

**DECLARATION OF COVENANTS, RESTRICTIONS AND CONDITIONS
FOR THE PLAT OF SECOND ADDITION TO SAUK CREEK,
CITY OF MADISON, DANE COUNTY, WISCONSIN**

VOL 12765 PAGE 28

A & J DEVELOPMENT CORPORATION, a Wisconsin Corporation, (the "Developer"), owner of the real estate in the City of Madison, Dane County, Wisconsin, which has been platted as the plat of Second Addition to Sauk Creek (the "Plat") hereby declares that all of the lots in the Plat, except Outlots 6 and 7 which were dedicated to the City of Madison by the Plat, are hereby subject to the following restrictions, covenants and conditions:

1. For all buildings erected or placed on any lot subject to this Declaration, the plans, specifications, site plans and landscape plan must be submitted to the Developer, or the Developer's duly sworn authorized agent, or the Developer's successors and assigns, and be approved in writing by same as to quality of workmanship and materials, harmony of exterior design including exterior colors, size, location with respect to topography, and finish grade elevation in relation to the street elevation and the finish grade of adjacent structures and lots, prior to commencement of any construction on any lot.

After the Developer ceases to have any title to any lot subject to this Declaration, the plans, specifications, and site plans must be submitted to a committee of three persons, elected by a majority of persons holding title to any lot or lots subject to this Declaration, for approval in writing by a majority of said committee as to all of the items enumerated in the preceding paragraph. The election of said committee (the "Architectural Control Committee") shall be held annually on the second Monday in January of each year at a site selected by the Developer or the previous committee. Vacancies created between elections shall be filled by the remainder of the Architectural Control Committee.

By approval of the plans submitted to the Developer or the Architectural Control Committee, neither the Developer nor the Architectural Control Committee shall be responsible for obtaining any approval necessitated by ordinances of the City of Madison, and neither the Developer nor the Architectural Control Committee gives any opinion or makes any representation that a building built pursuant to the plans will be structurally sound; or that the plans meet any city, county or state codes. Neither the Developer nor the Architectural Control Committee shall have any liability to any builder or lot owner with respect to the construction of and materials used in any building on a lot within the Plat. It shall be the builder and lot owner's sole responsibility to obtain all permits for the construction of any improvements on a lot in the Plat.

In the event the Developer or the Architectural Control Committee, whichever is then applicable, does not approve or reject such plans, specifications and site plans within fifteen (15) days after the same have been submitted to the approving authority, then such approval shall not be required in that instance.

2. For each building erected or placed on any lot subject to this Declaration, the prime contractor or builder to be hired for construction of such building must be approved in writing by the Developer or the Architectural Control Committee, whichever is then applicable, prior to commencement of construction.

The approval of the Developer or the Architectural Control Committee shall not be unreasonably withheld. Such approval may be withheld for reasons such as, the proposed contractor's or builder's financial status, business history and prospects, building reputation or any other reason which would be similarly relied upon by a reasonably prudent businessman then developing a neighborhood of quality residential homes.

3. No alteration in the exterior appearance of existing buildings, including but not limited to exterior remodeling and the construction of patios, decks, and swimming pools shall be made without the prior written approval of the Developer or the Architectural Control Committee, whichever is then applicable.

4. The existing vegetation of each lot subject to this Declaration, including trees of a diameter of three (3) inches or greater, shall not be destroyed or removed except as approved in writing by the Developer or the Architectural Control Committee, whichever is then applicable. In the event such vegetation is removed or destroyed without approval, the Developer or the Architectural Control Committee may require the replanting or replacement of same, the cost thereof to be borne by the lot owner.

5. The elevation of a lot shall not be changed so as to materially affect the surface elevation or grade of the surrounding lots. A copy of all plot plans shall be kept by the Developer or the Architectural Control Committee for the benefit of other purchasers in planning their individual elevations. Violation of the grading plan as submitted shall allow either the Developer or the Architectural Control Committee, whichever is then applicable, or any adjacent neighbor within the Plat a cause of action against the person violating such grading plan. No

earth, rock, gravel or clay shall be excavated or removed without the approval of the Developer or the Architectural Control Committee.

Drainage patterns for each lot are indicated by arrows on the recorded Final Plat and such drainage patterns shall be maintained by the lot owner unless modified in writing by the City Engineer.

6. The Developer, after a period of ten (10) years from the date of recording of the Final Plat of the Second Addition to Sauk Creek or after seventy-five percent (75%) of the lots in the Plat of the Second Addition to Sauk Creek have been sold, whichever occurs first, may elect to assign all of the Developer's right to approve all of the items listed in paragraphs 1 through 5 above to the Architectural Control Committee.

