# DECLARATION OF RESTRICTIONS

## For Durham Meadows

THIS DECLARATION, made this 18 day of August, 1972, by Jack L. LaBonte, ("the Developer").

WITNESSETH:

WHEREAS, the Developer owns the subdivision in the City of Muskego (the "City"), hereinafter legally described, which has been platted as "Durham Meadows" (the "Subdivision"), consisting of 27 single-family residential lots, 34 two-family residential lots, two planned unit development lots for multi-family purposes and an outlot for common use and enjoyment by all residents of the Subdivision; and Developer desires to subject the Subdivision to the 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, Developer 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 thereof, and shall apply to and bind the successors in interest, and any owner thereof.

Definition of Terms. "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. "Association" shall mean the Durham Meadows Homes Association, Inc., a nonstock Wisconsin corporation, or its corporate successor. "Architectural Control Committee" shall mean the committee referred to in Article III hereof. "Lot" shall mean a lot in the Subdivision platted for residential development, and shall not include any platted outlot. "Outlot" shall mean a parcel designated as an outlot on the Subdivision plat, which, by reason of such designation, is not platted as a building site. "Unit" shall mean that portion of a building to be occupied by a single family. "Dwelling" shall mean a building which contains one or more units.

## ARTICLE I

Property Subject to this Declaration. The following property shall be subject to this Declaration:

> Durham Meadows, being a subdivision of part of the SW¼ of Section 2, Town 5 North, Range 20 East in the City of Muskego, Waukesha County, Wisconsin.

## ARTICLE II

### 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 of certain open spaces and recreational areas within and in the vicinity of the Subdivision; to insure the best use and the 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 guard against the erection thereon of poorly designed or proportioned structures; to obtain harmonious use of material and color schemes; to insure the highest and best residential development of said property consistent with the purposes for which it is platted; to encourage and secure the erection of attractive residential structures thereon, with appropriate locations thereof on building sites; to prevent haphazard and inharmonious improvement of building sites; and to secure and maintain proper spatial relationship of structures to other structures and lot lines.

2.2 Single-Family Lots. Of the following lots, Lots 1 to 11, inclusive, in Block 3, and Lots 19 to 34, inclusive, in Block 2, no lot shall be used except for single-family, residential purposes. No building shall be erected, altered, placed, or permitted to remain on any such lot other than one detached, single-family dwelling, not exceeding two and one-half stories in height and an attached, semi-detached, or detached private garage or carport for not more than two cars, and other outbuildings incidental to residential use of the premises. The minimum living area of each such single-family dwelling shall be either:

a. One story dwelling, no less than 1,400 square feet on the first floor.

b. One and one-half or two story dwelling, no less than 1,000 square feet on the first floor.

c. Tri-level dwelling, no less than 1,300 square feet on the upper two levels.

The minimum living area of each two-family dwelling shall be 1,000 square feet per unit. As to all such single-family and two-family dwellings, each Unit either shall be provided with a basement of no less than 300 square feet, or the above-stated otherwise applicable minimum living area for such dwelling shall be increased by no less than 200 square feet per Unit. The Architectural Control Committee shall have exclusive right to determine whether such area requirements will be met by any proposed single-family or two-family dwelling. Any such action by said committee shall be final and conclusive.

2.3 Two-Family Lots. Of the following lots, Lots 1 to 8, inclusive, and Lots 10 to 18, inclusive, in Block 2, and Lots 1 to 6, inclusive, and Lots 8 to 18, inclusive, in Block 1, no lot shall be used except for two-family residential purposes. No building shall be erected, altered, placed or permitted to remain on any such lot other than one detached, two-family dwelling, not exceeding two and one-half stories in height and one or two (but if detached, not more than one) attached, semi-detached, or detached private garages or carports for an aggregate of not more than four cars, and other outbuildings incidental to residential use of the premises.

2.4 Multi-Family Lots. Lot 7 in Block 1 and Lot 9 in Block 2 shall be used only for multiple unit residential purposes. No building shall be erected, altered, placed or permitted to remain on any such lot other than one or more detached multiple unit apartment dwellings, not exceeding three stories in height, attached, semi-detached, or detached private garages or carports for not more than two cars per unit, and other outbuildings incidental to residential use of the premises.

