

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR BIG MUSKEGO ESTATES
MUSKEGO, WISCONSIN**

THIS DECLARATION, is hereby made this ____ day of July, 2003 by Homes By Towne of Big Muskego Estates LLC, a Wisconsin limited liability corporation (hereinafter called the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article I of this Declaration, and desires to subject said real property to the covenants, conditions, easements and restrictions hereinafter set forth, all of which are binding upon the real property described and each owner thereof and every other party having any interest therein, and such covenants, conditions, easements and restrictions shall inure to the benefit of and pass with said real property.

This instrument was drafted by and should be returned to:

Sandra J. DeLisle, Esq.
Young & Madigan, S.C.
710 N. Plankinton Ave., Ste. 1200
Milwaukee, WI 53203

PIN # Part of MSKC 2211-999

NOW THEREFORE, Declarant hereby declares that the real property described in and referred to in Article I hereof is held, transferred, sold, conveyed, used and occupied subject to this Declaration.

**ARTICLE I
PROPERTY SUBJECT TO AND BENEFITING FROM THIS DECLARATION**

The real property described on Exhibit A attached hereto and incorporated herein (hereinafter referred to as "Big Muskego Estates") shall be held, transferred, sold, conveyed, used and occupied subject to this Declaration.

**ARTICLE II
GENERAL PURPOSE OF THIS DECLARATION**

The Declarant desires to develop Big Muskego Estates as a single-family residential subdivision. As provided herein, the Declarant desires and intends to establish a general plan to ensure adequate and

reasonable development of Big Muskego Estates for the use and enjoyment of property owners; to encourage the construction of attractive improvements in appropriate locations; to secure and maintain proper setbacks from streets and adequate free spaces between structures; to manage, repair and replace the entry treatments and storm water ponds; and in general to provide adequately for a type and quality of improvements in Big Muskego Estates which will mutually benefit all present and future Lot Owners in Big Muskego Estates.

ARTICLE III GENERAL RESTRICTIONS

Section 1. LAND USE AND BUILDING TYPE. Big Muskego Estates is a development of single-family residential lots (hereinafter referred to collectively as “Lots” or singularly as “Lot”; with the titleholder, whether one or more, of the Lot, referred to herein as “Lot Owner”). Each Lot shall be restricted to allow the erection of only one single-family residence and an attached garage which shall be of sufficient size to accommodate a minimum of two cars (hereinafter referred to as “Residence”). Such Residence shall be limited to one-story, story and one-half, two story, tri-level or split level Residences. All Residences shall be erected in such a manner and location as approved by the Architectural Review Committee restrictions imposed by this Declaration and the zoning ordinances and building codes of the City of Muskego, Wisconsin.

Section 2. DWELLING SIZE. The following minimum sizes for a Residence in Big Muskego Estates shall be based solely on living area within the Residence. For the purpose of computing the square footage of living area within a Residence, the basement level or garage area of a Residence shall not be included in the square footage. All Residences in Big Muskego Estates shall have the following minimum living areas:

- a. A single story Residence shall have a minimum of 1900 square feet of living area.
- b. A story and one-half Residence shall have a minimum of 2200 square feet of living area, with a minimum of 1200 square feet of living area on the first floor of the Residence.
- c. A two story Residence shall have a minimum of 2300 square feet of living area on the first and second floors combined.
- d. A split level Residence shall have a minimum of 2300 square feet of living area on the first and second floors combined.

Section 3. RESIDENCE QUALITY. The exterior design of each Residence, attached garage and detached structures shall conform to the following guidelines. Deviation from or alternatives to these guidelines must be approved in writing by the Architectural Review Committee.

- a. All roof pitches shall have a minimum slope of six feet in height for each twelve feet in length.
- b. All exposed roofing materials to be either wood shakes, wood shingles, or dimensional "shake-like" fiberglass shingles.
- c. Siding materials shall consist of brick veneer, stone, wood or other natural materials. Vinyl, aluminum or cement composite siding and simulated stone are acceptable provided they are of high quality, provide "natural" texturing and coloration, and are approved by the Architectural Review Committee. If vinyl or aluminum siding is accepted, natural materials or cement fiber board must be used at all exterior corners, fascia and trim.
- d. Windows, doors, patio doors and garage doors, of wood, vinyl or masonite or clad with vinyl or aluminum are acceptable.
- e. All exterior colors must be noted on the plans with their corresponding manufacturer's identification number color and approved by the Architectural Review Committee.

