



WC2673630-015

**Declaration Of Restrictions,  
Covenants and Conditions for  
Sarah Estates**

Document Title

2121

2673630

REGISTER'S OFFICE  
WAUKESHA COUNTY, WI  
RECORDED ON

07-09-2001 3:25 PM

MICHAEL J. HASSLINGER  
REGISTER OF DEEDS

REC. FEE: 32.00  
REC. FEE-CO: 4.00  
REC. FEE-ST: 2.00  
TRAN. FEE:  
TRAN. FEE-STATE:  
PAGES: 15

Recording Area

Name and Return Address

City Of Muskego  
Attn: Sandi Asti  
PO Box 749  
Muskego WI 53150

A Part of Tax Key No.  
MSKC 2218.990

Parcel Identification Number (PIN)

20  
08/15

Being a part of the NE ¼ and NW ¼ of the NW ¼ of Section 15, T5N R20E City of Muskego, Waukesha County, Wisconsin, more particularly described as: Commencing at the northwest corner of said NW ¼ Section 15; thence S 88° 15' 34" W along the north line of said NW ¼ Section 15, 448.65 feet; thence S01° 44' 26" E, 25.00 feet to a place at the beginning of the lands to be described: thence continuing S 01° 44' 26" E, 245.68 feet to a point on the centerline of Woods Road; thence S57° 09' 22" W along said centerline, 272.59 feet; thence N01° 44' 26" W 181.50 feet; thence S88° 15' 34" W, 307.24 feet; thence S01° 44' 26" E 155.00 feet; thence S46° 31' 17" E., 135.24 feet; thence S32° 50' 38" E, 50.00 feet to a point on the centerline of Woods Road; thence S57° 09' 22" W, along said centerline 280.84 feet; thence S42° 23' 11" W along said centerline 296.64 feet; thence S47° 36' 49" E, 50.00 feet; thence S01° 27' 37" E, 439.77 feet; thence S88° 32' 23" W, 515.76 feet to a point on the centerline of Woods Road; thence N42° 23' 11" E along said centerline, 408.44 feet; thence N01° 11' 26" W, 559.60 feet; thence S87° 38' 11" W, 501.33 feet; thence N01° 23' 56" W 496.52 feet to a point on the south line of a Wisconsin Electric Power Company right-of-way; thence N88° 15' 34" E, 1540.13 feet to the place of beginning.

**DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS  
FOR THE PLAT OF SARAH ESTATES,  
CITY OF MUSKEGO, WAUKESHA COUNTY, WISCONSIN**

THIS DECLARATION made this 29<sup>th</sup> day of May 2001 by Sarah Estates LLC (the "Subdivider").

**WITNESSETH:**

WHEREAS, Subdivider is the owner of a subdivision in the City of Muskego ("City") in the County of Waukesha, State of Wisconsin, which has been platted as "Sarah Estates" (the "Subdivision"); consisting of 26 single-family residential lots; and Subdivider desires to subject the subdivision to conditions, restrictions, covenants, reservations and easements hereinafter set forth for the benefit of the Subdivision as a whole and for the benefit of each owner of any part of the Subdivision.

NOW, THEREFORE, Subdivider hereby declares that the real property hereinafter described shall be used, held, transferred, sold and conveyed subject to the conditions, restrictions, covenants, reservations and easements hereinafter set forth, which shall inure to the benefit of and pass with said property and each and every parcel thereto, and shall apply to and bind the successors in interest and any owner thereof.

**Definition of Terms.**

- A. "Architectural Control Committee" shall mean the committee elected pursuant to the terms hereof, either by the Subdivider or by the Board of Directors of the Sarah Estates Homeowners' Association, Inc., and having duties as disclosed herein or in the bylaws of the Sarah Estates Homeowners' Association, Inc. (hereinafter referred to as the "ACC").
- B. "Dwelling" shall mean a building which contains one unit.
- C. "Family" shall mean one or more than one person living, sleeping, cooking or eating on premises as a single housekeeping group, and shall exclude a group or groups of persons where three or more persons thereof are not household employees or related by blood, adoption, or marriage.
- D. "Lot" shall mean a lot in the Subdivision platted for residential development and shall not include any platted outlot.
- E. "Outlot" shall mean a parcel designated as an outlot on the Subdivision plat, which, by reason of such designation, is not platted as a single building site.
- F. "owner" shall mean the owner of the fee simple title (or in the case of a land contract sale, the vendee) to a lot and includes Subdivider for so long as it is the owner of the fee simple title to a lot.
- G. "unit" shall mean that portion of a building to be occupied by a single family.

