

Declaration of Protective Covenants, Conditions, and Restrictions

WHEREAS, Theodore J. Anderson, Jr., and Illa Anderson, husband and wife, (hereinafter the "Declarant") is the owner of certain real property located in the City of Lynd, County of Lyon, State of Minnesota, legally described as:

Lots one (1) through Eighteen (18) in Block 1 and Outlot A, Affinity Hills Estates Second Addition Subdivision to the City of Lynd, hereinafter referred to as "The Additions" and also described by metes and bounds on the attached Exhibit A.

hereby makes the following declarations as to limitations, restrictions, and uses to which the lots in the Additions may be put, and hereby specify that such declarations shall constitute covenants to run with the land as provided by law, and shall be binding on parties and all persons claiming under them, and for the benefit of and the limitation on all future owners in the Additions. These declarations are restrictions being designed for ensuring the use of the Additions for attractive residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the Additions, to ensure its compatibility with its location adjacent to the planned golf course, and to maintain the desired tone of the area, and thereby to secure to such lot owners the full enjoyment of their property with no greater restriction on the free and undisturbed use of the lot than is necessary to ensure the same advantages to all other lot owners.

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

1. LAND USE:

- (a) All lots within the Additions shall be used for residential purposes consistent with City of Lynd and Lyon County Land Use Ordinances.
- (b) No clear cutting of trees will be allowed, except as necessary for building sites, driveways, a reasonable size yard and garden, and with the express approval of the architectural committee. Except for saplings, no trees may be cut without the approval of the Architectural Committee.
- (c) No rental storage will be allowed in any building or on any lot.
- (d) No commercial or business activities of any type, nature or kind shall be carried on or permitted within or upon any lot in the Additions.
- (e) None of the platted lots within the Additions shall be subdivided by any owner thereof without prior written approval from the Architectural Control Committee ("Committee").

2. ALLOWABLE STRUCTURES:

- (a) No structure or building shall be erected, altered, or placed upon any lot in the Additions other than a single family dwelling or a two unit condominium, not to exceed two and one half stories in height above ground level, and other accessory buildings incidental to residential use of the premises as may be permitted in the provisions hereinafter described in paragraph 6 designated as "Permissible Buildings".

3. PLACEMENT OF BUILDINGS:

- (a) No structure or building shall be located on any lot nearer than 25 feet from the back of curb. No part of a building or structure shall be located nearer to a side lot than a distance of 15 feet. The rear yard set back shall be 15 feet. In the event a lot is contiguous to more than one street, the Committee shall determine the real lot line and promptly notify the owner of such determinations. All buildings and structures on a building site shall not cover in total more than 30% of the building site.
- (b) Walls or fences shall not be constructed to serve as perimeter fencing. If the property owner desires screening of the property boundary, only natural living bushes or shrubs shall be used.

4. ARCHITECTURAL CONTROL COMMITTEE:

(a) Committee Membership:

The Declarant shall select three (3) individuals to form the membership of the Committee. The Declarant may at any time, delegate in writing its authority to appoint members of the Committee to a homeowners association created for the benefit of the owners of the lots in the Additions.

(b) Powers:

It is the purpose of the Architectural Control Committee to promote the residential development of Affinity Hills Estate and to enhance the property values therein: therefore, the Architectural Control Committee shall have the right and power to approve or deny plans and specifications submitted as herein required, with due consideration given to the purposes for which the Committee is created. No member of the Committee having an ownership interest or other financial interest in the property or improvement before the Committee for consideration shall be allowed to vote upon the approval or denial of plans and specifications submitted in accordance with the provisions contained herein.

The Committee shall have the power to reduce side yard set back requirements by not more than 20% of the side otherwise required hereby and to reduce or increase the minimum dwelling size requirement as hereinafter required where the size, shape, quality and location of the lot and structure to be build thereon warrants such variance in the opinion of the Committee.

(c) Building Plans:

No building, dwelling, fence or other structure or excavation, including accessory buildings, shall be erected, constructed, altered or maintained upon, under or above or moved upon any part of the Additions, unless the plans and specifications thereof, showing the proposed construction, nature, kind, shape, height, approximate building elevations, and location of each structure upon the lot and any other facts or matters requested by the Committee, shall have been submitted and approved by the Committee and until a copy of such plans and specification as finally approved by the Committee is deposited as permanent record with the Committee. The Committee shall have the right to require that all building plans must be pre approved by a qualified professional as designated by the Committee for the purpose of verifying that all relevant building codes are being met.