2.5 Architectural Control. All structures shall be designed by a registered architect, a professional engineer experienced in home design, or equally qualified individual or firm. No building, wall, fence or other structure shall be erected, placed, or altered on any lot until the building plans, specifications, and plot plan showing the location thereof have been approved in writing by the Architectural Control Committee

as to quality, materials, harmony of external design and colors with existing and planned structures; as to location with respect to topography, setbacks, finish grade elevations, driveways and planting; and as to compliance with all applicable restrictions contained in this Declaration.

2.6 Building Location. No building or structure, excluding eaves, steps, open porches, overhangs, patios or other appurtenances not built on a foundation or frost footing, and no garage shall be located on any lot nearer to the front lot line than 25 feet or nearer to a side street line than 25 feet, or nearer to the side line of an adjoining lot than 10 feet or nearer to a rear lot line than 30 feet; *except*, the rear yard setback for garages only may be not less than 10 feet. The appurtenances which are excluded from the setback requirements of the preceding sentence shall be located so as to avoid encroachment upon any other lot. To the extent that such appurtenances are located outside of the building setback lines, the Architectural Control Committee shall determine the extent, if any, to which they shall be set back from lot lines. For the purposes of this paragraph, each corner lot shall be deemed to have one rear lot line and one side lot line, as determined by the Architectural Control Committee from the orientation of the proposed dwelling thereon.

2.7 Auto Parking, Garages, etc. Provisions shall be made on each lot for the onsite storage of not less than one (1) automobile for each unit to be built upon that lot, such provisions to consist of a properly surfaced area, carports, garages, or a combination of any two, and to be connected to the street by a properly surfaced driveway. The auto storage area shall be located within the building setback lines as defined under 2.6 of this Declaration. Carports and garages shall harmonize with residence structures as to design, materials, and finished floor elevations, and may be a part of, or attached to, or semi-detached or detached from dwellings, as approved by the Architectural Control Committee. If all or a portion of the auto storage area originally provided on any single-family or two-family lot is not enclosed by a carport or garage, it shall be so enclosed within three years of original occupancy of any Unit built upon the lot. No boat, trailer or motorized camper may be parked on any single-family or two-family lot outside of a garage or carport, and no truck or trucks may be parked on any such lot outside of a garage or carport, other than for delivery of material or merchandise, or except during construction or remodeling periods.

2.8 Preservation of Trees. No existing tree with a diameter of two (2) inches or more at a height of four (4) feet from the ground, beyond three (3) feet from the approved dwelling location, shall without approval of the Architectural Control Committee be cut down, destroyed, mutilated, moved or disfigured; and all existing trees shall be protected during construction and preserved by wells or islands, and proper grading, in such manner as may be required by the Architectural Control Committee.

2.9 Ground Fill on Building Site. 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 all dumping of fill material shall be leveled immediately after completion of the building.

2.10 Easements and Surface Drainage. In addition to any easements shown on the recorded plat, there is hereby reserved, for utility purposes and for ground water surface drainage, an easement ten (10) feet in width extending along the rear ten (10) feet of each lot. The rear ten (10) feet of each lot shall be graded and maintained so as to permit the unobstructed flow of surface water along the vicinity of the rear lot lines to a logical point of discharge into any watercourse; *provided however*, where topography does not permit a drainage swale within the rear ten (10) foot easement, it shall be located as indicated on the master grading and site plans. Surface water drainage swales shall be created and maintained along side lot lines to prevent flow toward adjacent dwellings.

The location of the proper course and method of drainage swales to provide for all surface drainage on each lot shall be determined by the Architectural Control Committee, on the basis of the approved master grading and site plans.

2.11 Nuisances. No noxious odors shall be permitted to escape from any unit, dwelling, or lot, and no activity which is or may become a nuisance or which creates unusually loud sounds or noises shall be suffered or permitted on any lot.

2.12 Temporary Structures. No structure of a temporary character, and no trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

2.13 Signs. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than twelve square feet advertising the property for sale or rent, or a sign used to advertise the property during the construction and sales period. All signs shall be located at least ten feet back from the lot line.

2.14 Animals and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept; provided that they are not kept, bred or maintained for any commercial purpose, or allowed to annoy neighbors.

2.15 Water Supply. Each dwelling shall be connected to the water supply of the City or public or private utility serving the entire Subdivision and no individual wells to provide water shall be permitted.

2.16 Sewage Disposal. Each dwelling shall be connected to the municipal sewer system, and no septic tank or individual sewage system shall be permitted.

2.17 Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and suitably screened from view from streets.

