

DECLARATION OF RESTRICTIVE COVENANTS

The following Restrictive Covenants are established by Della Marcus Corporation, Inc., a Wisconsin corporation ("the Developer"), and binding upon the property known as Lots 1 through 6 inclusive, and Outlots 1 through 6 inclusive (hereafter a "Lot" or collectively the "Lots") of Secluded Estates Subdivision, Town of Vandebroek, Outagamie County, Wisconsin (the "Property"). A copy of the plat map of the Property is attached hereto and incorporated herein as Exhibit A. These Restrictive Covenants shall run with Property, and be binding upon all present and subsequent owners of the Lots as provided herein.

PART 1 **GENERAL RESTRICTIONS**

1. **PURPOSE:**

The purpose of these covenants is to ensure the use of the Property for attractive residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the Property, to seek the use of quality materials and workmanship, and to maintain the desired atmosphere and appearance of the Property, and thereby to secure to each Lot owner the full benefit and enjoyment of their Lot.

It is intended that these restrictions shall be for the benefit of all Lot owners. It is further intended that these restrictions shall maintain a residential area and no trade or business shall be conducted thereon which shall become a nuisance or annoyance.

2. **TOWN/ COUNTY ORDINANCE:**

The laws, rules and regulations of the Zoning Ordinances of the Town of Vandebroek and/or Outagamie County, as in effect on the date hereof, shall apply to all of the Lots subject to these Restrictive Covenants. Any buildings to be constructed on the Lots and the use of the Lots, shall comply with such ordinances.

All Lot owners shall comply with all requirements noted on Plat for the Property and on the Drainage Plan for the Property; copies of which are available from the Developer or Outagamie County Zoning.

3. **WETLAND/FLOODPLAIN:**

All Lot owners shall comply with all wetlands and floodplain rules and regulations set by local Town, County and State authorities.

4. **FOUNDATION:**

All buildings shall be erected on permanent foundations of cement, stone or like material and no building shall be erected upon posts. Every residence building shall have a basement under the entire first floor of building with a basement depth of at least seven (7) feet eight (8) inches.

5. **DRAIN TILE:**

There may be existing drain tile on one or more of the Lots. All Lot owners are responsible to reroute and reconnect any drain tile they disturb.

6. **DWELLING:**

There shall be only one (1) dwelling allowed on each Lot, which dwelling may be used only for residential purposes. Every dwelling on Lots 1 through 5, inclusive shall be a minimum size of Two Thousand (2,000) square feet of usable living space above ground level for one story houses, and Twenty Four Hundred (2400) square feet for a one and a half or two story home, excluding any porches or garages. The dwelling on Lot 6, shall be a minimum size of One Thousand Five Hundred (1,500) square feet of usable living space above ground level for a one story home, and Eighteen Hundred (1,800) square feet for a one and a half or two story home. All garages must be attached to the residence. All buildings shall have a minimum 6/12 pitch roof. The front of dwellings (i.e. street side) shall have at least 2/3 brick or stone.

7. **SIDE LOT REQUIREMENT:**

A minimum side lot set-back requirement of fifteen feet (15') is hereby established, preventing construction of any structure within fifteen feet (15") of the side lot line of any adjacent lot owner.

8. **TREE LINE:**

No changes of existing tree line for Lots 1 through 6, inclusive, and Outlots 1 through 6 inclusive, will be allowed without prior written consent of the Developer.

9. **SHARED WELLS:**

Developer reserves the right to install shared wells for one or more of the Lots. Such shared wells may be placed anywhere on the Lots the Developer desires, and the owners of each Lot served by a shared well agree to pay to the Developer the pro-rata share of the cost of each shared well. For example, if a shared well is installed on Lot 1, which well services Lots 1 and 2, then the purchasers of Lots 1 and 2 shall each pay to the Developer one-half the cost of construction of such shared well. All payments are due Developer at the time the owner of a Lot obtains a building permit to construct a residence on the Lot, or three years after purchase of the Lot, whichever occurs first. Each Lot shall only be charged once for its pro-rata cost of a shared well.

Lot owners shall be required to provide at their own expense, their own well pump, laterals, electrical, tank, controls, and any other necessary parts to achieve water to their residence.

If a Lot has a shared well located on it, then there is established a 15 foot permanent easement across such Lot, for the benefit of all other Lots serviced by such shared well (the "Well Serviced Lots") which easement runs from such Well Serviced Lots to the well.

