

200200009899  
Filed for Record in  
CLARE COUNTY MICHIGAN  
CAROL MCAULAY  
09-30-2002 At 02:14 pm.  
RESTRICTION 39.00  
OR Liber 811 Page 886 - 901

200200009899  
WHITE BIRCH LAKES REC ASSOC  
4730 LAKE DR  
FARWELL, MI 48622

Instrument Liber Page  
200200009899 OR 811 886

*Amended*  
*Declaration of Restrictions*  
*White Birch Lakes*  
*Recreational Association*



# AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS EASEMENTS AND RESTRICTIONS

## WHITE BIRCH LAKES RECREATION ASSOCIATION

### TABLE OF CONTENTS

I.	The Association	2
II.	Residential Character of the Development	4
III.	Restrictions Concerning Size and Placement of Dwelling Houses And Other Structures and Maintenance Thereof	5
IV.	Provisions Respecting Disposal of Sanitary Waste, Etc.	7
V.	General Prohibitions	7
	H. Camping Restrictions	8
VI.	The Environmental Protection Committee	9
VII.	Easements	11
VIII.	Ownership, Use and Enjoyment of Streets, Parks and Recreational Facilities, No Dedication of Streets, Etc.	12
IX.	Speed Limits	13
X.	Provisions with Respect to Lakes and Lots Contiguous Thereto	13
XI.	Rights of First Refusal	13
XII.	Remedies	14
XIII.	Effect of Owner's Acceptance of Deed, Etc.	14
XIV.	Titles, Etc	15
XV.	Duration	15
XVI.	Severability	15

## AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

### WHITE BIRCH LAKES RECREATIONAL ASSOCIATION

THIS DECLARATION is made this 8th day of June 2002, pursuant to the authority contained in Paragraph (16) of the original Restriction and Covenants of White Birch Lakes Subdivision of Clare, numbers 1, 2, 3, 4, 5, 6, and 7; located in section 26, T18N, R5W, Lincoln Township, Clare County Michigan as recorded in the Clare County Plats Liber 11 pages 17 to 23 (no.1), Liber 11 pages 32 to 38 (no. 2), Liber 12 pages 11 to 17(no. 3), Liber 12 pages 27 to 33 (no. 4), Liber 13 pages 18 to 23 (no. 5), Liber 14 pages 12 to 21 (no. 6), and Liber 16 pages 50 to 52.

This document amends the original Covenants, Conditions, Easements and Restrictions Recorded in Liber 285 pages 268 to 325 (no. 1) Liber 288 pages 458 to 484 (no. 2), Liber 291 pages 276 to 303 (no. 3) Liber 297 pages 347 to 374 (no. 4), Liber 300 pages 284 to 311 (no. 5), Liber 435 pages 348 to 374 (no. 6), and Liber 460 pages 172 to 200 and Liber 501 pages 571 to 572 (no. 7), and Liber 542 page 18(no. 1&2). However, this document does not amend other original Restrictions regarding improvements on certain lots, which run with the land forever.

#### WITNESSETH:

NOW THEREFORE. The Association hereby declares that the real property located in the Development shall be held, conveyed, encumbered, leased, rented, used, occupied and improved, subject to the following restrictions, all of which are declared and agreed to be in furtherance of a common plan for improvement for the Development, established by the initial Developer (and now the Association) for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each lot and parcel situated therein. All of these restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof. (Such persons being sometimes hereinafter referred to as "Owners".) The Association specifically reserves unto itself the right and privilege to designate any lot or tract of land within the Development as being common property in character and, where necessary, to apply for commercial classification or zoning.

By acceptance of a deed or equitable title, each Owner agrees to abide by these Covenants and Restrictions.

#### I. The White Birch Lakes Recreational Association

##### A. In General

1. There has been created, under the laws of the State of Michigan, a not-for-profit corporation known as the "White Birch Lakes Recreational Association", which is referred to herein as "The Association". Every person who acquires title (legal or equitable) to any residential lot in the Development shall be a member of the Association, except that only one (1) of any number of co-owners of a lot shall be entitled to a vote. The foregoing provision requiring that owners of residential lots within the Development be members of the Association is not intended to apply to those persons who hold an interest in such real estate merely as security for the performance of an obligation to pay money, e.g., mortgagees and land contract vendors. However, if such person should realize upon his security and become the real owner

of a residential lot within the Development he will then be subject to all the requirements and limitations imposed in these restrictions on owners of residential lots within the Development and on members of the Association, including those provisions, with respect to alienation and the payment of an annual charge.