H. "Sarah Estates Homeowners' Association, Inc." means a Wisconsin non-stock corporation responsible for certain duties relating to the maintenance and operation of Sarah Estates as may be referred to herein or in the bylaws of Sarah Estates Homeowners' Association, Inc. (hereinafter referred to as the "HOA").

## ARTICLE 1

### Use of Lots and Similar Matters.

- 2.1 **General Purpose.** The general purpose of this Declaration is to help assure that the Subdivision and the adjacent property will become and remain an attractive community and toward that end to preserve and maintain the natural beauty and the natural plant life and wild life habitat of certain open spaces and recreational areas within and in the vicinity of the Subdivision; to insure the best use and most appropriate development and improvement of each building site; to protect owners of building sites against such use of surrounding building sites as will detract from the residential value of their property; to obtain harmonious use of material and color schemes; to insure the highest and best residential development of said property consistent with the purpose for which it is platted; to encourage and secure the erection of attractive residential structures thereon, with appropriate locations thereof on building sites; and to secure and maintain proper spatial relationship of structures and lot lines.
- 2.2 **Single Family Lots.** No lot or lots shall be used for other than single family residence purpose. No building shall be erected, altered, placed, or permitted to remain on any such lot or lots other than one detached single-family dwelling, and an attached private garage for not less than two cars nor more than four cars.

No dwellings shall be constructed on any lot having less than the following minimum areas:

- (a) Not less than 1850 square feet for a one-story dwelling with a fully enclosed first floor area.
- (b) Not less than 1000 square feet for the first floor of a one and one-half or two story dwelling, and not less than 1900 square feet for both the first and second floors combined; or
- (c) Not less than 1900 square feet on the upper two floors of split-level or bi-level dwelling; or
- (d) With respect to all other types of dwelling, not less than such areas, determined by the HOA or ACC, as are consistent with the foregoing and with other provisions hereof.

No dwelling shall exceed 35 feet in height, excluding chimneys or other projections, as measured from the finished first floor grade.

Square footage calculations shall be made from the outside face of exterior wall construction and include all walls. Window, fireplace, and room projections are included only when the floor joists are extended under those areas. Areas not included are decks, porches, garages, attics, spaces labeled "optional" or "bonus", breezeways, sunrooms or similar areas incidental to residential use. No floor area below finished yard grade shall be considered living area. In no event shall any dwelling of any type on any lot contain an area of less than 1850 square feet within the perimeter of the main dwelling and measured as above.

- 2.3 No buildings, out-buildings, or other structures shall be erected, placed or altered (including exterior additions, enlargement or major remodeling) on any lot until the construction plans and specifications, building grade elevations, and a plan showing the location of the structure have been submitted and approved by the ACC, as to quality of design, exterior workmanship and materials and harmony of external design with existing structures and as to location with respect to topography and finished grade elevation. These said plans, specifications and survey shall be submitted in duplicate and the ACC approval or disapproval shall be in writing within fifteen (15) days thereafter. The ACC shall have the right to waive infractions or deviations which, in the sole and uncontrolled opinion and discretion of the ACC may cause undue hardship. Any action by the ACC shall be final and conclusive as to persons then or thereafter owning lots covered by the ACC restrictions. No dwelling or other structure shall be constructed which shall be a substantial duplication of another previously approved or constructed improvement located within 500 feet of the proposed improvement unless, in the opinion of the ACC, such duplication would not be a detriment to the previously approved constructed building.

Whether or not specifically stated in any conveyance of a lot made by the Subdivider, the owner or occupant of each and every lot, by acceptance of title or by taking possession, covenants and agrees that no building, wall or other structure shall be placed upon the lot unless and until the plans, specifications and survey have been approved in writing by the ACC. Each building, wall or structure shall be placed on any lot in the subdivision only in accordance with the approved plans, specifications and surveys. Refusal to approve plans and specifications by the ACC may be based on any ground, including purely aesthetic grounds, which in the sole and unconditional discretion of the ACC shall seem sufficient. No alteration in the exterior appearance of the buildings or structures shall be made without like approval.

