and occupied subject to the covenants and restrictions herein set forth.

#### **ARTICLE 1**

##### **Covenants to Preserve the Residential Character of the Addition**

##### Single Family Residential Restrictions

Section 101. The following lots shall be used exclusively for private residential purposes: Block 1, Lots 1-5; Block 2, Lots 1-12; and Block 3, Lots 1-7. No dwelling erected or maintained within these lots shall be used or occupied for any

purpose other than for single-family dwelling EXCEPT that Block 1, Lots 1-5 will be allowed to have twin homes located on them if each unit meets all sections of These Covenants. Allowed uses are indicates in the table below:

LOT	BLOCK	ALLOWED USE
1-5	1	SF OR TWIN
1-12	2	SF
1-7	3	SF

Section 102. No structure shall be erected on the lots referred to in Section 101 except single-family or multi-family dwellings and those accessory structures, as defined in Section 301 "Accessory Structures," which have been approved by the Approving Authority. The primary structure on the property must be for residential use. No structure, other than a single-family dwelling or twin home, may be used for living purposes.

Section 103. No tent, tree house, barn, or 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 104. All construction shall be new. No building previously used at another location may be moved onto any lot or building site.

Section 105. No building materials shall be stored on any lot except temporarily during continuous construction of a building or its alteration or improvement.

Section 106. The exterior of all buildings or other structures must be completed within one (1) year after 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 107. 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 108. No derrick or other structure designed for use in or used for boring or drilling water, oil or natural gas shall be permitted upon or above the surface of said property. No advertising signs or billboards of any character may be erected, placed, permitted or maintained on any Lot except as expressly permitted by the Approving Authority. A name and address sign will be permitted. No other sign, except for a "for sale" sign advertising the property for sale.

Section 109. 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.

Section 110. All sump pumps must be connected to an authorized sump pump discharge line where available.

#### Density and Quality Standards

Section 121. No owner shall subdivide, re-plat, or otherwise partition any property into a lot smaller than is currently provided by the plat of Lopau Second Addition.

Section 122. All construction must commence within (1) one year upon issuance of a deed.

Section 123. No dwelling shall be erected which, exclusive of basements, porches, patios, decks and other storage areas, has gross livable floor area of less than 1300 square feet with a minimum dimension from front to back of twenty-eight (28) feet and a minimum dimension of thirty-six (36) feet from side to side, or less than 2400 square feet of livable floor area in a permitted twin home.

Section 124. No single-family dwelling shall be more than two (2) stories in height, except with prior written permission of the Approving Authority.

Section 125. No dwelling shall have a roof with less than a 6:12 pitch, except with prior written permission of the Approving Authority.

Section 126. All dwellings shall have at least 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. Garage door height shall not exceed eight feet unless approved by the Approving Authority.

Section 127. Any accessory building or similar structure shall harmonize in appearance with the dwelling situated on the same lot, as determined by the Approving Authority. There shall be no more than one accessory building or similar structure per lot. The accessory building or similar structure shall be of new construction and of not more than one hundred-twenty square feet in size, shall have no more than eight-foot walls and the sidewalls and roofing shall be of the same or substantially similar color and materials as the primary structure and garage.

Section 128. Each owner shall maintain the exterior of the dwelling, any accessory building, and all other structures, lawn and landscaping, walks and driveways, in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. No existing structure on any Lot shall be

altered in any way which materially changes the placement or exterior thereof without the prior approval of the Approving Authority.

#### Living Environment Standards

Section 131. Each owner shall prevent the development of any unclean, unsightly or unkempt 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. All owners and occupants and their guests shall have a right of quiet enjoyment of the property and shall use the property in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use of the property by other lot owners and their guests.

Section 132. All maintenance equipment and recreational vehicles shall be stored in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets. In addition, there shall be no unenclosed storage on any lot of any motor vehicles, recreational vehicles, marine craft or trailers of any type that are not currently licensed or not in working order. No unenclosed parking or storage of any commercial vehicle shall be permitted on any Lot.

Section 133. No firewood, ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material, or other refuse, or receptacles or containers therefore, 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, sounds 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 nine (9) months after completion of the principal dwelling, all yards and open spaces shall be landscaped and thereafter maintained in lawn or landscape. No trees shall be planted or structures erected within drainage or utility easements.

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 shall not be kept, housed, bred or maintained on any said property for commercial purposes.

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 any

lot in such manner as to be visible at ground level from any neighboring property or street.

Section 140. No vehicles shall be parked in the rear, side or front yard of any lot.