Any Residence and attached garage to be constructed on a Lot shall be completed within one (1) year from the date of the start of excavation. Owners are responsible for any damage to the streets, curbs, gutters and/or street trees caused by Owner's contractor and for ensuring that the contractor consistently maintains the Lot and street areas free of waste and debris during construction.

Section 4. RESIDENCE LOCATION/SETBACKS.

- a. The minimum setback for a Residence from any abutting street right-of-way shall be forty (40) feet.
- b. The minimum side setback for a Residence shall be fifteen (15) feet from one (1) side of the Lot line and twenty (20) feet from all other sides.
- c. The minimum rear setback for a Residence shall be twenty (20) feet from the rear lot line.

Section 5. ARCHITECTURAL REVIEW. In order to maintain the integrity and aesthetics of Big Muskego Estates, all building plans for any Residence or other permitted improvement including, but not limited to, the exterior design and color of each building to be constructed, and all yard grades

and stakeout surveys showing erosion control measures shall be submitted to the Architectural Review Committee and the Architectural Review Committee shall have approved the same in writing prior to Lot Owner (or its agents or contractors) submitting an application for a building permit. In addition, landscape plans and basic site features such as fences, decks, in-ground swimming pools, additions and other temporary or permanent structures or elements contributing significantly to the total environmental and aesthetic effect of Big Muskego Estates are subject to the prior written approval of the Architectural Review Committee. The Architectural Review Committee's approval of building design, square footage, building location, and any other restriction influencing the integrity and aesthetics of Big Muskego Estates shall be based upon the building and use restrictions contained in this Declaration and such guidelines as may be adopted from time-to-time by the Declarant at Declarant's reasonable discretion. The Architectural Review Committee shall have the right to withhold exterior design, material and minimum square footage approval if the design is too similar in appearance or does not aesthetically conform with the other buildings in close proximity, it being the intent of the Architectural Review Committee to maintain diversity in appearance and design in Big Muskego Estates.

Prior to application for a building permit, each Lot Owner shall submit the following documents to the Big Muskego Estates Architectural Review Committee c/o Homes By Towne of Wisconsin LLC, 1033 N. Mayfair Road, Suite 305, Wauwatosa, WI 53226, Attention: Todd Becker:

- a. Three (3) sets of drawings of the proposed Residence showing, at a minimum: floor plans, elevations of all sides of the Residence, exterior finishes, exterior colors (with color samples), roofing type (with color samples), landscaping, driveway location and size, exact location of the Residence on the Lot and any accessory buildings or amenities;
- b. Three (3) sets of the proposed grading and landscaping plans for the Lot;
- c. A plat of survey showing the location of the home, driveways, accessory buildings and any other improvements to be made on the Lot to scale with dimensions and setback distances shown;
- d. Three (3) sets of architectural specifications for the above; and
- e. The address for mailing the written determination of the Architectural Review Committee.

All submissions shall contain sufficient detail as may be required by the Architectural Review Committee. The Architectural Review Committee shall review the plans submitted within thirty (30) days and render its written approval or rejection.

SECTION 6. GARAGES. All garages shall be attached to the Residence and all garages shall be constructed at the same time the Residence is constructed. Although garage entrances may be oriented toward the front of the Residence, Owners are encouraged to construct garage entrances oriented to the side of the Residence.

SECTION 7. DRIVEWAYS. All driveways shall have a base of compacted gravel, crushed stone, or other approved base material and shall be surfaced with either asphalt, concrete or brick within one (1) year of the date of issuance of the Certificate of Occupancy for the Residence. No driveway or permanent vehicular access for any of the platted Lots of Big Muskego Estates will be granted from Durham Drive.

SECTION 8. LANDSCAPING/FENCING. All Lots shall be graded immediately upon completion of construction of a Residence and the grade shall thereafter be maintained to comply with the comprehensive grading plan for Big Muskego Estates as approved by the City of Muskego. Strict compliance with such grading plan shall be enforced so as to prevent the discharge or redirection of storm water onto any adjacent Lots.

Any excess soil resulting from excavations, grading or landscaping shall not be disposed of within Big Muskego Estates but must be transported off site at the Lot Owner's expense. Failure to comply with this provision shall render the violating Lot Owner liable for damages equal to the actual cost of removing, hauling and disposing of such excess soil plus a twenty percent (20%) supervisory fee.