**2.4 Setbacks and Locations of all Structures.** No building or any part thereof, including garages and porches, shall be erected on any lot closer than the following minimums:

- |     |   |                   |
|-----|---|-------------------|
| (a) | Building setback from front street line | 40 ft minimum     |
| (b) | Building Offset (side)                  | 15 & 20ft minimum |
| (c) | Building Offset (rear)                  | 20 ft minimum     |

For corner Lots:

- |      |  |               |
|------|--|---------------|
| (i)  | Building setback from<br>The front street line | 40 ft minimum |
| (ii) | Building setback from<br>The side street line  | 40 ft minimum |

When two or more lots are acquired as a single building site, the side offset line shall refer only to the lot lines bordering the adjoining property owners. No re-subdivision of lots shall be permitted.

No variations from these requirements shall be allowed or granted by any body, government or private, under any conditions.

**2.5 All garages, storage areas, tool cabinets, garden houses, dog houses and similar improvements, must be attached to the dwelling or be constructed so as to constitute together with the dwelling, one building only, and shall utilize the same roof and exterior materials as the house. All garages shall be built at the same time as the dwelling and shall be large enough to accommodate a minimum of two cars. Absolutely no truck, boat, snowmobile, dirt bike, all-terrain vehicle, mobile home, RV or trailer of any kind shall be parked on the premises outside of the garage other than for the delivery of materials or merchandise, except during construction or remodeling periods. Not included within the definition of a garage is a car port(s). Car ports shall not be permitted.**

**2.6 All buildings or improvements shall be completed within one year from the date ground is broken for such building or improvement.**

No building may be occupied until it has been substantially completed in accordance with the plans and specifications submitted to and approved by the ACC and an occupancy permit obtained from the City.

**2.7 No used materials shall be permitted in the construction of any building in this Subdivision except such materials as re-cleaned brick, which, in the sole opinion of the ACC will enhance the appearance of the building of which they will become a part. Approved roofing materials are limited to the following:**

- (a) Cedar Shakes
- (b) Cement or clay tile
- (c) Slate
- (d) Dimensional Asphalt shingle, but such material shall be 300 pounds per square or better.

No mail boxes shall be installed except for those of a design approved by the ACC.

- 2.8 No animals, birds, or fowl shall be kept or maintained on any portion of the property except normal household pets, such as dogs, cats, aquarium fish and caged birds. The total number of cats for each dwelling unit shall not exceed two (2), and the total number of dogs for each dwelling unit shall not exceed two (2). Such pets may be kept only as normal household pets for the pleasure and use of the occupants and not for any commercial use or purpose. All dogs must be kept on a leash or within a fenced area when outside of a dwelling unit and no pets shall be permitted to become a nuisance to others. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the property upon three (3) days' written notice by the HOA or the ACC to the owner thereof or to the owner of the dwelling unit or lot containing such pet.

No clotheslines or drying yards shall be permitted unless concealed by hedges, lattice work or screening acceptable to the HOA or the ACC.

- 2.9 No signs or other advertising, except one (1) real estate "For Sale" sign, or one (1) real estate "For Rent" sign shall be displayed on any lot unless the size, form, and number of same are first approved in writing by the ACC. Provided however, a building contractor or the Subdivider may display on a lot one (1) "For Sale" sign and one (1) sign advertising the name of the building contractor or the Subdivider.

No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any lot; no refuse pile, unused motor vehicles, or unsightly objects shall be allowed to be placed or to remain anywhere on the lot. No noxious or offensive activities shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. In the event that any owner of any property in the Subdivision shall fail or refuse to keep their premises free from weeds, underbrush, refuse plies, unused motor vehicles, unsightly growths or objects, or in any other condition not permitted by this declaration, HOA may enter upon the lands and remove the same at the expense of the owner and such entry shall not be deemed a trespass. In the event of such removal, a lien shall arise and be created in favor of the HOA and against the owner's premises for the full amount chargeable to the lot, and that amount shall be due and payable within fifteen (15) days after the owner is billed for it.