#### 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 two (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, driveway, sidewalk(s), fence(s) and grading of site. In granting or withholding approval, the Approving Authority shall consider, among other things: the quality and adequacy of the materials and workmanship for their intended use, the harmonization of the external appearance with the surroundings, the proper relation of the structure to the environment and to the surrounding uses, and 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 1/8<sup>th</sup> inch equals 1 foot. The plot plan in 1/20<sup>th</sup> minimum scale shall show the location of all buildings, driveways, sidewalks, fences and other structures. Proposed new contours throughout the lot and abutting the street elevations on all sides shall be shown. Structural plans shall show all exterior elevations and projected finish grades, and shall indicate and locate on each elevation the materials to be used for construction of the improvement. In addition, the Approving Authority may request descriptive information on materials such as brick, stone, siding and roofing.

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. Construction or alteration may not start until the builder and/or owner has received a certified Building Permit from the City of Luverne Building Official and a statement of approval from the Approving Authority, a copy of which shall be signed by the builder and/or owner and returned to the Approving Authority to be retained along with a complete set of plans. If the Approving Authority does not execute and acknowledge such a statement within forty- five (45) days after delivery of all required materials to the members of the Approving Authority, the materials so delivered shall stand approved for the purpose of these covenants. Any substantial change made following approval must be resubmitted to the Approving Authority for re-approval. The Approving Authority may charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to these covenants,

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 its authority to another entity by written instrument signed, acknowledged and filed for record with the Rock County Recorder 's Office. For purposes of These Covenants, the Approving Authority shall consist of a committee of three individuals. The initial committee shall be composed of the Building& Zoning Official for the City of Luverne, the Economic Development Director for the Luverne Economic Development Authority, and the President 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.

The Approving Authority may establish procedures governing requests that are submitted to it under these Restrictive Covenants. The criteria for the approval of any such requests shall include, at a minimum, (a) consideration of compatibility of design in relation to existing improvements and topography, (b) comparable or better quality of materials as used in existing improvements, and (c) compliance with governmental laws, rules, codes and regulations.

### Definitions

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

Accessory Structures: Utility or Garden sheds with a maximum size of 120 square feet.

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

These Covenants: The protective covenants and the provisions contained herein.

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

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.

Recreational Vehicle: Is defined for the purpose of this covenant as a boat, personal watercraft, other watercraft, trailer, motor home, snowmobile, motorcycle, camper or any other form of craft or vehicle used primarily for recreational purposes.

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, parking pad, storage bin or area, 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 question shall arise concerning the true intent 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 a written instrument duly acknowledged by the Approving Authority and filed for record with the Rock County Recorder, the meaning, effect and application of the provision.

#### Covenants Run with the Land

Section 304. These Covenants shall be deemed to be mutual covenants running with the land and shall be deemed to be binding upon parties hereto and upon their respective heirs, successors, personal representatives, and assigns. All deeds executed hereinafter shall contain a provision indicating it 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 shall 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 failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of These Covenants. Every person bound by These 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 that they 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 attorney's 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 These Covenants.

#### Duration of Restrictions

Section 308. Unless sooner terminated and provided in Section 309, restrictions and other provisions set forth in These Covenants shall remain in force until January 1, 2030, after which time These Covenants shall be automatically extended for successive periods of ten years unless an instrument stating that an extension is not desired, signed the owners of at least two-thirds (2/3) of the lots in the Addition.

#### Amendment, Termination and Extension

Section 309. From time to time any one Section of These Covenants may be amended, changed, or altered by an instrument signed and acknowledged by owners of at least two-thirds (2/3) of the lots in the Addition and filed for record with the Rock County Recorder.

#### 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 or 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 address listed on the property tax rolls at the Office of the Rock County Auditor-Treasurer.

Applicable Law

Section 313. This agreement shall be interpreted under and in accordance with the laws of the State of Minnesota.

**IN WITNESS WHEREOF**, The Luverne Economic Development Authority has executed this Declaration this 13<sup>th</sup> day of November, 2023.

Luverne Economic Development Authority

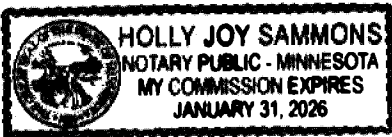
BY: [Signature]  
Its President

BY: [Signature]  
Its Secretary

STATE OF MINNESOTA )  
  )  
COUNTY OF ROCK        )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of November, 2023 by Patrick T. Baustian and Jill Wolf, the President and Secretary of the Luverne Economic Development Authority.

[Signature]  
NOTARY PUBLIC



This INSTRUMENT WAS DRAFTED BY:  
City of Luverne  
305 E. Luverne St. PO Box 659  
Luverne, MN 56156