Lots must be landscaped and seeded or sodded within one (1) year after issuance of the Certificate of Occupancy for the Residence. Landscaping shall include the area between the front Lot line and the edge of the street pavement.

Street trees are required by the City of Muskego and specific tree species, sizes and locations have been approved by the City of Muskego. It is the responsibility of Homes By Towne of Big Muskego Estates LLC to plant the required initial street trees in accordance with the City of Muskego approved plans at the Declarant's expense. Within one (1) year after issuance of the Certificate of Occupancy permit, the Lot Owner shall plant on its respective Lot at least two (2) additional trees, with a minimum trunk diameter of 1.5 inches at a point six (6) feet above the root system.

Plans showing exact locations and construction details of walls, hedges or mass screening plantings shall be submitted to and approved by the Architectural Review Committee prior to

construction and/or planting. The only permitted fencing shall be security fencing around pools and four (4) foot black aluminum, wrought iron or similar type fencing approved by the Architecture Review Committee.

SECTION 9. LIGHTING AND MAILBOX. At the time of construction of a Residence, the Lot Owner shall install at the Lot Owner's expense, one (1) outdoor electric lamppost and mailbox (the design and quality of which shall be specified by the Declarant), at a location on the Lot deemed appropriate in the Architectural Review Committee's discretion. The lamppost and mailbox shall be maintained by the Lot Owner at its cost, in proper operating condition. If the Lot Owner fails to maintain the lamppost and mailbox in proper operating condition, following fifteen (15) days prior written notice to the Lot Owner maintenance of the lamppost and mailbox may be performed by the Declarant or Association and the cost of such maintenance shall be a Special Assessment against the Lot, payable according to the terms and conditions contained in Article V, Section 7 hereof.

SECTION 10. EASEMENTS. Declarant reserves all easements for installation and maintenance of utilities and drainage facilities as shown on the recorded plat for Big Muskego Estates or created by recorded easement agreements. No permanent structure shall be placed within the easement areas which may damage or interfere with the installation and maintenance of the utilities. The easement area of each Lot shall be maintained continuously by the Lot Owner.

Declarant and/or Association or its authorized agents or subcontractors are granted a perpetual right to construct, maintain, and replace within the Big Muskego Estates the entry treatments at their respective locations, and is granted reasonable access for the purpose of maintenance of the same.

SECTION 11. ACCESSORY BUILDING. Each Lot shall be permitted to erect one (1) accessory building or structure, provided that the design and construction materials are compatible and equal to the design and materials used for the primary Residence.

No accessory building or structure shall exceed one hundred twenty (120) square feet in floor area. Accessory building or structure location and height must conform to City of Muskego codes and require prior written approval by the Architectural Review Committee and the City of Muskego.

All accessory structures are subject to the approval of the Architectural Review Committee prior to construction.

SECTION 12. GENERAL PROHIBITIONS. The following constitute general restrictions on

Lots in Big Muskego Estates:

- a. **Vehicle Storage.** There shall be no outside storage of cars, motorcycles, snowmobiles, jet skis, boats, trailers, buses, trucks or campers, or any other vehicles or items deemed to be unsightly by the Declarant. The outside storage or parking of commercial or recreational vehicles is expressly prohibited.
- b. **Satellite Dishes.** There shall be no satellite dish antennas having a diameter in excess of twenty-four (24) inches. No antenna or permitted satellite shall be visible from any roadway.
- c. **Storage.** No Lot shall be used in whole or in part for the storage of rubbish or building materials (other than during the construction of a Residence or other permitted improvement) of any character whatsoever, nor shall any Lot be used for the storage of any property, item or material that shall cause such Lot to appear in an unclean or untidy condition or that will be obnoxious or offensive in the opinion of the Declarant.
- d. **Nuisances.** No obnoxious or offensive activity shall be carried out upon any Lot nor shall anything be done thereon which may be or may become a nuisance to the neighborhood.
- e. **Pets.** No exterior detached dog kennel or pet house detached from the main structure shall be constructed or maintained on any Lot unless fully screened from neighboring Lots. No Lot Owner shall keep any pet or pets which create a nuisance. The maximum number of household pets shall be in accordance with the City of Muskego ordinances covering such pets. Farm animals, poultry, horses, etc., and animals kept for commercial purposes shall be prohibited under any circumstances.
- f. **Refuse.** Trash, garbage, refuse, debris or other waste kept on any Lot in preparation for removal from such Lot shall be kept in sanitary covered containers, which are stored out of sight of the street. No burning of refuse shall be permitted.
- g. **Vision Corners.** No structure of any kind shall be permitted within a "vision corner" (as shown on the plat of Big Muskego Estates), which exceeds two (2) feet above the elevation of the intersection, except for necessary highway and traffic signs, public utility lines and open fences through which there is clear vision. No vegetation or other plant

material shall be permitted which obscures safe vision of the approaches to any intersection in Big Muskego Estates.