2.18 Antennae. Except for rooftop antennae which extend not more than five feet above the highest point in the roofline of any dwelling, no external television antennae or similar devices shall be erected without the prior approval of the Architectural Control Committee.

2.19 All exterior service and utility wiring, including service drops to individual dwellings shall be installed underground, and no overhead wires shall be permitted within Durham Meadows, except such overhead wires as may have been installed prior to the recording of this Declaration of Restrictions.

2.20 Fences and Walls. No fence or wall shall be permitted to extend beyond the minimum front building setback line established herein. No cyclone fences and no fences or walls over 48 inches in total height shall be permitted on any lot, except fences which enclose swimming pools and which are set back at least ten (10) feet from each side lot line and at least fifteen (15) feet from each rear lot line. No fence or wall of any height shall be permitted on any lot except upon approval by the Architectural Control Committee.

2.21 Roof Colors. No building on any lot shall be permitted to have a roof of color other than black, white, off-white, or natural wood, except that the Architectural Control Committee in its discretion may grant approvals of other colors harmonious with those aforementioned.

2.22 Motorized Vehicles. No motorcycles, snowmobiles, trail bikes, dune buggies or off-street motorized vehicles of whatsoever type or description shall be operated on any outlot, driveway, parking area, private road, multi-family lot or open space within the Subdivision, except for necessary travel, as contrasted with recreational use, over private roads, parking areas and driveways by any such vehicle which is by law authorized to travel upon public roads.

2.23 Effect of Approval. Upon approval of the building plans, specifications and the plot plan by the Architectural Control Committee, and upon receipt of all necessary municipal or other governmental approvals, consents and permits, construction in accordance with said plans and specifications may commence. Such construction shall be substantially completed, (1) if a single-family or two-family dwelling or any garage, carport or other permitted outbuilding, within one year after the last such approval has been given and (2) if a multi-family dwelling, then within 18 months after the last such approval has been given. In the event such Committee, or its designated representative, fails to act upon said plans and specifications within 30 days after submission, or, in any event, if no suit to enjoin the erection of such structure or the making of such alterations or to require the removal thereof has been commenced before one year from the date of the completion thereof, no right shall exist to enforce these covenants insofar as they require such approval.

2.24 Use of Outlot. Outlot 1 in Block 2 shall be used only in accordance with the "Open Space Agreement" between Developer and the City relating thereto and recorded concurrently herewith, as the same may be amended by agreement between Developer and the City and in effect from time to time.

## ARTICLE III

### Architectural Control Committee

3.1 Membership. So long as the Developer owns any lot or lots within the Subdivision, the Developer, by written notice to the Association shall designate the person or persons, not more than three in number, who from time to time shall comprise the members of the Architectural Control Committee. Thereafter, the Architectural Control Committee shall be chosen and governed in accordance with the bylaws of the Association.

3.2 Procedure. Any approval required by this Declaration to be obtained from the Committee shall be in writing. Promptly after acting upon any request for approval presented to it, the Committee shall in writing notify the person submitting such request of its determination. In the event said Committee, or its designated representative, fails to act upon said plans and specifications within thirty days after submission, or, in any event, if no suit to enjoin the erection of such structure or the making of such alterations or to require the removal thereof has been commenced before one year from the date of the completion thereof, no right shall exist to enforce these covenants insofar as they require such approval. Upon request the statutory registered agent of the Association shall furnish a written statement of the name and address of the persons to whom plans, specifications and requests for approval may be submitted for consideration by the Committee. Submission of plans, specifications and requests for approval to the person so designated by the registered agent shall constitute submission to the Committee for all purposes under these Declarations, or, if the registered agent shall fail to make the aforementioned designation, submission of plans, specifications and requests for approval to the registered agent shall constitute submission of the same to the Committee for all purposes under this Declaration.

## ARTICLE IV

### Charges, Assessments and Special Assessments

4.1 General Annual Charge. All lots shall be subject to a general annual charge or assessment, determined solely by the Association, for the purpose of defraying the costs

and expenses of the Association in carrying out its stated purposes and functions, including defraying the costs of maintaining and administering such open spaces and recreational facilities as shall have been conveyed to the Association and accepted by it, either before or after the date hereof. The general charge or assessment shall be determined or fixed during the month of November or December of each year; shall be sufficient to raise an amount which, in the judgment of the Association's members represented at a meeting called for that purpose, may be required for the ensuing calendar year; and shall be a pro rata share allocated on the basis of one share per each single-family lot and two-family lot, sixteen (16) shares for Lot 7 in Block 1 and eight (8) shares for Lot 9 in Block 2 (equivalent to one-quarter (¼) share for each estimated developable unit for each of said two multi-family lots). The maximum per share annual assessment shall be Sixty Dollars ($60.00). Such charges or assessments shall be paid annually to the Association, on or before the first day of February in each year.