The Committee shall upon request and upon satisfactory completion of the improvements in accordance with the plan and specifications so submitted, issue its certificate of completion and compliance. If the Committee fails to approve or reject any plan or matter requiring its approval within 30 days after the plans or specifications have been submitted, or in the event no suit to enjoin construction has been commenced prior to the completion date of the improvement, approval shall be conclusively presumed and the related covenant shall be deemed to have been fully complied with.

(d) Landscaping Plans:

The Committee shall also be provided with detailed landscaping plans setting forth the anticipated trees, shrubbery, and other landscaping planned for the lot. The landscaping plans submitted shall be subject to the same approval requirements as required of building plans.

(e) Certificate of Completion and Compliance:

The Committee shall, upon request and upon satisfactory completion of the improvements in accordance with the plan and specifications so submitted, issue its certificate of completion and compliance. If the Committee fails to approve or reject any plan or matter requiring its approval within 30 days after the plans or specifications have been submitted, or in the event no suit to enjoin construction has been commenced prior to the completion date of the improvement, approval shall be conclusively presumed and the related covenant shall be deemed to have been fully complied with.

(f) Right of Inspection:

During any construction of alteration required to be approved by the committee, any member of the said committee or any agent of the committee shall have the right to enter upon and inspect during reasonable hours any building embraced within said subdivision for the purpose of ascertaining whether or not provisions herein set forth have been or are being fully complied with and shall not be deemed guilty of trespass by reason thereof.

(g) Waiver of Liability:

The approval by the Committee of any plans and specifications or any other matter requiring its approval as herein provided, shall not be deemed to be a waiver by the Committee of its right to withhold approval as to similar or other structures, features or plans when subsequently submitted for approval in connection with the same or other building site. Neither the Committee, nor any member thereof shall be in any way responsible or liable for any loss or damage or for any error or defect which may or may not be shown on any plans or specifications or any building or structure or work done in accordance with the plans and specifications as submitted, whether or not the same has been approved by the Committee or any member thereof.

(h) Structural Alterations:

No dwelling or building in the Additions, after its initial certificate of completion and compliance is issued, shall be structurally altered in such a way as to materially change the exterior appearance of the structure unless the Committee shall, prior to such alteration, approve written plans thereof submitted by the owner of the property. The Committee upon approving such written plans for alteration shall issue its supplemental certificate of compliance at the time such alterations are completed in accord with the plans theretofore approved.

5. DWELLING QUALITY AND SIZE:

It is the intention and purpose of these covenants to assure that all dwellings shall be of a quality of design, workmanship, and materials approved and established by the Committee. All dwellings shall be constructed in accordance with the applicable Governmental Building Code and with more restrictive standards that may be required by the Committee. The ground floor area of the dwelling, exclusive of attached garages, open terraces, screened porches, and breezeways shall be:

One (1) story: 1,200 square feet minimum

More than one (1) story: 1,200 square feet minimum

Duplex or Triplex: 1,000 square feet minimum per unit

These requirements may vary with the topography of the lot and with the approval of the committee. Each dwelling shall have an attached garage for a minimum of two (2) cars and a maximum of four (4) cars.

6. PERMISSIBLE BUILDINGS:

All buildings erected on any building site shall be constructed of materials of good quality suitably adapted for use in the construction of residences and no old building or buildings shall be placed on or moved upon said premises. Detached accessory storage buildings shall be constructed of materials of the same quality and of similar color as that of the principal dwelling and shall be subject to the same requirements as otherwise provided herein for the approval of plans and specifications by the Committee as to the principal dwelling on each lot. All accessory or storage buildings shall comply with the property line set backs as herein above provided. Accessory or storage building shall not be erected, constructed or maintained prior to the erection or construction of a dwelling. The foregoing shall not apply to temporary buildings or structures erected by builders in connection with the construction of any dwelling or accessory building and which are promptly removed upon completion of such dwelling or accessory building.

7. DILIGENCE DURING CONSTRUCTION:

The construction of any dwelling or other building shall be prosecuted diligently and continuously from the time of commencement until the exterior construction shall be fully completed and the interior construction substantially completed and no such building or structure shall be occupied until a certificate of completion and compliance shall have been issued by the Committee. All materials and equipment placed upon a lot during construction of a dwelling or other building shall be confined to the lot on which the construction is under way and shall be stored or covered as may be necessary to preserve a clean and neat appearance in the Additions at all time when no actual work is being performed.