- h. **Pool.** Above-ground pools are strictly prohibited. In-ground pools with fence enclosures are allowed but prior written approval by the Architectural Review Committee and the City of Muskego is required.

SECTION 13. LOT-SPECIFIC PROHIBITIONS. The following constitute specific restrictions on individual Lots in Big Muskego Estates, and nothing contained in this Section 13 shall in any manner invalidate the effect of the general restrictions contained in this Declaration.

- a. **Lots requiring Specific Residence Design.** Lots 7, 8, 9, 10, 11, 21, 23, 24, 31, 32, 33, 39 and 40 require a partially exposed rear or side yard residence design.

Lots 49, 50, 51, 52, 53 and 54 may require a specific building orientation due to proximity to wetland and open space areas.

- b. **Wetlands and Open Space.** The portions of Lots 49, 50, 51, 52, 53 and 54, which are indicated as wetland areas, on the final plat of Big Muskego Estates and recorded at the Waukesha County Register of Deeds office, shall be preserved as wetlands and open space areas, with development of such affected Lots strictly limited to those areas outside the wetland boundaries. Unless otherwise approved by the City of Muskego and other jurisdictional governmental agencies including the Wisconsin Department of Natural Resources, all of the area included in the wetland areas shall remain and be retained in its natural, undisturbed state and shall be subject to the City of Muskego Municipal Code and the following restrictions:

1. Grading and filling shall be prohibited unless specifically authorized by the City of Muskego, and if applicable, the Wisconsin Department of Natural Resources and the U.S. Army Corps of Engineers.
2. The removal of topsoil or other earthen materials shall be prohibited.
3. The removal or destruction of any vegetative cover, ie., trees, shrubs, grasses, etc., shall be prohibited with the exception of the removal of exotic or invasive species, or dead, diseased or dying vegetation at the discretion of landowner, forester or naturalist, and with the approval of the Waukesha County Department of Parks and Land use.
4. The introduction of plant material not indigenous to the existing environment of the Preservation Area shall be prohibited.

5. Construction of buildings is prohibited.
6. All buildings must be outside of the preservation areas shown on the approved Grading and Erosion Control plans prepared by R.A. Smith and dated June 19, 2003.

In an effort to protect the natural resources and beauty of the area, disturbance of these areas is discouraged and is only permitted subject to approval by the City of Muskego and in compliance with the City of Muskego zoning ordinances, the Wisconsin Department of Natural Resources and other jurisdictional government agencies.

c. **Future Roads.** Certain roads in Big Muskego Estates terminate at the current boundaries of the subdivision. Owners are hereby put on notice that said roads may be connected with or extended to other roads in lands owned by others if such extension or connection is approved by the City of Muskego, Waukesha County or other public entities having jurisdiction.

SECTION 14. CONSTRUCTION DEPOSIT. At the time of closing on a Lot, a construction deposit in the amount of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) ("Construction Deposit") shall be collected from the Owner and held in an escrow account by Declarant. This Construction Deposit is required to assure compliance with the terms and conditions of this Article III which deal with contractor cleanup, damage to street, curbs, or gutters, installation of the required mailbox, lamp post and security that the owner and its contractors will take adequate measures to protect the street trees during the construction and landscape process. In the event the Owner is unable to obtain compliance of its contractors, fails to install the requisite mailbox and/or lamppost, or damage occurs to the street trees, rendering cleanup, installation, repair or replacement necessary by the Declarant, such costs will be deducted from the Construction Deposit. In the event that no deductions are made or there is a balance remaining after any deduction, the balance of the Construction Deposit shall be returned to the Owner upon completion and first occupancy of the residence, within thirty (30) days of Owner's written request.

ARTICLE IV ARCHITECTURAL REVIEW COMMITTEE

SECTION 1. CREATION. The Architectural Review Committee shall initially consist of three persons: Todd Becker, Dennis Stapleton and Jim Doering.