The owners of the Well Serviced Lots may erect, maintain, and replace as necessary in the 15 foot easement areas all necessary water pipes and electrical wires for the

installation and maintenance of a well pump, electrical wires and controls, and water laterals for the owners of the Well Served Lots to obtain water from the shared well to a residence on their Lot. The easement area shall be located in a direct line from the shared well to the area of the residences where the owners of the Well Served Lots determines its best to place the water lateral and electrical wires. No gardens, bushes, trees or other vegetation other than grass may be placed in such easement area. The owner of the Well Served Lots shall be required to restore the easement area, including the grass, if they disturb the same.

Each Lot owner that shares a well is responsible for all costs of installation and maintenance of their respective well pump, electrical wires, tanks, controls, and all other equipment besides the well casing and the well. All Lot owners with shared wells shall each pay one-half the cost of maintaining or replacing the well and well casing.

All Lot owners hereby release Developer from all liability, known or unknown, with regard to the well, well casing, and any water from the well, and the Developer shall have no liability to any Lot owner, now or in the future, to provide water or a well for such Lot owner. The Developer has no responsibility to insure that the water from any well is safe for human consumption or use (now or in the future) and all Lot owners hereby release Developer from any such liability. All shared wells shall be owned by the owner of the Lot that the well is located on, subject to the above easements and cost of sharing of maintenance.

10. **EASEMENTS:**

All easements and right-of-ways, as recorded on the final plat for the Property shall remain in full force and effect.

11. **DRAINAGE PLAN:**

All Lot owners shall comply with the master surface water drainage plan on file with the Town of Vandebroek and/or County of Outagamie.

12. **PLAN APPROVAL:**

No excavation of any Lot nor construction of any buildings on any Lot subject to these Restrictive Covenants shall take place until Developer has received and approved in writing a complete set of final construction plans and specifications, including a site plan showing the proposed location, grade, and elevation of the structure on the Lot and such additional detail as may be reasonably requested by Developer. Developer reserves the right to approve or reject the plans and specifications of any such construction. This restriction shall only apply to the initial construction of a residence or detached building and shall not apply to any subsequent improvements which may be made to such building.

Shoreland Zoning Permits are required from Outagamie County for any excavating on Lots 1 through 5 inclusive.

13. **CONSTRUCTION SITE: COMPLETION OF LANDSCAPING AND DRIVEWAYS:**

No Lot shall be used for storage except for materials to be used for the initial/immediate construction of the residential building.

At all times during construction, the site shall be maintained to Developer's reasonable satisfaction, in a neat and orderly manner.

Construction of any building on any Lot must be completed within twelve (12) months from the date of commencement of such construction. Landscaping of the Lot and permanent driveway installation must be completed by the owner of the Lot within twelve (12) months of that owner's initial occupancy of the residential building. All permanent driveways must be hard surfaced in asphalt, concrete, brick or similar surface.

All culverts shall have apron and walls.

The owners of each Lot understands and agrees not to disturb soil in the area of the perk test for on-site waste disposal systems, which soil, if disturbed, may cause significant decrease of the Lot value, for which the owner will solely bare loss of value.

14. **TEMPORARY STRUCTURES, OUTBUILDINGS OR TRAILERS:**

One (1) single-story storage shed shall be allowed per Lot. Shed plans and specifications (with site plan) shall be submitted to Developer for written approval prior to commencement of construction. All sheds shall have a maximum storage area not to exceed Twelve Hundred (1200) square feet and shall be constructed in a style and of materials that are similar to those used in the construction of the residential dwelling located on the Lot. Construction of a shed shall not begin until the residential dwelling is 50 percent completed. No pole building construction of sheds is allowed. Town of Vandebroek has a current restriction of 900 square feet for outbuildings. Any thing larger than 900 square feet will require a variance.

15. **STORAGE:**

Except as authorized by Developer, no structure of a temporary nature, nor trailers, tents, shacks, barns or similar structures, shall be permitted on any Lot either temporarily or permanently. No outside storage is allowed. Recreational vehicles, snowmobiles, boats, trailers, mini-bikes, fishing shanties, etc., must be stored inside buildings.

16. **FIREARMS:**

No discharge of firearms is allowed on any Lot.

17. **TRASH:**

No Lot shall be used as a dumping ground for rubbish, trash, garbage, or other waste. All trash and waste shall be kept in sanitary containers. No sanitary container is to be put in front of any dwelling sooner than the day of the regularly scheduled garbage pickup. All equipment and/or containers for the storage or removal of such materials

shall be kept in a clean and sanitary condition.

18. **FILL:**

Developer reserves the right to direct the disposition of any fill, including excess excavation fill, which is to be removed from any Lot; all at the Lot owner's expense. However, such disposition as directed by Developer shall be within a one (1) mile radius of the Lot from which it is being removed; otherwise, the owner shall be free to dispose of such fill.