2.10A master surface drainage plan has been prepared by the Subdivider designating the manner in which each lot shall drain in relation to other lots in Sarah Estates. A copy of this plan is on file in the office of the City Engineer and in the office of the Building Inspector of the City. Within thirty (30) days of completion of a dwelling on any lot in Sarah Estates, the owner of said dwelling shall grade the lot to conform to said drainage plans prior to occupancy and from that time forward, nothing shall be done which will impede or obstruct the flow of surface drainage water in accordance with the said plan. Silt fences have been, or will be placed in various location in the Subdivision by Subdivider in accordance with approved plans on file as above, or as ordered by the City in the course of development of the Subdivision. Owners are required to maintain said fences until such time as turf cover is restored to all disturbed areas.

2.11 Where fill is necessary on a lot to obtain the proper topography and finished ground elevation, it shall be ground fill free of waste material and shall not contain noxious materials that will give off odors of any kind, and dumping of fill material shall be leveled immediately after completion of the building. Said fill shall also be subject to a fill permit issued by the City. The elevation of a lot shall not be changed so as to materially affect the surface elevation of grade of the surrounding lots nor materially affect the master surface drainage and house grade plan.

2.12 Swimming pools are permitted and must be installed in accordance with City requirements.

2.13 Lot line and other fences shall be permitted, provided they are constructed of wood or masonry, a maximum of four feet in height, and the design thereof has been submitted to and approved in writing by the ACC and City in advance of construction thereof. Fences shall not be allowed within the front yard set back. Wall shall not be allowed within thirty (30) feet of the front property line. The HOA or the ACC shall have the right to enforce the maintenance and appearance of such fences. Conflicts with underground public utility facilities with an easement shall result in fence locations accommodating such facilities. All fences constructed pursuant to the provisions of the Section 2.13, shall comply with all applicable City codes, and in accordance with any and all existing municipal codes governing installation of said fences.

2.14 Lots shall be landscaped and seeded or sodded within one (1) year after completion of a dwelling. Landscaping shall include the area between the front lot line and the edge of the street curb. Landscaping must include a hard surface drive, parking stand or turnabout consisting of concrete, brick pavers, or other similar material. No permanent gravel drives will be permitted. The hard surface of concrete, pavers, or similar materials shall be installed within one (1) year from the date that the premises are completed. One HOA approved lamp post, either gas or electric, shall be installed where the driveway abuts the front lot line.

At least five (5) trees, minimum caliper of two inches, shall be installed on each unwooded lot at time of landscaping. On all lots there shall be at least one (1) tree planted for every fifty (50) feet or fraction thereof of street frontage. ("frontage trees") Each frontage tree shall be no less than twelve (12) feet in height and shall be located and be place no further than ten (10) feet from the front property line.

2.15 No motorcycles, snowmobiles, trail bikes, dune buggies or off street motorized vehicles of whatever type or description shall be operated on any lot, outlot, driveway, parking area, private road, or open space within the Subdivision.

2.16 All telephone and electric service to any dwelling on any lot shall be from the underground utilities system and no overhead service shall be provided or permitted. Reserved for the purpose of installing and maintaining underground municipal and public utility facilities, and for such other purposes incidental to the development of the Subdivision, are the easements shown upon the plat of Sarah Estates, as recorded with the Register of Deeds in and for Waukesha County, Wisconsin. All claims for damages, if any, arising out of the construction, maintenance, and repair of utilities or on account of temporary or other inconvenience caused thereby against the Subdivision, or any utility company or municipality, or any of their agents or servants, are waived by the owners or purchasers of lots. The Subdivider further reserves the right to change, lay out anew, or discontinue any street, avenue, or way shown on the plan of development not necessary for ingress of egress to and from an owner's premises, subject to the approval of the City, if approval is required.

2.17 Satellite receiver dishes with a maximum 24" diameter or less, with ACC approval will be permitted. No rooftop television or other antennae shall be allowed. Television or other antennae shall be placed within the attics of all dwellings.

2.18 It shall be the responsibility of each lot owner to regularly remove all debris caused by any and all construction work occurring on this lot(s). No owner shall knowingly allow disposal of any waste building material, tree stump, branches, tree trunks, or other material on any lot or outlot within the Subdivision. This shall also apply to the city street abutting said lot(s).