7. Every owner of record of any of Lots 244 through 287 in the Second Addition to Sauk Creek shall automatically be a member of the Second Addition to Sauk Creek Homeowners' Association (the "Association"). The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership in the Association shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

There shall be one vote per lot in the Association. When more than one person holds an ownership interest in a lot, all such persons shall be members. The vote for such lot shall be exercised by the owners of the lot as such owners among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

The Association, subject to the rights of the lot owners set forth in this Declaration, shall be responsible for enforcing this Declaration and for the exclusive management and control of the common area, which shall include Outlots 4, 5 and the proposed entrance boulevard in Gray Fox Trail of the Second Addition to Sauk Creek and all improvements thereon (the "Common Area"), and the Association shall maintain the Common Area as a landscaped green area and keep the same in good, clean, attractive and sanitary condition, order and repair.

Every member of the Association shall have a right to enjoyment in the Common Area which shall be appurtenant to and shall pass with the title to each lot. Each lot owner may delegate such right of enjoyment to the members of the owner's family and to his or her guests.

Lots 244 through 287 in the Second Addition to Sauk Creek shall be subject to general annual charges, which may be determined and assessed annually by the Association, to carry out the Association's above-stated purposes. The general charge shall be sufficient to raise an amount which, in the reasonable judgment of the Association, may be required for the ensuing calendar year and shall be divided and levied equally among all of said lots, provided, however, that the maximum annual assessment per lot shall not exceed \$100 until January 1, 1992 and then only if such larger amount is approved by the owners of at least sixty percent (60%) of said lots. The Association shall determine the annual charges on the basis of a calendar year and each lot owner shall pay such charges by January 31 of each year.

The right to collect or enforce the collection of charges is hereby delegated to the Association. Any owner of a lot shall be personally obligated to pay such charges which were assessed or accrued upon the lot during his or her period of ownership. All charges which are unpaid when due shall from such date become and remain a lien upon the lot until paid, with interest thereon at the rate of twelve percent (12%) per annum from the due date until paid in full. The Association shall have the right to bring an action or proceeding for the collection of charges and the enforcement of liens therefor. Any liens securing unpaid charges shall be subject and subordinate to the lien of any mortgage whether the mortgage is executed or recorded prior to or after the creation of the lien securing unpaid charges. The Association may commence an action against any person obligated to pay the charges and/or to foreclose the lien for such charge against any lot. Any such foreclosure action may be brought at the Association's election either in the same manner as an action to foreclose a real estate mortgage or as a proceeding to enforce a statutory maintenance lien as provided in Section 779.70, Wisconsin Statutes, to the extent said section is applicable. The Association shall, upon the written request of an owner or purchaser of any lot, issue a Certificate of Status of Lien. If an attorney is retained to enforce any such delinquent charge, the costs of such collection, including, without limitation, reasonable attorneys' fees, shall be added to and become a part of such charge.

8. Lots 244 through 287 in the Plat shall be used only for single family residential purposes. Persons acquiring title to any of said lots within the Plat are hereby notified that Lot 4 of Certified Survey Map #5514 is intended for multi-family (apartment) development and Lots 1, 2 and 3 of Certified Survey Map #5514 are intended for commercial development and said persons specifically waive any rights to object to the development of said Lots for the above stated uses. (Lots 1, 2, 3 and 4 of

Certified Survey Map #5514 were previously described as Lots 242 and 243 of the First Addition to Sauk Creek.)

9. The following minimum floor area requirements shall apply to all single family residential buildings erected on Lots 244 through 287 in the Plat:
- a. No single story building shall have less than 2,200 square feet;
 - b. No two-story building shall have less than 2,700 square feet;
 - c. No raised ranch, bi-level, or tri-level building shall have less than 2,200 square feet on the main level;
 - d. The above minimum requirements may be waived by the Developer or the Architectural Control Committee, whichever is then applicable, in the event the proposed architecture and quality of the house is such as to present an appearance compatible with other houses in the Plat.

For the purpose of determining floor area, stair openings shall be included but open porches, screened porches, attached garages and basements, even if the basements are finished, shall be excluded. All measurements shall be taken from the outside walls.

10. A minimum building setback of forty (40) feet from the front property line and ten (10) foot side yards are suggested. However, all buildings constructed on any lot subject to this Declaration shall conform to all governmental zoning requirements and all side-yard and set-back requirements imposed by the local ordinance. The Developer or the Architectural Control Committee, whichever is then applicable, shall have the right to change the side-yard and set-back requirements for new construction within the Plat from time to time in their sole discretion.

11. It is suggested that all single family residential buildings have at least fifty percent (50%) stone or brick on the front elevation and each side of any building must have at least one window. In the event the proposed architecture and quality of the house is such as to present an appearance compatible with other houses in the plat, the Developer or Architectural Control Committee may waive this requirement.