19. **ZONING, HEALTH, AND OTHER LAWS AND REGULATIONS:**

So long as the property subject to these Restrictive Covenants is zoned for residential use, all zoning, health and other laws, ordinances and regulations promulgated by the Town of Vandebroek, Outagamie County, the State of Wisconsin, and/or the United States of America that are more restrictive have jurisdiction over the Property subject to these Restrictive Covenants and shall be strictly observed and complied with.

20. **GOVERNMENT PERMITS:**

The owner of each Lot shall secure all government permits, such as building permits, culvert permits, and septic permits, etc. needed before any improvements are made to any Lot, and provide a copy of the same to Developer.

21. **FENCES AND LANDMARKS:**

No wall or fence (excluding hedge fences) of any kind whatsoever shall be constructed upon any Lot within the Property unless the height, type, design and location thereof have the prior express written approval of Developer.

22. **UNLICENSED VEHICLES AND SALVAGE MATERIALS:**

No unlicensed vehicles or junkyards or storage areas for cars, salvage materials, or other storage of any nature shall be permitted on the Lots.

No overnight or longer parking of any item, including motor vehicles, shall be permitted outside of a permanent structure.

No mobile homes or double wides shall be set upon or maintained or parked on any Lot. Furthermore, no partially or fully constructed home shall be moved upon any Lot.

23. **DIVISION OF LOTS:**

No Lot shall be subdivided into two or more lots.

24. **GEOTECHNICAL REPORT:**

A geotechnical report applicable to parts of the Property is on file with the Developer and is available to all Lot owners upon request from the Developer.

25. **RETENTION/DETENTION PONDS:**

Maintenance costs for retention/detention ponds located on the Property shall be assessed to all property owners on an equal basis, as described in Part III below.

26. **STREET LIGHTING:**

Developer paid for the installation of streetlights on the Property. All Lot owners shall equally share in the maintenance, upkeep and utility cost for such street lighting as set forth in Part II below.

27. **ANIMALS:**

No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats, or other household pets, provided they are not kept, bred or maintained for any commercial purpose. There shall be a limit of three (3) dogs per Lot, and of two (2) cats per Lot. No outdoor kennels of any kind whatsoever are allowed.

28. **NUISANCE:**

No noxious or offensive trade, activity or hobby shall be carried on upon any Lot, nor shall anything be done thereon which shall be or become a nuisance or annoyance to the neighborhood.

29. **TERM:**

These Restrictive Covenants herein contained shall be in effect for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive periods of ten (10) years, unless an instrument terminating or reducing these terms shall be executed and recorded in accordance with the requirements as set forth in paragraph No. 30 herein.

30. **AMENDMENT:**

These Restrictive Covenants may be amended, waived, or removed by the execution and recordation in the Office of the Register of Deeds for Outagamie County, Wisconsin, of an instrument executed by two-thirds (2/3) of the owners of the Lots; provided that if Developer owns any Lot, then Developer's signature shall be required for any such amendment, waiver or removal. Furthermore, so long as Developer shall own any Lot in the Property, Developer, by itself alone, shall be entitled to amend, waive, or remove any or all of these covenants.

31. **VARIATION:**

Variations in any of these Restrictive Covenants may be permitted by Developer where

it is reasonably satisfied that such variations will be in the best interest of all Lots within the Property and will further the overall purposes and intentions of these Restrictive Covenants.

32. **ENFORCEMENT:**

If any Lot or person(s) in possession of any Lot or dwelling on any Lot within the Property shall violate or attempt to violate any of these covenants, it shall be lawful for any other person(s) owning any Lot or owning or occupying any dwelling on any Lot in the Property to prosecute and/or commence proceedings at law or in equity against the person(s) violating or attempting to violate any such covenants, either to prevent such person(s) from doing so or to recover damages for such violation or to restrain the violation.

The Developer does hereby authorize the Town of Vandebroek to enforce these Restrictive Covenants on behalf of the Lot owners who are Town residents.

33. **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.

PART II
DRAINAGE AND LIGHTING RESTRICTIONS

34. **DRAINAGE EASEMENT RESTRICTIONS:**

The following restrictions shall apply to drainage easements and ditches as shown on the final plat for the Property.