In the event of the death or resignation of any member of the Architectural Review Committee, Declarant shall have the right to designate a successor so long as Declarant shall own real estate within Big Muskego Estates. It is the express intent of Declarant that it shall appoint all of the members of the Architectural Review Committee until its ownership of real estate in Big Muskego Estates is fully relinquished. After Declarants' ownership has been relinquished, all members of the Architectural Review Committee shall immediately resign and an election shall be had by the Association to nominate and elect three new members of the Architectural Review Committee. Each Lot in Big Muskego Estates shall have one vote, regardless of the number of Lot Owners. A simple majority of votes cast shall elect each member of the Architectural Review Committee. Declarant shall have the further right to increase the membership of and to fix rules of procedure for the Architectural Review Committee.

SECTION 2. PROCEDURE. Each Lot Owner shall file all plans, specifications, and other materials for the approval of the improvements of any Lot with the office of the Declarant, for referral to the Architectural Review Committee.

A response in writing setting forth the decision of the Architectural Review Committee and reasons thereof shall thereafter be transmitted to the applicant by the Architectural Review Committee within thirty (30) days after the date of filing the plans, specifications, and other materials by the Lot Owner. Builders and/or Lot Owners are encouraged to submit preliminary sketches for informal comment prior to the submittal of architectural drawings and specifications for approval.

In the event the Architectural Review Committee fails to approve or disapprove in writing the proposed improvements within sixty (60) days after submission of the final plans, specifications and other material, as required in this Declaration, approval shall be deemed granted.

**ARTICLE V.
BIG MUSKEGO ESTATES HOMEOWNERS ASSOCIATION**

SECTION 1. CREATION AND PURPOSES. The Big Muskego Estates Homeowners Association (hereinafter referred to as the "Association") is hereby created and shall be an incorporated association of the Lot Owners in Big Muskego Estates for the purpose of:

1. Maintaining and promoting the desired character of Big Muskego Estates.
2. Managing, maintaining and controlling common areas for the purpose of preserving wetlands, open space and trees and for the managing, maintaining and controlling of

storm water detention areas pursuant to Big Muskego Estates Storm Water Management Plan dated July 23, 2003 and Big Muskego Estates Retention Pond Maintenance Agreement dated July 23, 2003.

3. Managing, maintaining and controlling the entry treatment on Durham Drive or future entry treatments placed at any other future entry locations of Big Muskego Estates.

SECTION 2. INITIAL COMMITTEE/TERM. The Association shall be governed by a three member committee, hereinafter referred to as the "Committee", which shall be solely responsible for the activities of the Association.

The initial members of the committee have been appointed by the Declarant and shall be Todd Becker, Jim Doering and Bill Wigchers.

Within three months of the date fifty-one (51) lots (95%) in Big Muskego Estates have been sold, the three remaining members of the Committee appointed by Declarant shall be replaced with Lot Owners elected by the Association.

Declarant may relinquish or reassert all or any part of the rights provided to the Committee or the Association at any time prior to the time Declarant owns less than 95% of the Lots in Big Muskego Estates.

After the initial term as provided in Article V, Section 2 above, the term of office of each Committee member shall be two (2) years from the date of election. If any Committee member shall die, resign, be unable to act or cease to be qualified, the unexpired term of such Committee member shall be filled by special election of the Association.

SECTION 3. MEMBERSHIP AND VOTING. Declarant and every Lot Owner in Big Muskego Estates shall be a member of the Association. Each such member shall be entitled to one vote for each Lot owned, whether the Lot is owned singularly or jointly.

SECTION 4. MEETINGS. All Committee meetings shall be open to all Lot Owners, and shall be held upon not less than three (3) days prior written notice to all of the Lot Owners. The presence of two (2) Committee members shall constitute a quorum. Actions of the Committee shall be taken by majority vote. The Committee shall call a meeting for all the Lot Owners of the Association no less than once per calendar year.

SECTION 5. COMMITTEE DUTIES. The Committee shall have the following duties:

- a. To provide for the maintenance of the entry treatments;
- b. To establish dates and procedures for the election of Committee members;
- c. To promulgate operational procedures for the conduct of Association and Committee business;
- d. To enforce the terms, conditions and restrictions contained in this Declaration; and
- e. To establish and maintain an Architectural Review Committee subsequent to the initial Architectural Review Committee established and controlled by the Declarant. Such Architectural Review Committee shall consist of three (3) persons appointed by the Committee. No Lot Owner of a vacant Lot (except for the Declarant) shall have the right to serve on the Architectural Review Committee. Upon the delegation of the Declarant's authority under this Declaration, the Architectural Review Committee shall have all the rights and obligations of the Declarant.