2. In addition to the foregoing, The Board of Directors of the Association establishes associate memberships in the Association for persons who may from time to time be tenants or regular occupants of dwellings within the Development and who are not otherwise entitled to the benefits of membership by virtue of being owners or co-owners of residential lots (as outlined in paragraph (1) above) within the Development. Such associate memberships, if any, shall cease automatically upon the termination of such tenancy or occupancy. Associate members shall have none of the rights of members to vote at meetings of the Association.

B. Purposes of the Association. The general purposes of the Association are:

1. To promote pleasure, social recreation and sports activities for its members, their families and guests and to develop and maintain a recreationally oriented environment in the Development;
2. To provide a means whereby the streets, and those areas within the Development designated as parks, lakes, recreational areas and other amenities on the plats thereof, and such other recreational facilities within the Development as may be conveyed to the Association or established by it, may be operated, maintained, repaired and replaced; and
3. To provide a means for the promulgation and enforcement of all regulations necessary to the governing of the use and enjoyment and public safety of such streets, parks, lakes and recreational facilities or other amenities and such other recreational facilities within the Development as may be conveyed to the Association and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each lot and parcel situated therein.

C. Power of Association to Levy and Collect Charges and Impose Liens.

1. The Association, by its Board of Directors, shall have the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law, as well as the power to levy a uniform annual charge against the individual lots of the Development. The Board of Directors of the Association, acting in accordance with the By-Laws of said Association, shall, after consideration of the financial requirements of the Association, so determine the annual lot charge.  
Each adult person having a legal or equitable ownership in a lot shall be a member of the association and shall be required to pay only one such annual charge for each lot owned, subject to contiguous lot status.  
No charge shall ever be levied against the Association itself, or any corporation that may be created to acquire title to and operate utilities serving the Development.  
The rights of the members of the Association as such members shall be set forth in the By-Laws of the Association.
2. Every such charge so made shall be paid by the member of the Association on or before the first day of March of each year, or as determined by the Association, for the current year. The Board of Directors of the Association shall fix the amount of the annual charge per lot by the first day of February of each year, and written notice of the charge so fixed shall be sent to

each member prior to February 15<sup>th</sup> of each year, or by the date determined by the Association.

3. If any charge levied or assessed against any lot subject to these restrictions shall not be paid when due, it shall then ipso facto become a lien upon the lot or lots owned by the persons owing such charge or charges, and shall remain a lien against said lot or lots until paid in full together with interest as is hereinafter provided and other charges or costs which might become due as a result of non-payment, or as is hereinafter provided. Such charges as are provided for in these Restrictions shall bear interest at the prime rate plus 1% per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charges have remained due and payable for an unreasonably long period of time, they may, on behalf of the Association, institute such procedures, within law or in equity, either by way of foreclosure of such lien or otherwise, to collect the amount of said charge in any court of competent jurisdiction. The owner of the lot or lots subject to the charge shall, in addition to the amount of the charge at the time legal action is instituted, be obligated to pay any expenses or costs, including attorney's fees, incurred by the Association in collecting the same. Every person who shall become the owner of any lot subject to these Restrictions, whether such ownership be legal or equitable, and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified and by acquisition of such interest, agrees that any such liens or charges which may be extant upon said lot or lots at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring such title, such person will be conclusively held to have covenanted to pay the Association all the charges that the Association shall make pursuant to these Restrictions.
4. The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association certifying that the assessments against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

D. Purpose of the Assessment. The charge or assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association, and in particular, for the improvements and maintenance of the properties owned or operated by the Association.

E. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, The Board of Directors of the Association shall have the right to suspend the voting rights, (if any) and the right to use the facilities of the Association of any member or Associate member:

1. For any period during which any Association charge (including any fines) owed by the member or associate member remains unpaid; and
2. During the period of any continuing violation of the restrictive covenants of the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association.