8. TEMPORARY STRUCTURES:

No structure of a temporary character, including trailers, mobile homes, motor homes, basements, tents, garages, barns or other accessory buildings, shall be used on or adjacent to any lot as a residence, either temporarily or permanently.

9. DRIVEWAYS:

Access driveways and other paved areas for vehicular use on a lot shall have a base of compacted gravel, crushed stone or other approved base material and shall have a wearing surface of concrete or asphalt. Plans and specifications for such access driveways shall be submitted to the Committee as a part of the plans and specifications for structures, as herein above provided, and shall be subject to approval by the said Committee.

10. OFF STREET PARKING:

Each property owner shall provide a garage on the property having a vehicular capacity to equal the number of automobiles in use by the owner or residents of the property. The owner of the property shall furthermore provide enclosed garage space for the storage of any and all trucks, trailers, boats, snow-mobiles, and motor homes, or other recreational vehicles, which they or the residents of the property may at any time have or maintain upon or adjacent to the property.

11. MAILBOXES:

Each lot owner shall install and maintain a mailbox of a uniform design and at locations to be approved and designated by the Architectural Committee.

12. WALLS AND FENCES:

No wall, fences or fenced enclosures shall be constructed, unless such construction is approved, in writing, prior to commencement to such construction, by the Committee.

13. SIGNS:

No signs of any kind shall be displayed to the public view on any lot except one sign of not more than 5 square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during construction.

14. PETS AND LIVESTOCK:

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, and other common household pets may be kept, provided they are not kept, bred, or maintained for any commercial purposes. However, no more than two pets or a combination totaling two may be kept upon any lot. Household pets, if maintained or kept outside, shall be confined to an enclosed area located upon the lot of the owner. The location, plans, and specification of such enclosed area shall be approved in advance of construction, by the Committee.

15. LANDSCAPING:

No objectionable trees or shrubbery, such as Cottonwood, Chinese Elm, Poplar, and Boxelder trees shall be planted on any part of the property. Each lot must have an established lawn within twelve (12) months of substantial completion of the home upon such Lot.

16. SEWER AND WATER SERVICE:

Each lot owner shall be obligated to connect to and accept service from the City of Lynd for sewer service

All water for human consumption must be obtained by each individual dwelling or business by purchasing a connection to Lincoln Pipestone Rural Water (LPRW) on such terms and conditions as LPRW shall

from time to time require. No well shall be constructed for use for human consumption and no well otherwise constructed may be used to provide water for human consumption. Property owners may not share a well or water source except when connected through Lincoln Pipestone Rural Water.

17. PUBLIC EASEMENTS:

Easements for installation and maintenance of underground utilities and drainage facilities are reserved as noted on the Plat. No building or outside facility within the Additions shall be supplied with utility service lines above the surface of the ground. No structures, walls or fences shall be placed or permitted to remain within the platted easements which may damage or interfere with the installation, operation or maintenance of the utility services. All utilities serving the Additions and all connections made thereto shall be located beneath the surface of the ground, excepting therefrom transformer installations and service pedestals.

18. GARBAGE AND REFUSE DISPOSAL:

No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. All rubbish, trash, or other wastes shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition and stored inside a garage or other building so as to not be visible from other properties within the Additions. Debris and waste material, including but not limited to, brush piles, cut or fallen tree limbs and the like, shall be removed from the lot within thirty (30) days of accumulation thereof or the Committee will give the lot owner written notice requesting cure of said violation. In the event the lot owner fails to cure said violation within fifteen (15) days of the date of the written notice, the Committee shall have the right to enter onto the property and remove said refuse and charge the lot owner for the cost thereof. The committee shall have the right to file and enforce a lien against said lot for the amount of said charges as well as any administrative and reasonable attorney fees incurred by the Committee pursuant thereto.

19. NUISANCES:

No noxious or offensive activities shall be carried on or upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Noxious or offensive activities shall include, but are not necessarily limited to, "Public Nuisances" as defined by the Lynd City Code. Weeds and grass on all lots shall be cut before such weeds and grass reach an average height of six (6) inches. If the lot owner fails to do so, the Committee may cause such weeds and grass to be cut in accordance with the foregoing schedule at the lot owner's expense, and a lien may be filed against the property for the actual cost of such mowing. Each lot owner shall keep his lot clear of debris and waste materials so as to preserve a neat and clean appearance in the Additions.