During construction, all debris or trash shall be picked up daily so as not to blow freely through the Subdivision and all construction materials shall be neatly kept. Owners shall be responsible for removal of dirt and debris upon streets or other common areas of the Subdivision contiguous to lots upon which buildings are being constructed, during the construction period. The Subdivider and/or the HOA shall have the right to require an owner to utilize a dumpster during the construction period. If an owner fails to comply with the owner's obligations as described herein, as determined in the sole discretion of the Subdivider or the HOA, the Subdivider or the HOA may perform such clean-up obligation on behalf of the owner and assess the owner for the costs involved, all pursuant to the provision of Article 3 hereof.

2.19 Due to the proximity of the Subdivision to natural water courses, private ponds and public lakes, no fertilizers, weed killers, or other similar such substances or chemicals shall be utilized or applied by any owner if such substances or chemicals are determined by the HOA, or any governmental body or agency, to be hazardous or toxic to marine wildlife or vegetation.

2.20 Retaining walls shall be subject to the regulations of the City and shall be built of wood, stone or brick, but not of plain concrete block or unfaced poured concrete.

## ARTICLE 111

### Composition, Powers and Rights of the HOA and the ACC.

3.1 Purpose for the HOA. The Subdivider has deemed it desirable for the effective preservation of the values and amenities in the Subdivision to create an agency to which should be delegated and assigned the powers of maintaining and administering the outlots described herein and dedicated to it, together with any other common areas in the Subdivision, and administering and enforcing the covenants and restriction herein. The Subdivider has also deemed it desirable that the HOA shall have the power to assess, collect and disburse the assessments and charges hereinafter created. To this end there will be incorporated under the laws of the State of Wisconsin, the HOA, for the purposes of exercising the functions aforesaid.

- 3.2 **Membership.** Every person or entity who is an owner as defined herein shall be a member of the HOA, provided that no person or entity who holds an interest merely as security for the performance of an obligation shall be a member.
- 3.3 **Management.** The HOA shall be managed by a Board of Directors. The Board of Directors shall consist of three (3) members. As long as the Subdivider owns at least twenty percent (20%) of the lots in the Subdivision (the "threshold percentage"), the Board of Directors of the HOA shall be appointed by the Subdivider. After the threshold percentage is reached, the Board of Directors shall be elected by a majority vote of the owners. However, nothing contained herein shall prevent the Subdivider, at its sole discretion, from turning control of the Board of Directors of the HOA over to the members of the HOA at any time.
- 3.4 **Voting Rights.** The HOA shall have one class of membership: members shall be owners and shall be entitled to one vote for each lot in which they hold the interest required for membership. When more than one percent holds such interest or interests in any lot, i.e., and without limitation by enumeration, as tenant in common or as survivorship marital property, there shall be cast one (1) vote amongst them for each lot they so own.
- 3.5 **Amendment of These Restrictions and Covenants.** Prior to the time that the threshold percentage is reached, the Board of Directors of the HOA may amend these restrictions to the extent permitted by law. After the threshold percentage is reached, the HOA may amend these restriction to the extent permitted by law, but only by an affirmative vote of no less than two-thirds (2/3) of its members; provided, however, that no amendment shall be permitted without the written consent of the Subdivider, which onset may be unreasonably or arbitrarily withheld, so long as the Subdivider, or its assigns, continues to own, have title to, or control any lot(s) within the Subdivision.
- 3.6 **The ACC**
- (a) Until the threshold percentage is reached, the ACC shall be composed of three (3) representatives of the Subdivider. Thereafter, the ACC shall consist of three (3) members elected by the Board of Directors of the HOA. Nothing contained herein shall prevent the Subdivider, at its sole option, from relinquishing control over the ACC prior to the time that the threshold percentage is reached.
- (b) The ACC shall have the right to promulgate and impose rules and regulation and a schedule of reasonable fees for the processing of applications by the ACC, as the ACC deems necessary in order to preserve the value and appearance of the Subdivision, and thereafter, to modify, alter, amend, rescind and augment any of the same (collectively the "Architectural Control Committee Rules"), provided that the Architectural Control Committee Rules so

promulgated shall not conflict with the provisions of these restriction and covenants; and further provided that such Architectural Control Committee Rules be approved by the Subdivider in writing, so long as the Subdivider or any builder owns any lot within the Subdivision and thereafter, be approved in writing by the HOA Board of Directors.