SECTION 6. COMMITTEE POWERS. The Committee shall have the following powers:

- a. To take such action as may be necessary to cause the entry treatments and Common Areas to be maintained, repaired, landscaped (where appropriate) and kept in good, clean and attractive condition;
- b. To enter into contracts and to employ agents, attorneys or others for purposes of discharging its duties and responsibilities hereunder;
- c. To levy and collect assessments in accordance with the provisions of Article V, Section 7, below and;
- d. To take any other action which is incidental to or necessary for the Committee to perform its duties and discharge its obligations under this Declaration.

SECTION 7. ASSESSMENTS. The Committee shall levy and collect assessments in accordance with the following:

- a. Each Lot shall be subject to a general annual charge or assessment ("General Assessment") equal to the pro rata share of the costs incurred or anticipated to be incurred by the Association in performing its duties and discharging its obligations hereunder. The pro rata share of a Lot shall be a fraction, the numerator of which shall be one and the denominator of which shall be 54. Said costs shall include, but not be limited to: taxes, insurance, repairs, plantings, replacements and additions to the

improvements made to the Common Areas; equipment, materials, labor, management and supervision thereof; and all costs for the Association reasonably incurred in conducting its business and enforcing the terms, conditions and restrictions contained in this Declaration. The Committee shall also have the power to levy a special assessment ("Special Assessment") against any individual Lot Owner for the failure of such Lot Owner to: maintain its Lot in accordance with the reasonable standard of Big Muskego Estates; maintain the lamppost and mailbox required under Article III, Section 9 herein; and/or, to comply with the terms, conditions and restrictions contained in this Declaration. General Assessments and Special Assessments are sometimes collectively referred to as "Assessments."

- b. Assessments shall be approved at a duly convened meeting of the Committee.
- c. Written notice of an Assessment shall be personally delivered to each Lot Owner or delivered by regular mail addressed to the last known address of such Lot Owner.
- d. Assessments shall be due and payable on or before 30 days after the mailing or personal delivery of the notice.
- e. Assessments not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid, and such unpaid Assessments and the interest thereon shall constitute a continuing lien on the real estate against which it was assessed until the Assessments have been paid in full. The Assessments and interest thereon shall also be the personal obligation of any current or subsequent Lot Owner against which the Assessment was made.
- f. The Committee may record a document with the Register of Deeds in Waukesha County, Wisconsin, giving notice of a lien for any such unpaid Assessment and upon payment or satisfaction of the amount due record a document canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. All recording and attorney's fees relating to any such document or the collection of an Assessment shall be borne by the respective Lot Owner.
- g. Upon application by a Lot Owner, any Committee member may, without calling a Committee meeting, provide to such Lot Owner a statement in recordable form certifying (1) that the signer is duly elected or appointed Committee member, and (2) as to the existence of any unpaid assessments or other amounts due the Association. Such statement shall be binding upon the Association and shall be conclusive evidence to any party relying thereon of the payment of any and all outstanding Assessments or other amounts due to the Association.
- h. Any lien for Assessments may be foreclosed by a suit brought by the Committee, acting on behalf of the Association, in a like manner as the foreclosure of a mortgage on real

property. The delinquent Lot Owner shall be responsible for all of the Association's costs in collecting the Assessments, including, but not limited to, attorney's fees.

SECTION 8. LIMITATIONS. During the initial term of the Committee, the Committee shall not have the power to make improvements to the Common Area in addition to those in existence ("Additional Improvements") without the written approval of Declarant. After the initial term, the Committee shall not have the power to make Additional Improvements costing in excess of Five Thousand Dollars (\$5,000.00) without the consent of ninety percent (90%) of the then-current Lot Owners.

SECTION 9. COMMITTEE LIABILITY. Members of the Committee shall not be liable for any action taken by them in the good faith discharge of their duties, even if such action involves a mistake of judgment or negligence. The Association shall indemnify and hold the members of the Committee harmless from and against any and all costs or expenses, including reasonable attorney's fees, in connection with any suit or other action relating to the performance of their duties hereunder.

SECTION 10. NO WAIVER. Failure of the Association or the Committee to enforce any term, covenant, condition or restriction contained in this Declaration, shall not be deemed to be a waiver of the right to do so or an acquiescence to that violation or any subsequent violation.

