

DECLARATION OF EASEMENTS, RESTRICTIONS, COVENANTS
AND CONDITIONS

Declarant owner of real estate described in attached exhibit "A" now being platted as "Arthur Heights", a subdivision of Dickinson County, Iowa, hereby makes the following declarations as to limitations, restrictions, and uses to which the lots or tracts constituting this subdivision may be put, and hereby specify that such declarations shall constitute covenants to run with all the land, as provided by law, and shall be binding on all parties and persons claiming under them, and for the benefit of and limitations on all future owners in the subdivision, this declaration of restrictions being designed for the purpose of keeping the subdivision desirable, uniform and suitable in architectural design and use as specified herein. Declarants hereby declare that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

DEFINITIONS

- 1.) "Association" shall mean and refer to Arthur Heights Owners Association, Incorporated, an Iowa non-profit corporation.
- 2.) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 3.) "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- 4.) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the designated "Park Area" and lot four (4).
- 5.) "Dwelling Unit" shall mean and refer to one or more rooms in a building used for occupancy by one family as a home or residence for living or sleeping purposes and in which the cooking facilities and sanitary facilities are designed for the use of one family only.

RESTRICTIVE COVENANTS

USE OF LOTS. All lots in the said subdivision shall be known and described as residential lots, and shall be used solely for residential purposes, subject to provisions of Dickinson County Zoning Ordinances. Property owners must build permanent garages on their respective lots. On any lot with more than one dwelling unit built upon it, there shall be at least one garage per dwelling unit. All garages are to be solely for the use of occupants of the dwelling units. However, garages shall not be closer than 15 feet to the street.

FRONT YARDS. Front yard requirements shall comply with County Zoning requirements.

SLIDE YARDS. Side yard requirements shall comply with County Zoning requirements.

BACK YARDS. Back yard requirements shall comply with County Zoning requirements.

STRUCTURE RESTRICTIONS. No building, fence, wall, or other structure shall be constructed until the plan and specifications and plot plan, showing the nature, kind, shape, height, materials, floor plan, exterior color scheme and location of such structure and the grading of the lot to be built upon, shall have been submitted to and approved by the Design Committee, hereinafter named, and a copy thereof, as finally approved, lodged permanently with said Committee. The Committee shall have the right to refuse to approve any such plans or specifications or grading plan, which are not suitable or desirable, in its opinion for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring property. All decisions of the Committee shall be final and no lot owner or other parties shall have recourse against the Committee for its refusal to approve any such plans and specifications or plot plan, including lawn area and landscaping.

LOT SIZE. No lot may be sub-divided into smaller building lots, however, additional lots or portions thereof may be added to provide larger yards or building sites.

BUILDINGS. No single family residential dwelling shall have a floor area of less than twelve hundred (1,200) square feet, and no multi-family units less than nine hundred (900) square feet per unit, exclusive of open porches, basement, breezeways, patio areas, or garages; such dwelling or building shall be of new masonry, frame, or log, or any other material approved by the design committee. Construction of accessory buildings must be acceptable to the design committee and subject to Dickinson County Zoning Ordinances. No permanent dwelling shall be constructed upon any utility or planting easements. Earth sheltered housing shall be prohibited upon lots unless approved by the Design Committee according to the procedure hereinabove set forth and approval of the design is given by "Declarants" or their authorized agents.

All construction must be commenced within six (6) months from the date of approval by the design committee. All exterior construction shall be completed within twelve (12) months from commencement of construction.

EXCAVATED DIRT. Excavated dirt from basements and building areas shall be removed from the lot unless the retention and spreading of the same shall be approved in writing by the design committee upon written application of the individual lot owner and builder.

CARE OF LOTS. Owners of all lots shall at all times keep the same free and clear from all obstructions, debris, and obnoxious growths. No boats, trailers, campers, motorcycles, snowmobiles, tent trailers, house trailers, mobile homes, fish houses, or other like vehicles or structures shall be stored or kept upon any lots except when enclosed within a garage or similar permitted structure. No outside toilets shall be permitted on the premises, and the owner agrees that he will connect all water waste lines to the public sewer system. All toilets, bathrooms, and sanitary conveniences shall be connected to the sanitary sewer system. Waste, refuse, or garbage shall be disposed of in a manner consistent with the regulations of the county health department and good sanitation practices.