- (c) Every member of the ACC shall be indemnified by the HOA against all expenses and liabilities, including attorney's fees reasonably incurred by or imposed by such member in connection with any proceeding in which he may be a party, or in which he may become involved by reason of his being or having been a member of the ACC, or any settlement thereof, whether or not he is a member of the ACC at the time such expenses are incurred, except in such cases wherein the member of the ACC is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. The foregoing rights to indemnification shall be in addition to and not exclusive of any right or indemnification to which a member of the ACC may be entitled, whether by statute or common law.

- 3.7 Annual Assessments. Each owner shall be subject to a general annual charge or assessment to be determined solely by the Board of the Directors of the HOA for the purpose of defraying the costs of maintaining and administering the outlot and any other common areas of the Subdivision. Such annual assessment shall be a prorata share, or one (1) share per lot, of the cost incurred by the HOA to maintain the outlot and other common areas for the recreation, health, safety, welfare and enjoyment of its members. Said cost shall include, but not be limited to, payment of taxes, insurance, repair, replacement, and additions to the improvements made upon said outlot or common areas, and the cost of labor, equipment, materials, management and supervision thereof.

The Subdivider shall pay its prorata share of such annual assessments for each lot it still owns in the Subdivision

Such annual assessment shall be levied by the HOA as of January 1<sup>st</sup> for each such year and the statement for such amount shall be mailed to the owner of each lot as of such date and be payable on or before March 1<sup>st</sup> of each year.

The maximum annual assessment shall be \$100.00 per lot. Such maximum annual assessment may be changed by a majority of the votes of the members of the HOA. The assessment, however, as established by the HOA shall be set taking into consideration the cost of current maintenance and future needs and may be in any lesser sum than the maximum which will meet these requirements.

- 3.8 **Special Assessments.** A special assessment may be levied by the HOA for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon an outlot or common are in the Subdivision, if consented to be a two-thirds (2/3) majority of the votes of the members of the HOA. The Subdivider shall not be assessed for any such capital improvement or special assessment for any lot it owns for which it has not consented to in writing.

Such special assessments shall be due and payable ninety (90) days after the required affirmative vote of the members of the HOA.

- 3.9 **Proof of Payment.** The HOA shall, upon demand at any time, furnish to any owner a certificate in writing signed by an officer of the HOA setting forth whether said assessments have been paid. Such certificate shall be conclusive evidence of the payment of any and all assessments therein stated to have been paid.

- 3.10 **Violation or Breach of These Restrictions or Covenants, Individual Assessments.** For violation or breach of any of these restriction or covenants by any person claiming by, through, or under the Subdivider, or by virtue of any judicial proceedings, the Subdivider and the HOA, or each of them severally, shall have the right to proceed at law or in equity (including, but not limited to, injunctive relief) to compel compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing right, the Subdivider or the HOA shall have the right, whenever there shall have been built on lay lot any structure which is in violation of these restriction, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and any such entry and abatement or removal not be deemed a trespass. The Subdivider and the HOA, or each of them severally, shall have the right to assess an owner for its costs in abating or removing any such violation. Any such individual assessment shall be paid by the assessed owner within fifteen (15) days from the date of levy by the Subdivider of the HOA.

- 3.11 **Liens and Collection of Assessments.**

- (a) **Establishment of Liens and collections of Assessments.** Any and all HOA assessments made by the HOA and in accordance with the provisions of this Declaration with interest thereon at the highest rate allowed by law and costs of collection, including, but not limited to, reasonable attorney's fees, are hereby declared to be a charge and a continuing lien upon the lots against which each such HOA assessment was made. Each HOA assessment against a lot, together with interest thereon at the highest rate allowed law

costs of collection thereof, including reasonable attorney's fees, shall be the personal obligation of the owner of each lot assessed. Said lien shall be effective only from and after the time of the recordation with the Register of Deeds of Waukesha County, of written acknowledged statement by the HOA setting forth the amount due to the HOA as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Notwithstanding anything to the contrary herein contained, where an institutional mortgagee of record obtains title to a lot as a result of foreclosure of its mortgage or by virtue of deed in lieu of foreclosure, such acquirer of title, its successors or assigns, shall not be liable for the share of the HOA assessment pertaining to such lot or chargeable to the former owner thereof which become due prior to the acquisition of title as a result of the foreclosure or deed in lieu thereof, unless the HOA assessment against the lot in question is secured by a claim of lien for the HOA assessment, as recorded prior to the recordation of the mortgage that was foreclosed or with respect to which a deed in lieu of foreclosure was given.