ARTICLE VI GENERAL PROVISIONS

SECTION 1. DURATION OF DECLARATION. This Declaration and any amendments shall be in force for a term of twenty (20) years from the date the Declaration is recorded. Upon the expiration date of such initial twenty (20) year term or any extended term as provided herein, this Declaration shall be automatically extended for a successive term of ten (10) years, unless prior to the end of the then current term a Notice of Termination is executed by the Lot Owners and mortgagees of at least sixty percent (60%) of all Lots, is consented to by the City of Muskego and is thereafter recorded in the Office of the Register of Deeds of Waukesha County.

SECTION 2. BINDING EFFECT AND ENFORCEMENT. This Declaration shall run with the land and bind Declarant, its successors, agents or assigns, Association, and any and all Lot Owners.

The Declarant, Association, any Lot Owner(s) or the City of Muskego shall have the right to enforce all of the terms, conditions and restrictions contained herein. Any Lot Owner violating the terms, conditions or restrictions contained in this Declaration shall be personally liable for and shall

reimburse all costs and expenses, including attorneys fees, incurred by the Declarant, Association, any other Lot Owner(s) or the City of Muskego in enforcing the terms, conditions and restrictions contained in this Declaration. Any Lot Owner who causes or allows any improvement or improvements to be constructed, installed, placed or altered on its Lot without first obtaining the prior written approval of the Architectural Review Committee shall, at the Architectural Review Committee's discretion, be required to remove such improvement or improvements in their entirety at the Lot Owner's expense. The foregoing shall be in addition to any other rights or remedies which may be available to the Declarant or Association.

SECTION 3. AMENDMENT. Any of the provisions of this Declaration may be annulled, waived, changed, modified or amended at any time by written document setting forth such annulment, waiver, change, modification or amendment, executed by Lot Owners having at least Sixty percent (60%) of the votes in the Association; provided, however, that any such action must also be approved in writing by the Declarant so long as it shall be a Lot Owner. This Declaration and all amendments shall be executed as required by law so as to entitle it to be recorded, and shall be effective upon recording in the office of the Register of Deeds for Waukesha County, Wisconsin.

SECTION 4. EFFECT ON MORTGAGES OR DEEDS OF TRUST. All covenants, liens and other provisions set forth in this Declaration shall be subject to and subordinate to all mortgages, land contracts or deeds of trust in the nature of a mortgage, encumbering any of the Lots in Big Muskego Estates. The Terms of this Declaration shall not supersede or in any way reduce the security or affect the validity of any such mortgage, land contract or deed of trust in the nature of a mortgage.

SECTION 5. DECLARANT'S ASSIGNMENT OF RIGHTS AND DUTIES TO ASSOCIATION. In its sole discretion, Declarant reserves the right to assign any or all of the rights, privileges, easements, powers, and duties herein to the Association. Such assignment shall be in writing and shall relieve and discharge Declarant from every duty assigned to the Association.

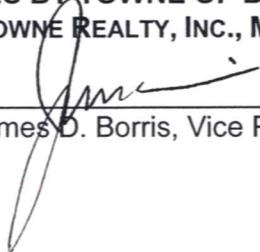
SECTION 6. ADDRESS NOTIFICATION. Each Lot Owner shall file their correct mailing address with the Declarant and/or the Association and shall notify the Declarant and/or Association promptly in writing of any subsequent change of address. A written or printed notice, deposited in an United States Post Office, postage prepaid, and addressed to any Lot Owner at the last address filed shall be sufficient and proper notice to the Lot Owner whenever notices are required.

Unless otherwise specified herein, all communications to Declarant shall be in writing and shall be forwarded to Homes By Towne of Big Muskego Estates LLC to the attention of William A. Wigchers at 710 North Plankinton Avenue, Suite 1100, Milwaukee, Wisconsin 53203.

SECTION 7. CONFLICTS. In the event any covenant or provision of this Declaration is in conflict with any law, regulation or ordinance of the City of Muskego or any other governmental authority, such law, regulation or ordinance shall control and supersede said covenant or provision of this Declaration. All remaining covenants and provisions of this Declaration shall remain valid and in effect.

In Witness whereof, the undersigned has executed this Declaration this ____ day of July, 2003.