BUILDING HEIGHT. No structures on lots 1-11, inclusive, or lot number 47, or any lot either existing or being brought into the subdivision which fronts on the lake shore, shall exceed one story in height. Walk-out basements shall be permitted. The remaining lots shall be in compliance with County Zoning Ordinances.

MISCELLANEOUS PROHIBITIONS. No building of any kind or for any purpose, may at any time be moved to and upon any of the lots, except new construction which meets approval of the design committee (construction trailers or buildings shall be permitted during construction period). Nor may any business, trade or commercial activity of any kind be conducted upon any lot excepting only from a one man - one room professional office or service office by the lot owners; nor may any lot owner directly or indirectly permit the use of his lot in such a manner as to become a nuisance or annoyance in the neighborhood, of which the Owners Association shall be the judge.

No temporary structure, tent, trailer, etc. shall be used as a temporary residence on any of the lots.

No advertising or billboards shall be permitted on the premises except a "For Sale" sign no larger than five (5) square feet in area, which sign shall pertain only to the premises upon which it is located, and should be near the street side of the lot. However, entrance monuments and signs pertaining to the subdivision as a whole, or to the common area of the subdivision will be allowed upon design committee approval and must be located within the common area. Owner identification signs shall be subject to approval from design committee.

No animals such as but not limited to, horses, cattle, sheep, hogs, goats, poultry or rabbits, shall be permitted upon the premises. This shall not prohibit domestic cats and dogs as pets, provided that there is a limitation of two dogs and cats per dwelling unit or household, and that they are confined upon the premises and not permitted to roam at large beyond the limits of the owners property.

No dog kennel run may be constructed with dimensions in excess of 5 feet by 20 feet, it shall be attached to the house and shall not extend more than 10 feet beyond the house in any direction. The holding of animals for commercial sale or breeding is prohibited.

No hospital, sanitarium or other place for the care or treatment of the sick or disabled, physically or mentally, shall be erected or permitted upon any of the lots.

Lot owners and those under their direction shall not cover, bridge, or otherwise interfere with existing drainage culverts or ditches without the prior express written approval of the declarants, or the Owners Association Board of directors after a period of 10 years.

No fence or hedge shall be erected or maintained on the property which shall unreasonably restrict or block the view from an adjoining lot, or which shall materially impair the continuity of the general landscaping plan of the subdivision.

No wall or fence of any kind whatsoever shall be constructed on any lot until after the height, type, design and location thereof shall have been approved in writing by the "Design Committee". No metal yard fences shall be constructed.

No exterior lighting shall be installed and maintained so as to unreasonably disturb the owner of any other lot.

No evaporative or air heating or conditioning units shall be located on or by any structure unless screened by walls or other adequate means in such a manner as to conceal them from the view of neighboring lots and streets. Also, all such units, equipment, fixtures, swimming pool filters, water systems, wood piles or storage piles shall be walled in or kept screened by adequate plantings, walls or other means in such a manner as to conceal them from the view of neighboring lots and streets. All utility tanks for storage of fuel shall be buried.

Easements for the installation and maintenance of utilities and facilities are dedicated by Declarants as shown on the recorded plats. Within these easements no structure, walls, or fences or other materials of any type may be constructed, placed, or permitted to remain thereon. These easements conform to the requirements of all lawful public authorities including but not limited to the County Engineers of Dickinson County.

DRIVEWAYS AND PARKING. All driveways and parking areas shall be hard surfaced with black top or concrete and must adjoin street surface, within six months after construction of the building is completed. The number of required parking spaces shall be governed by county zoning laws.

UTILITIES. All utility transmission lines must be buried; no overhead utility lines shall be permitted.

LOT NUMBER FOUR (4). The above requirements to the extent they restrict building upon and the use of lot 4, shall not apply to lot 4, except that the use of lot 4 shall conform to all of said requirements until such time as Arthur Heights Owners Association, Inc. may, in its sole discretion, waive such requirements as to build and use, in writing.

TREES. Trees shall not be cut down or removed from the lot unless they are dead or located such that they interfere with a structure that has been accepted by the design committee, or a driveway, swimming pool, patio, etc. Any tree which is determined to be diseased such that it could be detrimental to surrounding trees, that tree should be removed immediately. If such tree is not removed within two weeks (14 days) after a diagnosis is made, the board of directors may have the tree removed and disposed of at the expense of the person who owns the tree.