4.2 Capital Improvements; Assessments Therefor. The Association may construct or install additional amenities upon any lands owned by or leased to it, and may make capital expenditures for such purpose. Funds for such expenditures may be derived from the general annual charge levied pursuant to Section 4.1 hereof, or from any special assessment which may be levied as follows: after dwellings have been built on at least 90% of the single-family lots and two-family lots, such assessments for capital improvements may be levied if approved by a written instrument executed in accordance with requirements of Section 6.2 hereof for approval of amendments to this Declaration and recorded in the same manner as a conveyance; any such instrument shall set forth the amounts assessed against each lot, which shall be the same proportion of the aggregate assessment as is provided in Section 4.1 hereof for the general annual charge, and shall specify the due date for such assessments.

4.3 Assessments to Obtain Compliance with Restrictions. All lots shall also be subject to special assessment by the Board of Directors of the Association to cover all or any portion of the expenses incident to the enforcement of the recorded Deed Restrictions concerning said lot, and for caring for vacant, unimproved or unkempt lots and removing weeds, grass, or any other unsightly or undesirable objects therefrom. Such special assessments shall be due and payable ninety (90) days after the required affirmative vote of the Board of Directors of the Association.

4.4 Collection and Enforcement. The right to collect or enforce the collection of charges, assessments and special assessments is hereby delegated exclusively to the Association. The owners of lots, and any portion thereof, shall be personally obligated to pay such charges, assessments and special assessments upon the lots owned by them. All charges, assessments and special assessments levied by the Association pursuant to this Article IV, which are unpaid when due, and any charge which may be levied by the City for maintenance of the open space pursuant to Section 4.5 hereof, which charge is not paid at the due date specified by the City in its statement therefor, shall bear interest from such due date at the rate of eight percent (8%) per annum, and such charge and interest shall from that time on become and remain a lien upon the lot until paid. The Association shall have the exclusive right and power to collect or enforce the collection of all charges, annual assessments and special assessments imposed by it by reason of this Article IV, and shall have the exclusive right to bring any and all actions and proceedings for the collection thereof and for the enforcement of liens arising therefrom. Any liens securing unpaid charges, assessments or special assessments arising by virtue of this Article IV 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 such liens. Nothing herein contained shall prevent or impede the collection of lawful charges, special assessments and similar taxes by the City. The Association may bring an action at law against any owner personally obligated to pay the same, or to foreclose the lien for such charge against any lot. Any such foreclosure action shall be brought in the same manner as an action to foreclose a real estate mortgage. If the Association retains an attorney to enforce any such delinquent charge, reasonable attorney's fees and any court costs incurred shall be added to and become a part of such charge.

4.5 Maintenance of Open Space. If the Association shall fail to maintain any lands or outlots in the City of Muskego conveyed to and accepted by it, or if the Association shall cease to have the legal duty to maintain any property to which it holds title, the owners of all lots in the Subdivision shall be responsible, on a proportionate basis as set forth for the general annual charge in Section 4.2 of this Article IV, for the maintenance of such property. If such owners shall thereafter fail to maintain such open space, the City is authorized to give them written notice requiring them within 30 days thereafter to provide the required care or to give evidence satisfactory to the City of their willingness to provide such care. Should said owners fail to do so, the City shall have the right to provide the required maintenance and to include in the tax bill for each platted lot in the Subdivision proportionate shares, allocated as provided in Section 4.2 of this Article IV, for the cost of such maintenance. For such purpose, the Subdivision shall be deemed to constitute a special assessment district.

## ARTICLE V

### The Association

5.1 Membership. Every person or entity who is a record owner of fee title to a lot in the Subdivision shall be a member of the Association, provided that no person or entity who holds an interest merely as security for the performance of an obligation shall be a member but in such case the owner of equitable title shall be the member.

5.2 Management. The Association shall be managed by a Board of such number of directors as may from time to time be designated in the bylaws of the Association, but not less than three. All directors shall be elected annually by the membership of the Association.