- a. **Prohibited Uses and Structures:** The following uses and structures are prohibited within all drainage easements: Filling, grading, excavating (except for the construction and maintenance of drainage ways or drainage facilities); the cultivation of crops, fruits, or vegetables; the dumping of ashes, waste, compost or any other garden, lawn or domestic waste; the storage of vehicles, equipment, materials or personal property of any kind; constructing, erecting or moving any building or structure, including fences, within the drainage easement, or any use or structure that interferes with the flow of water in the drainage easements pursuant to the surface water drainage plan for the Lots as approved by Outagamie County.
- b. **Maintenance of Drainage Improvements:** Maintenance of drainage ways and associated drainage improvements shall be the responsibility of the property owners of the Lots. Outagamie County and the Town of Vandebroek retain the right to perform maintenance or repairs. The cost of maintenance or repairs shall be equally assessed among the property owners of the Property. The purchase of any Lot constitutes a waiver of objection to any such assessment and an agreement to pay any such assessment which shall be placed on the tax bill of each Lot as a special assessment.
- c. **Maintenance Easement:** Outagamie County and the Town of Vandebroek

shall have the unqualified right to enter upon any drainage easement for inspection and, if necessary, maintenance and repair of the drainage ways and associated drainage improvements.

- d. **Drainage Ditches:** No Lot owner shall disturb any drainage ditches or drainage water flow without written consent of the Developer. All drainage ditches shall remain unobstructed.

35. **GRADING AND GRADES:**

All grading of all Lots shall conform to the surface water drainage plan as approved by the Outagamie County Planning and Zoning Department.

36. **STREET LIGHTING:**

The cost of the operation and maintenance of the street lights and the Town of Vandebroek's administrative costs concerning the same shall be equally assessed among the Lot owners of the Property. The purchase of any Lot constitutes a waiver of objection to any such assessment and an agreement to pay the annual/special assessment which shall be placed on the tax bill for each Lot as a special assessment for street lighting.

37. **ENFORCEMENT:**

The Town of Vandebroek and Outagamie County may enforce the provisions of Parts II and III of the Declaration of Restrictive Covenants by proceeding in law or equity against any person violating or attempting to violate the provisions of Part II or III, either to restrain violations or to recover damages, or both.

38. **MODIFICATION:**

Any amendment or modifications of the provisions of Part II of this Declaration of Restrictive Covenants shall require written approval of Outagamie County and the Town of Vandebroek.

PART III
HOMEOWNER'S ASSOCIATION

39. There is hereby formed a Homeowner's Association entitled "Secluded Estates Homeowner's Association" (the "Homeowner's Association"). The members of the Homeowner's Association shall be all the Lot owners. The Homeowner's Association shall have deeded to it ownership of Outlot 6, which Outlot shall have a retention pond on it. The Developer will pay the costs to build the retention pond. The Homeowner's Association shall (i) maintain the retention pond on such Outlot in conformity with all local, county and state rules and regulations, as such rules may be amended from time to time, including maintaining the grass around the pond, maintaining the weeds in the pond, maintaining the water quality (including algae) in the pond, maintaining the electricity for the pumps in the pond, and (ii) timely pay all real estate taxes assessed against Outlot 6. The cost of such maintenance and taxes shall be born equally between the owners of all the Lots (excluding the ownership of all Outlots). Each owner

of each Lot (excluding Outlots) is entitled to one vote per Lot (excluding Outlots) owned in all matters involving the Homeowner's Association. The Homeowner's Association may elect any officers it deems necessary to carry out its duties. As long as the Developer owns any Lot the Developer shall be the President of the Homeowner's Association. At least 10 days written notice of all meetings of the Homeowner's Association shall be given to all Lot owners (except in the case of an emergency meeting). The majority vote of the Lot owners (excluding Outlots) present at any Homeowner's Association meeting shall constitute action of the Homeowner's Association; provided that as long as the Developer owns any Lot, the Developer's vote, even if in a minority, shall control the actions of the Homeowner's Association. All costs of maintenance of Outlot 6, including the retention ponds on Outlot 6, and all taxes assessed against Outlots 6 shall be shared equally among all Lot owners, (excluding Outlots) and upon certification by the Homeowner's Association to the Town of Vandebroek, such Lot owner's unpaid maintenance or tax charge may be placed upon the Lot owner's next annual real estate tax bill (along with a \$50 service fee) and paid to the Town of Vandebroek, and/or Outagamie County, who will forward the money to the Homeowner's Association for payment of the Homeowner's Association's costs for maintenance and taxes of the Outlots.

Except for the owner of Lot 6, Outlot 6 shall not be accessible for any use of any Lot owners, (but is only accessible to the Homeowner's Association for maintenance purposes as set forth above); provided however that the owner of Lot 6 shall have exclusive right to the use and enjoyment of Outlot 6.

DELLA MARCUS CORPORATION, INC.

By: _____

Keith M. Gonnering, President

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)SS
COUNTY OF _____

Personally came before me on _____, 20____, the above-named Keith M. Gonnering to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My Commission

expires: _____
THIS INSTRUMENT DRAFTED BY:
Attorney David J. Winkel
Winkel Law Office
36 Jewelers Park Dr., #202
Neenah, WI 54956
Phone: (920) 725-8887
Fax: (920) 725-9077