ACCEPTANCE. The owner of each vacant lot or a dwelling unit, or a contract purchaser of either, and each person acquiring an interest in any vacant lot or a dwelling unit, by acceptance of the instrument by which such interest is acquired, agrees to abide and be bound by these restrictions, covenants and all of the provisions of the platting procedures including the provisions for and governing the Owners Association and the Design Committee. Provisions for the creation and government of which are hereto attached and by this reference made a part hereof.

DURATION. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than eighty per cent (80%) of the lots or dwelling units and thereafter by an instrument signed by the owners of not less than seventy-five per cent (75%) of the lots. Any amendment must be recorded.

SEWER CONNECTION. All sewage producing facilities on every lot shall be connected with the sanitary sewer collection lines at the time of improvement of the lot for which a connection fee of \$300.00 must be paid to the proprietors of this plat at the time of making said connection; and in addition an inspection fee must be paid the Iowa Great Lakes Sanitary District at the time of making said connection, amount thereof to be determined by said District.

MEMBERSHIP AND VOTING RIGHTS IN
ARTHUR HEIGHTS OWNERS ASSOCIATION, INC.

1.) Every owner of a vacant lot and every owner of a dwelling unit shall be a member of the association. Membership shall be appurtenant to and may not be separated from ownership of any vacant lot or dwelling unit, and all vacant lots and all dwelling units shall be subject to assessment. Lot number four (4) shall be exempt from assessments as long as it remains the property of the Owners Association.

2.) Members shall be all owners and they shall be entitled to one vote for each dwelling unit owned. When more than one person holds an interest in any vacant lot or any dwelling unit, all such persons shall be members. The vote for such lot or dwelling unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any vacant lot or any single dwelling unit. Lot number 4 will not have voting rights as long as it remains the property of the Owners Association.

3.) The business and affairs of the Association shall be governed and managed by a Board of Directors. Copies of Articles of Incorporation and By-Laws of Arthur Heights Owners Association, Incorporated are attached hereto as Exhibits "1" and "2", respectively. Whenever a vote or other action of the Association is required, the mechanics of conducting such vote or taking such action shall be under the control and supervision of the Association.

COVENANT FOR MAINTENANCE ASSESSMENTS

1.) Creation of the Lien and Personal Obligation of Assessments. The Declarants, for each vacant lot or any dwelling unit owned within the Properties, hereby covenant, and each Owner of any vacant lot or any dwelling unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire of the Association as to the amount of any unpaid assessments. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

2.) Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Properties and limited exterior maintenance upon each lot.

3.) Payment of Assessments. The annual assessments shall be payable in twelve equal, monthly installments one month in advance on or before the first day of each month; provided, however, that the Association may establish a different method of payment, Special assessments shall be payable in the manner, amounts and times specified by the Directors of the Association.

4.) Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Properties, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the majority of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

5.) Notice and Quorum Requirements. Written notice of any meeting called for the purpose of taking any action authorized shall be delivered either personally or by mail to all members not less than 10 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of the members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

6.) Rate of Assessment. The total annual and special assessments shall be levied at a rate determined by dividing the total amount of assessments that the Board of Directors determines by the total number of vacant lots and total dwelling units. Each vacant lot and each dwelling unit will be assessed the equal pro-rated share as determined by this computation. This shall be computed every year, at the required annual meeting to allow for any newly constructed units, or new lots brought into the subdivision.

7.) Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following October 1, 1981. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

8.) Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum rate of interest allowed by law per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in proceedings in the nature of a Mechanics Lien foreclosure. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot.

9.) Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

DESIGN COMMITTEE

Whereas, it is considered in the best interests of the present as well as all future owners of lots and dwelling units in the plat, that some control be exercised over the design of dwellings, garages, fences, etc., to be constructed upon lots within the plat, there is hereby created and established a "Design Committee", consisting of three persons appointed every 10 years by the Board of Governors. All plans and specifications for construction and placement of dwellings upon lot sites must first be presented to said committee and meet with its approval before any work on the lot relating to said construction shall be started. From a rejection of any such proposed plans and specifications an appeal may be taken to the Board of Governors, but only an unanimous approval of said board can reverse the action of said committee. Earth sheltered housing must also be presented to Declarants for approval. Until the first committee is appointed in 1982, Declarants shall serve as members of said committee. Declarants reserve the right to replace committee members for a period of ten (10) years. In the event of death, incapacity or resignation of a member of the committee, the declarants shall have full authority to designate a successor. The members of the committee shall not be entitled to any compensation for services performed under this covenant. The Association shall have the power through a duly recorded instrument amending this declaration to change the membership of the committee after a period of 10 years from January 1, 1982. The initial members of the Design Committee shall be:

Randy Scheppmann
1510 Hill Avenue
Spirit Lake, Iowa 51360

Robert Arthur
East Okoboji Beach
Spirit Lake, Iowa 51360

Duane Sather
RFD 1
Round Lake, MN 56167

GENERAL PROVISIONS

1.) Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Should it become necessary at any time that the Association employ counsel to enforce any of the provisions, conditions, restrictions or covenants herein contained, all costs incurred in the enforcement of such provisions, conditions, restrictions or covenants herein contained including but not limited to a reasonable fee for counsel, shall be paid by the owner or owners of a vacant lot or lots, or a dwelling unit or units, who through their breach make it necessary for the Association to enforce such provisions, conditions, restrictions, or covenants herein contained. The Association shall have a lien upon such lot or lots, or a dwelling unit or units, to secure payment in restitution caused by any breach of the provisions, conditions, restrictions, or covenants herein contained.

2.) Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. Should any of the covenants or stipulations herein be held invalid or void, such invalidity or voidness of any of the covenants shall not affect the rest of the instrument or any remaining valid covenants herein contained.

3.) Annexation. Additional residential property may be annexed to the Properties after January 1, 1981, by the execution and recording of a special annexation amendment to this Declaration by all owners of the land to be annexed and by a majority of owners of lots. However, Declarants reserve the right to bring additional property into the Association, provided that the land is adjoining the original platted area, and that all property brought in be subject to all privileges, restrictions, covenants, and assessments. Declarants give up this right after a period of ten (10) years.

4.) Reference to this Document. Deeds of conveyance of the lots, or of any part thereof, may contain the above restrictive covenants by reference to this document, but whether or not such reference is made in such deeds, or any thereof, each and all of such restrictive covenants shall be valid and binding upon the respective grantees. Failure to enforce any of the restrictions, rights, reservations, limitations, covenants and conditions contained herein shall not, in any event be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation. Upon the breach or threatened breach of any of said covenants or restrictions, anyone owning or having an interest in any vacant lot or dwelling unit in or within Arthur Heights may bring an appropriate action in the proper court to enjoin or restrain said violations, or to compel compliance with the said covenants or restrictions herein contained, or to collect damages or other dues on account thereof, provided, however, that a violation of these restrictive covenants or of any one or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record.


5.) Additional Definitions.


Divided Lot. If a lot is divided to add to another lot, or if two lots are put together to enlarge a building site, then only one vote for the lot added to will be permitted, or one vote per dwelling unit, but no vote will be allowed for the lot that was divided or added to the other lot.

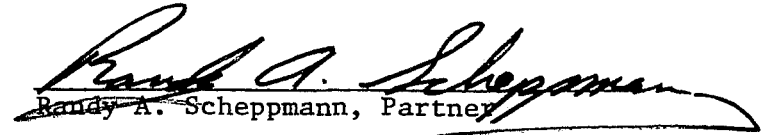
6.) Affect of Subsequent Legislation. The plat of Arthur Heights, the proprietor's certificate and other certificates, this Declaration of Easements, Restrictions, Covenants and Conditions, the Articles and By-laws of Arthur Heights Owners Association, Incorporated, along with the other documents recorded herewith relating to and establishing the plan for Arthur Heights shall be subject to legislation hereafter enacted by whatever authority only to the extent required so that the rights, duties, benefits and burdens shall remain substantially as set forth in these proceedings.

IN WITNESS WHEREOF, the said partners of Scheppmann Development
Company have hereunto set their hands this 9th day of March, 1981.

Scheppmann Development Company,
An Iowa Partnership

BY: 
August R. Scheppmann, Partner


Reed T. Scheppmann, Partner


Randy A. Scheppmann, Partner

STATE OF MINNESOTA)
) ss.
COUNTY OF JACKSON)

The foregoing instrument was acknowledged before me this 9th day of
March, 1981, by August R. Scheppmann, Reed T. Scheppmann and Randy A.
Scheppmann, Partners on behalf of Scheppmann Development Company, an
Iowa Partnership.