12. All single family residential buildings must have an attached garage and such garage must contain not less than two (2) nor more than four (4) automobile garage stalls. When possible, it is suggested that garage entrances be from the side.

13. No building previously erected elsewhere may be moved onto any lot subject to this Declaration, except new prefabricated construction which has been approved by the Developer or the Architectural Control Committee, as previously set forth.

14. All driveways must be paved or concrete. No more than two (2) domestic animals may be kept on any lot subject to this Declaration. Commercial animal boarding, kenneling or treatment is expressly prohibited whether for fee or not. Accessory buildings are expressly prohibited except where approved in writing in advance by the Developer or Architectural Control Committee, whichever is then applicable. Landscape planting and maintenance of the premises and adjoining street terrace shall be the responsibility of the lot owner. Where public sidewalks exist, it is the responsibility of the abutting lot owner to maintain same in a safe and passable condition, reasonably free from snow, ice or obstruction.

15. No trailer, basement, tent, shack, garage, barn, or any part thereof, shall ever be used as a residence, temporary or permanent, nor shall any residence be of a temporary character.

16. Parking of service vehicles owned or operated by residents of homes is prohibited unless such vehicles are kept in garages. Storage of boats, travel trailers, mobile homes, campers, and other recreational vehicles is prohibited unless kept inside garages. This shall not prohibit the temporary storage of such vehicles for the purposes of loading or unloading for a period not to exceed forty-eight (48) hours. No cars or other vehicles shall be parked on lawns or yards at any time.

17. No firewood or wood pile shall be kept outside a structure. All areas of lots not used as a building site or lawn or under cultivation as a garden shall have cover crop or be so cultivated or tended as to keep such areas free from noxious weeds. The lot owner shall be responsible for maintaining the lot in a neat appearance. Except for wooded lots left in a natural state, the owner shall mow the lot at least four (4) times annually. This paragraph shall not be construed to prevent a family garden or orchard.

18. On any lot conveyed by deed from the Developer, construction shall be commenced within one (1) year from the date of such deed. Upon violation of this restriction, the Developer shall have the option, exercisable by written notice to the lot owner within ninety (90) days of the expiration of such one (1) year period, to have said lot conveyed to the Developer at the original sales price, free and clear of any liens and encumbrances created by act or default of the owner of such lot,

with taxes and installments on assessments for the year in which such conveyance occurs being prorated as of the date of such conveyance.

19. Construction of all buildings shall be completed within six (6) months after issuance of a building permit for the respective building. Landscaping (including grading, sodding and seeding) shall be completed within ninety (90) days of completion of construction, provided weather conditions so allow. If such construction or landscaping is delayed due to matters beyond the control of the owner, the time for completion shall be extended by the period of such delay.

Landscaping Requirements:

- a. All front and side yards must be sodded - this includes street terraces.
- b. Each lot upon which a residential building is constructed must have at least three (3) conifers or shade trees visible from the street. Minimum height of conifers shall be five (5) feet and minimum diameter of the trunks of shade trees shall be three (3) inches.
- c. A minimum of \$2,500.00 shall be spent on foundation plantings.

The Developer or Architectural Control Committee, whichever is then applicable, may at their option, require submission of proof of actual landscape expenditures prior to or after foundation plantings have been installed.

20. No exterior antennas, satellite disks, solar panels, outdoor kennels, walls or fences shall be permitted unless approved in writing in advance by the Developer or the Architectural Control Committee, whichever is then applicable, as to location, material, height and color.

21. No noxious or offensive trade or activity shall be carried on, nor shall anything be done which may be or will become a nuisance to the neighborhood. This shall not be construed to prevent a vegetable garden or orchard, provided that all vegetable gardens and orchards shall be located in back or side yards.

22. The owner of any lot subject to this Declaration shall not change the elevation of the utility easement in excess of six (6) inches without the permission of Madison Gas and

Electric Company and shall be responsible for any damages caused to underground utilities based on any changes in grade by more than six (6) inches.

23. This Declaration shall run with the land and shall be binding on all persons having an interest in the Plat for a period of twenty-five (25) years after the Plat is recorded, after which time this Declaration shall automatically stand renewed for successive five (5) year periods unless the same is cancelled as provided in Section 26 below. If any person, or his heirs, successors or assigns, shall violate or attempt to violate any of the covenants and restrictions contained herein while this Declaration is effective, any person or persons owning any lot or lots in the Plat shall have standing to bring proceedings at law or equity against the person or persons violating or attempting to violate any such covenants or restrictions, and the prevailing party shall be awarded reasonable attorneys fees and costs.

24. No lot as platted shall be resubdivided. This covenant shall not be construed to prevent the use of one lot and part or all of another lot or lots as one building site.

25. No signs of any type shall be displayed to public view on any lot without the prior consent of the Developer or the Architectural Control Committee, whichever is then applicable, except lawn signs of not more than four (4) square feet in size advertising property for sale.