20. WAIVER:

No delay or omission on the part of the Architectural Committee or the owners of other lots in the premises in exercising and rights, power, or remedy herein provided, in the event of any breach of the covenants, conditions, reservations, or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the reversionary owner for or on account of his failure to bring any action on account of any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions herein which may be unenforceable by the reversionary owner.

21. TERM OF THE COVENANTS:

These covenants are to run with the land and shall be binding upon all parties and all persons under whom they shall claim for a period of 10 years from the date the covenants are recorded, after which time the covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the Additions shall have been recorded, agreeing to change the covenants in whole or in part.

22. ENFORCEMENT:

Enforcement shall be by proceeding at law or in equity against any person or persons violating or

attempting to violate any covenants, either to restrain the violation or to recover damages. Actions may be brought either by the Declarant, the Architectural Committee or by the owner or owners of other lots located in the Addition. The Declarant may delegate its authority to enforce these Covenants and Restrictions to a homeowner's association. Reasonable attorneys' fees and cost incurred in the enforcement of these covenants shall be assessed against said owner and included in any claim for lien or judgement otherwise provided for herein.

23. CONSTRUCTION:

If it shall at any time be held that any of the foregoing restrictions, conditions, covenants, reservations, liens or charges herein provided, or any part thereof, is invalid or for any reason becomes unenforceable, no other restrictions, conditions, covenants, reservations, liens or charges herein provided, or any part thereof, shall be thereby affected or impaired.

24. GOLF COURSE:

Easements to permit the doing of every act necessary and proper to the playing of golf on the golf course adjacent to the lots which are subject to these restrictions are granted and established. These acts shall include, but not be limited to, the recovery of golf balls from the lots, the flight of golf balls over and upon the lots, the use of necessary and usual equipment on the golf course, the usual and common noise level created by the playing of the game of golf, together with all other common and usual activity associated with the game of golf, and with all the normal and usual activities associated with the operation of a county club, including acts necessary for the care and maintenance of the golf course.

25. PLAYGROUND AND PARK FACILITIES:

In the event that Outlot A is transferred to either a homeowner's association or to the City of Lynd, Mn., Outlot A, as described in the Plat of Affinity Hills Estates Second Addition, may be used as a playground and or park facility by members of the public or members of the homeowner's association and their guests. Prior to construction, all plans and specifications regarding said park shall be submitted to the architectural committee or if no such architectural committee exists, to the homeowner's association for approval.

26. AMENDMENT TO COVENANTS:

Any amendment of these Covenants, in whole or in part, may be made by an instrument signed and recorded by owners representing a majority of lots located in the Addition. Amendments to these Covenants may be made at any time through the filing of such an instrument signed by a majority of the lot owners located in the Addition.

27. DRAINAGE:

Sump pumps or drain fields shall be discharged in accordance with the ordinances for the City of Lynd and Lyon County and shall not be dischargedable onto the planned golf course property or the country club property.

28. SEVERABILITY:

In the event any one or more of the foregoing covenants, conditions, reservation, or restrictions is declared for any reason, by a court of competent jurisdiction, to be null and void, the judgement or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions, reservations, and restrictions not declared to be void or unenforceable, but all of the remaining covenants, conditions, reservations, and restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

29. PERPETUITIES RULE:

In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event the terms shall be reduced to the maximum period of time which shall not violate the rule against perpetuities as set forth in the law of the State of Minnesota.

30. DEDICATED RIGHTS:

The premises shall be subject to any and all rights and privileges which the City of Lynd or the County of Lyon, Minnesota, may have acquired through dedication of the filing or recording of maps or plats of such premises, as authorized by law, and provided further, that no covenants, conditions, reservations, or restrictions, or acts performed shall be in conflict with any City or County Zoning Ordinance or Law.

31. NOTICES:

Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears in the records of the Lyon County Recorder's office as the Owner of the lot.

32. DEFINITIONS:

"Declarant" shall mean and refer to Theodore Anderson, his successors and/or assigns.

"Owner" shall mean and refer to the recorded purchaser and owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the Addition, including contract seller, but excluding those having any such interests merely as security for the performance of an obligation.

"Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Addition.