HOMES BY TOWNE OF BIG MUSKEGO ESTATES LLC
By: **TOWNE REALTY, INC., MANAGER**

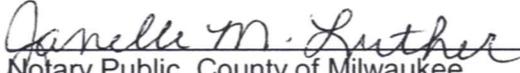


By: James D. Borris, Vice President

State of Wisconsin

County of Waukesha

Personally came before me this 21st day of July, 2003, the above named James D. Borris, Vice President of Towne Realty, Inc., to me known to be the person who executed the foregoing instrument and acknowledged the same in such capacity.



Notary Public, County of Milwaukee
State of Wisconsin
My Commission: expires 2/13/04

This instrument was drafted by and should be returned to:
Sandra J. DeLisle
Young & Madigan,, S.C.
710 N. Plankinton Avenue
Milwaukee, WI 53203

sjd1452 Declarations Big Muskego Estates 071403.doc

EXHIBIT A

LEGAL DESCRIPTION FOR MUSKEGO ESTATES FOR PROTECTIVE COVENANTS

LOTS 1 THRU 54, OUTLOT 2 AND THE DETENTION EASEMENT FOR STORM WATER MANAGEMENT PURPOSES AFFECTING OUTLOT 3, ALL OF BIG MUSKEGO ESTATES, BEING PART OF GOVERNMENT LOTS 2 AND 3 IN THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 13 AND PART OF THE NORTHWEST 1/4 AND SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 13, ALL IN TOWN 5 NORTH, RANGE 20 EAST, CITY OF MUSKEGO, WAUKESHA COUNTY, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHEAST 1/4 SECTION; THENCE SOUTH 87°18'00" WEST ALONG THE NORTH LINE SAID SOUTHEAST 1/4 SECTION 1834.35 FEET TO THE POINT OF BEGINNING OF THE LANDS TO BE DESCRIBED; THENCE SOUTH 01°11'16" EAST 1576.61 FEET TO A POINT ON THE NORTH LINE OF OUTLOT 1 OF BIG MUSKEGO ESTATES; THENCE SOUTH 75°26'36" WEST ALONG SAID NORTH LINE 340.26 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF DURHAM DRIVE; THENCE SOUTH 36°58'26" EAST 164.09 FEET TO A POINT; THENCE SOUTH 89°01'34" WEST 61.80 FEET TO A POINT; THENCE NORTH 38°45'12" WEST 444.48 FEET TO A POINT; THENCE NORTH 36°03'13" EAST 14.43 FEET TO A POINT ON THE CENTERLINE OF DURHAM DRIVE; THENCE NORTH 36°58'26" WEST ALONG SAID CENTERLINE 2.14 FEET TO A POINT; THENCE NORTH 40°36'26" WEST ALONG SAID CENTERLINE 425.47 FEET TO A POINT; THENCE SOUTH 49°23'34" WEST 50.00 FEET TO A POINT ON THE SOUTHWEST LINE OF DURHAM DRIVE; THENCE NORTH 43°26'35" WEST ALONG SAID SOUTHWEST LINE 366.64 FEET TO A POINT; THENCE SOUTH 46°33'25" WEST 415.00 FEET TO A POINT; THENCE NORTH 73°59'34" WEST 285.27 FEET TO A POINT; THENCE NORTH 43°26'35" WEST 160.00 FEET TO A POINT; THENCE NORTH 02°24'10" WEST 366.50 FEET TO A POINT; THENCE NORTH 46°56'00" EAST 320.00 FEET TO A POINT ON THE AFORESAID SOUTHWEST LINE OF DURHAM DRIVE; THENCE NORTH 43°04'00" WEST ALONG SAID SOUTHWEST LINE 330.21 FEET TO A POINT; THENCE NORTH 87°27'18" EAST 65.78 FEET TO A POINT; THENCE SOUTH 43°04'00" EAST ALONG THE CENTERLINE OF DURHAM DRIVE 59.28 FEET TO A POINT; THENCE NORTH 46°56'00" EAST 83.68 FEET TO A POINT; THENCE NORTH 02°32'42" WEST 50.69 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 13; THENCE NORTH 87°27'18" EAST ALONG SAID NORTH LINE 799.39 FEET TO A POINT; THENCE NORTH 87°18'00" EAST ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 13 A DISTANCE OF 827.64 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,136,444 SQUARE FEET OR 49.046 ACRES.

PREPARED BY: JOHN P. CASUCCI, RLS
DATE: JULY 15, 2003
SURVEY NO.: 160237