## II. Residential Character of the Development

- A. In General. Every numbered lot in the Development, unless it is otherwise designated on the plats, is a residential lot and shall be used exclusively for single-family residential purposes. No structure shall be erected, placed or permitted to remain upon said lots, except a single-family dwelling house and such outbuildings as are usually accessory to a single-family dwelling house.
- B. Residential Use of Accessory Outbuildings Etc., Prohibited. No accessory outbuildings shall be erected on any of said lots prior to the erection thereon of a single-family dwelling house. In no event shall any such accessory outbuilding or temporary structure which may be constructed upon such lot under these restrictions ever be used as a residence or dwelling house or place of human occupancy or habitation.
- C. Occupancy or Residential Use of Partially Completed Dwelling Houses Prohibited. No dwelling house constructed on any of said lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether or not a house shall have been "substantially completed" shall be made by the "Environmental Protection Committee" hereinafter described, following approval by Lincoln Township Zoning authorities.

III. Restrictions Concerning Size and Placement of Dwelling Houses and Other Structures and the Maintenance Thereof.

- A. Minimum Living Space Areas. No dwelling shall be constructed on any lot in the Development having less than the following minimum square footage of living space, exclusive of porches, terraces, garages, car ports, and other buildings:  
No house or dwelling shall be permitted having less than a 24' X 30' outside dimension. In the case of one-story houses, all qualifying living space shall be situated on the first floor of said house. In determining the amount of living space contained within the house, there shall not be taken into consideration any area which is wholly or substantially below ground level. A home may not be constructed with less than 1000 square feet of living space.
- B. All new dwellings shall comply with the current BOCA code.
- C. Set-Back Requirements.  
In General. Except as may be otherwise provided in these restrictions or on the plats, no dwelling house or above grade structure shall be constructed or placed on any numbered lot in the Development (except fences, the placement of which is provided for hereinafter) except as follows:
1. Definitions: "Side Line" is a lot boundary line that extends from the road on which the lot abuts to the rear line of said lot. "Rear Line" is the lot boundary line that is farthest from, and substantially parallel to, the road on which the lot abuts, except that on corner lots it may be determined from either abutting road.
  2. FRONT YARDS: The front building setback line shall be equal to (1/2) of the width of the adjoining road right-of-way. In the event that on a particular lot the width of the said lot shall be less than sixty-five (65) feet at that point, then the building setback line on that lot shall be established at the point where said lot has a minimum width of sixty-five (65) feet.
  3. SIDE YARDS: The side yard setback line shall not be less than ten (10) feet from the side line of the lot, except where said lot is a corner lot, and in such cases the minimum side yard setback line shall be equal to one-half (1/2) of the width of the adjoining road right-of-way.

4. **REAR YARDS:** If the rear of a particular lot abuts on a road, whether public or private, the minimum rear setback line shall be equal to one-half (1/2) of the right-of-way of said road. If the rear of a particular lot abuts on Teel Lake, Timber Lake, Holiday Lake or White Birch Lake, the minimum rear setback shall be the further of fifty (50) feet from the normal high water mark for said lake, being 1070', 1058', 1058' and 1105', respectively, or the freeboard line at the same elevation. In all other cases, the minimum rear setback line shall be thirty (30) feet or twenty-five percent (25%) of the depth of the lot, whichever is greater.
- D. **Fences.** In order to preserve the natural quality and aesthetic appearance of the existing geographical areas within the Development, all property lines shall be kept free and open one to another and no fences shall be permitted on any lot or lot lines except where, in the opinion of the Environmental Protection Committee (as it is hereinafter described), a fence or other enclosure, as a structure or aesthetic feature of a design concept, will contribute to and be in keeping with the character of the area. In such cases, The Committee shall determine the size, location, height and composition of the fence or other enclosure.
- E. **Exterior Construction Materials.** The finished exterior of every building constructed or placed on any numbered lot in the Development shall be of material consistent with the current BOCA code.
- F. **Diligence in Construction.** The exterior of every building whose construction or placement on any numbered lot in the Development is begun shall be completed within six (6) months after beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than six (6) months from the time of such destruction or damage.  
All structures constructed or placed on any numbered lot in the Development shall be constructed with a substantial quantity of new materials, and no used structures shall be relocated or placed on any such lot.
- G. **Maintenance of Lots and Improvements.** The owner of each lot in the Development shall, at all times, maintain said lot and any improvements situated thereon in such a manner so as to prevent said lot or improvements from becoming unsightly and, specifically such owner shall:
1. Remove all debris or rubbish from said lot;
  2. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of said lot;
  3. Where applicable, prevent debris or foreign material from entering any lake or stream;
  4. When such debris or foreign material has entered a lake or stream from said lot, to remove same;
  5. Keep the exterior of all improvements constructed on said lot in such a state of repair or maintenance so as to avoid their becoming unsightly.
- H. **Association's Right to Perform Maintenance.** In the event that the owner of any lot in the Development shall fail to maintain said lot or any improvements situated thereon in accordance