- (b) **Collection of HOA Assessments.** In the event any owner shall fail to pay any HOA assessment or installment thereof, charges to such owner, within fifteen (15) days after the same becomes due, then the HOA, through its Board of Directors, shall have any and all of the following and which remedies are not in lieu of, but are in addition to, all other remedies available to the HOA:
- i. To advance on behalf of the owner in default, funds to accomplish the needs of the HOA, up to and including the full amount for which such owner is liable to the HOA, in the amount or amounts of money so advanced, together with interest at the highest allowable rate, and all costs of collection there, including, but not limited to, reasonable attorney's fees, may thereupon be collected by the HOA, and such advance by the HOA shall not waive the default
  - ii. To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the HOA in like manner as the foreclosure of a mortgage on real property.
  - ii. To file an action at law to collect said HOA assessment, plus interest, at the highest rate allowed by law, plus court costs and reasonable attorney's fees without waiving any lien rights or rights of foreclosure in the HOA.

- (c) **Collection by Subdivider.** In the event for any reason the HOA shall fail to collect the HOA assessment, then in that event, the Subdivider shall at all times have the right (but not the obligation):
- i. To advance such sums as the HOA could have advanced as set forth above: and
  - ii To collect such HOA assessment and, if applicable, any such sums advanced by Subdivider; utilizing remedies available to the HOA as set forth above, which remedies (including, but not limited to, recovery of reasonable attorney's fees) are hereby declared to be available to Subdivider.

#### ARTICLE IV

##### General Provisions.

- 4.1 This Declaration, including all attachments hereto, shall run with the land and shall be binding upon all persons claiming under the Subdivider and shall apply to and bind the successors in interest and any owner thereof..
- 4.2 The failure to promptly enforce any of these restriction and covenants shall not bother enforcement.
- 4.3 Invalidity of any provision of this Declaration, regardless of how determined, shall in no way affect any of the other provision, which shall remain in full force and effect.
- 4.4 In the event of a conflict between the provisions of this Declaration and the provision of the HOA Articles, of HOA Bylaws, the provision of this Declaration shall control.
- 4.5 Whenever the context so requires or admits, any pronoun used herein may be deemed to be the corresponding masculine, feminine or neuter form thereof and the singular form of any nouns or pronouns herein may be deemed to mean the corresponding plural for thereof and vice versa.
- 4.6 Article and paragraph captions, headings and titles inserted thorough this Declaration are intended as a matter of conveniences only and in no way shall such captions heading or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder nor the terms and provisions of this Declaration.
- 4.7 In the event the HOA receives any award or payment arising from any taking of property dedicated to the HOA or any part thereof as a result of the right of condemnation or eminent domain, the net proceeds there of shall first be applies to the restoration of the remaining property dedicated to the HOA and improvements

thereon to the extent deemed advisable by the HOA, and the remaining balance of such net proceeds, if any, shall then be distributed in equal shares to each owner and the holder of any mortgage encumbering a lot as its respective interest any appear.

- 4.8 This Declaration shall become effective only upon due recording with the office of the Register of Deeds of Waukesha County, Wisconsin.
- 4.9 In the event of any conflict between these restrictions and the City's zoning and building regulation, the stricter provision shall apply.

IN WITNESS WHEREOF, this instrument has been duly executed as of the day, month, and year first above written.

SARAH ESTATES LLC  
A Wisconsin Limited Liability Company

By: *Wayne E. Wegenke*  
Wayne E. Wegenke  
Its Managing Member

STATE OF WISCONSIN }

WAUKESHA COUNTY }

Personally came before me this 24 day of May 2001, the above named Wayne E. Wegenke, to me known to be the Managing Member of Sarah Estates Limited Liability Company, a Wisconsin Limited Liability Company, and to me known to be the person who executed the foregoing instrument and acknowledge the same.

*[Signature]*  
Notary Public, Waukesha County, Wis.  
My commission expires 3-27-05

*Drafted by WAYNE E. Wegenke*