5.3 Levy of Annual Charge. The amount of each general annual charge or assessment levied pursuant to Section 4.1 hereof shall be approved by majority votes, determined in accordance with Section 5.4 hereof, of members present or represented at an annual or special meeting of members of the Association, both (1) as to all such members so present or represented, and (2) as to the members so present or represented who own single-family lots, voting as a class.

5.4 Voting Rights. Members of the Association shall have initially an aggregate of 85 membership votes, as follows:

(a) each owner of the 27 single-family lots shall have one (1) vote;

(b) each owner of the 34 two-family lots shall have one (1) vote; and

(c) initially the owner of Lot 7 in Block 1 shall have sixteen (16) votes, and the owner of Lot 9 in Block 2 shall have eight (8) votes.

After either multi-family lot has been fully developed by the construction of dwellings thereon, the owner thereof shall have a number of votes equal to one-quarter (¼) of the total number of units constructed.

No tenant or occupant of a unit, as such, shall be a member of the Association or entitled to vote at its meetings. Lots held in joint or co-ownership shall vote as a unit, as determined by all of the owners, but, in the absence of notice to the contrary, the Association may treat any owner as authorized to vote such membership. Fractional votes of owners of two-family and multi-family lots shall be counted.

## ARTICLE VI

### Miscellaneous

6.1 Term. This Declaration shall run with the land and shall be binding upon all persons claiming under the Developer for a period of ten years from the date this Declaration is recorded. After the expiration of such ten-year period, this Declaration shall be automatically renewed for successive periods of ten years, unless there is recorded an instrument executed by the owners of at least 60% of all lots subject hereto, which signers shall include the owners of 60% of the single-family lots, for the purpose of terminating this Declaration, in which case this Declaration shall terminate at the end of the initial or renewal term which next expires following the recording of such instrument of termination.

6.2 Amendment. This Declaration may be amended at any time and in any respect by the recording of an instrument executed as follows: (a) so long as the Developer continues to own any of the lots subject hereto, such instrument shall be executed by the Developer and the owners of at least 60% of the lots subject hereto which are not owned by Developer, which signers shall include the owners of 60% of the single-family lots, and (b) after the Developer no longer owns any of the lots subject hereto, such instrument shall be executed by the owners of at least 75% of the lots subject hereto, which signers shall include the owners of 75% of the single-family lots.

6.3 Enforcement. Initially the Association shall have the sole right to enforce the provisions hereof (except as to the rights of the City under Section 4.5 hereof), which it may do by proceedings at law or in equity, either to restrain or to recover damages for any violation or attempted violation of any provision of this Declaration, or for both such remedies. However, if any member of the Association in good standing shall file with the Association a written petition for the commencement by it of proceedings against any such violation or attempted violation and the Association shall fail to act within a period of thirty days thereafter or shall refuse in writing to act upon such petition, then such petitioner may within a period of six months after filing such petition commence an action or proceedings based upon any injury to his individual rights arising from the violation or threatened violation described in such petition.

6.4 Severability. Invalidation of any one or more of these covenants by judgment or court order shall in no wise affect any of the other provisions, which other provisions shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, the Developer has executed this instrument on the date first above written.

Witnesses as to Developer:

[signature] ........................................

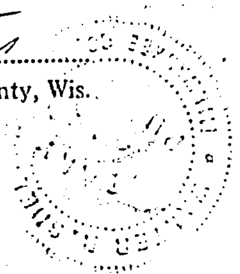
[signature] ........................................

[signature] ........................................
Jack L. LaBonte

STATE OF WISCONSIN )
) ss
MILWAUKEE COUNTY )

Personally came before me this 18 day of Aug., 1972, the above named Jack L. LaBonte, to me known to be the person who executed the foregoing instrument and who acknowledged that he executed the same as his own free act and deed.

Walter R. Shelton
Notary Public, Milwaukee County, Wis.
My Commission 2/13/74
WALTER R. SHELTON



REGISTER'S OFFICE } ss 826392
Waukesha Co. Wis. } No.
RECEIVED FOR RECORD THE 21st DAY
AUGUST, A. D., 1972 AT 1:06
O'CLOCK P.M. & RECORDED IN REEL 14
OF RECORDS IMAGE 153
Michael J. Hasslinger
REGISTER

This instrument was prepared by
Neal E. Madisen
Quarles, Herriott, Clemons, Teschner & Noelke
780 North Water Street
Milwaukee, Wisconsin 53202

RITE REALTY CORP.
7121 W. WISCONSIN AVE
MIL. 53208

PA
1580