with the provisions of these restrictions, and any By-laws of the Association (as hereinafter described), which, from time to time, may be in effect, and which may be relevant to these restrictions, said Association, acting upon the recommendation of the Environmental Protection Committee, shall have the right, by and through its agents or employees or contractors to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and the improvements situated thereon, (if any) conform to the requirements of these restrictions. The cost, therefore, to the Association shall be added to and become a part of the annual charge to which said lot is subject, and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractor shall be liable for any damage, which may result from any maintenance work performed hereunder. This maintenance is to be performed only after proper notification to the lot owner.

IV. Provisions Respecting Disposal of Sanitary Waste, Etc.

- A. No outside toilets shall be permitted, and no sanitary waste or other wastes shall be permitted to enter any Lake or Stream.
- B. All septic systems constructed on lots shall be constructed in accordance with the rules, regulations or recommendations of The State of Michigan Department of Public Health, as they may from time to time be in effect, and with all authorities concerning disposition of sanitary wastes and similar material. All such septic systems and percolation tests prepared in connection therewith shall be designated and prepared by a qualified and registered engineer.
- C. The foregoing notwithstanding, in no event shall any portion of a septic or sanitary waste system be situated within fifty (50) feet of any lake or stream or below an elevation of 1070' if the lot abuts Teel Lake, 1058' if the lot abuts Timber Lake and Holiday Lake, or 1105' if it abuts White Birch Lake; nor shall any discharge from any sump pump or other similar device be permitted to enter into a Lake or stream. Violation of this sub-section shall be deemed to have created a nuisance as the same is herein after described.
- D. Copies of all permits, plans and designs and tests relating to the construction of a septic system shall be submitted in duplicate to The Environmental Protection Committee (as hereinafter described) at the time of the submission of all other plans or documents required for the obtaining, from said Committee, of a permit to build or before any construction is begun.

V. General Prohibitions.

- A. In General. No noxious or offensive activities shall be allowed on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Development.
- B. Signs. No signs or advertisements larger in size than 18" X 24" shall be displayed or placed on any lot or structure in the Development without the prior written approval of the Environmental Protection Committee.
- C. Animals. No animals shall be kept or maintained on any lot in the Development, except the usual household pets, and in such case, such household pets shall be kept confined, controlled, or attached to a leash so as not to become a nuisance.



- D. Vehicle Parking. No vehicle shall be parked on any street in the Development. No truck (8,000 GVW or greater) shall be parked for overnight (or longer) on any lot in the Development, unless the same shall be parked in such a manner so that it is not visible to the occupants of other lots in the Development or the users of any street or Lake in the Development.
- E. Disposal of Garbage, Trash and Other Like Household Refuse. No owner of any lot in the Development shall burn or permit the burning, out of doors, of garbage, trash or other like household refuse, nor shall any such owner accumulate or permit the accumulation, out of doors, of such refuse on his/her lot.
- F. Restriction on Construction of Model Homes, Etc. No owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house unless prior written permission to do so shall have been first obtained from the Association. No dwelling constructed within the Development shall be resold within two years after its construction without the consent of the Association.
- G. Restriction on Temporary Structures. No temporary house, garage, or other outbuildings shall be placed or erected on any lot.
- H. Restrictions on Camping.
1. Camping shall be allowed without the necessity of a permit each year from the beginning of Memorial Day weekend through October 31, and at such other times during the year ("off-season camping") only in accordance with permits issued by the Board of Directors of the White Birch Lakes Recreation Association ("Association"). The granting of such permits to not be unreasonably withheld, but which will not, in any event, permit off-season camping for any landowner for a duration of more than fourteen (14) consecutive days.
  2. Each camping unit must meet Health Department requirements.
  3. All camping units must be set back at least 100 feet from any road.
  4. All lots where camping takes place must have an approved fire ring.
  5. All campers must comply with these Conditions.
  6. The Association will enforce these conditions.
- I. Limited Access. There shall be no access to any lot on the perimeter of the Development except from designated roads within the Development. Lot numbers 237 through 242 and 361 through 366 are exempt from this requirement.
- J. Docks, Piers, Etc. No pier, dock or other structure may be constructed in such a manner that any portion thereof extends more than fifteen (15) feet into the lake, and in no event shall any pier, dock or other structure be erected without prior written permission of the Environmental Protection Committee hereinafter described.