26. These restrictions or any part thereof may be cancelled, released, amended, or waived in writing as to some or all of the lots subject to this Declaration by any instrument signed by the Developer and the owners of at least 65% of the lots subject to this Declaration, or if the Developer has released or assigned the Developer's rights under this Declaration, as above provided, then by an instrument in writing signed by the owners of 65% of the lots subject to this Declaration.

27. Invalidation of any one of these covenants or any severable part of any covenant, by judgement or court order, shall not affect any of the other provisions, which shall remain in full force and effect.

28. Only mail boxes (and support columns) approved by the Developer or the Architectural Control Committee shall be used in the Plat.

Anchor Savings and Loan Association, a Wisconsin corporation, as holder of the following Mortgages by A & J Development Corporation, a Wisconsin corporation, as Borrower, which Mortgages constitute a lien on part or all of the property in the Plat of the Second Addition to Sauk Creek, in the City of Madison, Dane County, Wisconsin:

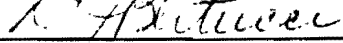
- 1) Mortgage, dated May 13, 1987, and recorded in the office of the Register of Deeds for Dane County, Wisconsin, on May 14, 1987, in Volume 10008 of Records, page 41, as Document No. 2017926;
- 2) Mortgage, dated November 23, 1987 and recorded in the office of the Register of Deeds for Dane County, Wisconsin on November 25, 1987 in Volume 10857 of Records, page 58, as Document No. 2056157; and
- 3) Mortgage, dated November 28, 1988 and recorded in the office of the Register of Deeds for Dane County, Wisconsin on November 29, 1988 in Volume 12238 of Records, page 42, as Document No. 2116227;

hereby joins in the execution of the foregoing Declaration of Covenants, Restrictions and Conditions in order to consent thereto and to subject to the same interest, as the holder of the three above-described Mortgages, in the property included in the Plat of the Second Addition to Sauk Creek.

Dated this 2nd day of February, 1989.

ANCHOR SAVINGS AND LOAN
ASSOCIATION

By: 
R. E. Smith, Senior Vice President

Attest: 
D. F. Bertucci, Vice President

[CORPORATE SEAL]

STATE OF WISCONSIN)
) SS.
COUNTY OF DANE)

VOL 12765 PAGE 38

Personally came before me, this 2nd day of February, 1989, R. E. Smith and D. F. Bertucci, the Senior Vice President and Vice President, respectively, of Anchor Savings and Loan Association, a Wisconsin corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such officers of said corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of said corporation, by its authority.

[NOTARIAL SEAL]

Katherine R. Schulz
* Katherine R. Schulz
Notary Public, Dane County, WI
My Commission (~~is~~) (expires)
1-14-90

Haen Investment Company Limited Partnership, a Wisconsin limited partnership, as the vendor under a Land Contract, dated May 13, 1987, with A & J Development Corporation, a Wisconsin corporation, as Purchaser, which Land Contract was recorded on May 14, 1987 as Document No. 2017924 and which Land Contract currently applies to part or all of the property in the Plat of the Second Addition to Sauk Creek, in the City of Madison, Dane County, Wisconsin hereby joins in the execution of the foregoing Declaration of Covenants, Restrictions and Conditions in order to consent thereto and subject to the same its interest, as the vendor under said Land Contract, in the property included in the Plat of the Second Addition to Sauk Creek.

Dated this 2nd day of February, 1989.

HAEN INVESTMENT COMPANY
LIMITED PARTNERSHIP

By: A. J. Haen
A. J. Haen, General Partner

STATE OF WISCONSIN)
) SS.
COUNTY OF DANE)

VOL 12765 PAGE 39

Personally came before me, this 2nd day of February, 1989, A. J. Haen, a general partner of Haen Investment Company Limited Partnership, a Wisconsin limited partnership, to me known to be the person who executed the foregoing instrument, and to me known to be such general partner of said limited partnership, and acknowledged that he executed the foregoing instrument as such partner as the deed of said limited partnership, by its authority.

[NOTARIAL SEAL]

Dee J. West
* *Dee J. West*
Notary Public, Dane County, WI
My Commission *(is)* (expires)
Sept. 3, 1989

RECORDED'S OFFICE
DANE COUNTY, WI.
APR 28 10 39 AM '89
RECORDS & COMM. SECS
NOTARY PUBLIC
DEE J. WEST
STATE OF WISCONSIN
UNEMPLOYMENT UNDER
FEDERAL LAW

This instrument was drafted by and, after recording, ~~should be returned to~~, Attorney Steven V. Ponto of Foley & Lardner, One South Pinckney Street, Post Office Box 1497, Madison, Wisconsin 53701-1497.