- K. Boating Restrictions. Power boating activities on all lakes will be limited to outboard type boats powered by electric motors only, horsepower of boats powered by electric motors to be limited to five (5) h.p. Rowboats, canoes and small sailboats (of the "day sailor" class) are also permitted. No boat shall be equipped with facilities which will discharge any waste materials into the lake.
- L. Ditches and Swales Shall Not Be Obstructed. It shall be the duty of every owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated, to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably required to accomplish the purposes of this sub-section. And, all lot owners, where required, shall install dry culverts between the road right-of-way and their lots in conformity with the specifications and recommendations of the Environmental Protection Committee as hereinafter described.
- M. Installation of Utility Services. No utility services may be installed under finished streets except in one of the following methods:
1. By jacking, drilling or boring; or
  2. If an open trench method is used, such trench must be covered with a six (6) inch thick slab of 2500 PSI concrete bridging the backfilled trench approximately twelve (12) inches below the finished grade and bearing at least twelve (12) inches on each side of the trench. The trench above the concrete slab shall be finished to match the existing street.

VI. The Environmental Protection Committee.

- A. Composition of the Committee. The committee shall be composed of a minimum of three (3) members who shall be appointed by the president of the Association and approved by the Board of Directors and shall be subject to removal by the same at any time. Any vacancies from time to time existing, shall be filled by appointment in the same manner.
- B. Duties of the Committee. The Committee shall deal with all lot improvements, building restrictions, forest conservation and tree removal, contiguous lot status, camping regulations and permits, maintenance of properties, blight and clutter and such other items as assigned by The Board of Directors. The committee shall approve or disapprove any application within thirty (30) days after all required information shall have been submitted to it. One copy of the application and submitted material shall be retained by the committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.
- C. Powers of the Committee.
1. Lot Improvements and Building Restrictions. No dwelling, building structure or improvement of any type or kind may be constructed or placed on any lot in the Development without the prior written approval of the Environmental Protection Committee. Such approval shall be obtained only after written application has been made to said Committee by the owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be

accompanied by a complete set of plans and specifications for such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon said lot and the location of the improvement proposed to be constructed or placed upon said lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, including dredging of ponds, together with any other material or information which the Committee may require. All plans, drawings, etc. required to be submitted to said Committee shall be drawn to a scale of 1 inch = 10 feet, or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or reports required under section 4 of these restrictions. The Environmental Protection Committee may require that such plot plans shall be prepared by either a registered land surveyor, engineer or architect.

2. Forest Conservation and Tree Removal. In order to maintain the woodland character of the Development, no live tree over three (3) inches in diameter may be removed from any lot in the Development without first having obtained the written consent of the Committee.
3. Rules Covering Building on Contiguous Lots Having One Owner. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such persons shall desire to use two (2) or more of said lots as a site for a single family dwelling house, he/she may apply in writing to the Environmental Protection Committee for permission to use said lots for said purpose. If written permission for such a use is granted, the lots constituting the site for such single family dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single family dwelling house.
4. Camping Regulations and Permits. The Committee shall have the power to inspect and require compliance with all camping restrictions as set forth in section V. H. and such other rules and regulations as the Board of Directors of the Association may, from time to time require.
5. Maintenance of Properties, Blight and Clutter. The Committee shall have the power to inspect and require clean-up and removal of unsightly debris and other items as may be required by the rules and regulations of the Association. (as per section III. G.)
6. Disapproval by the Committee. The Committee may refuse to grant permission to construct, place or make the requested improvement, or other permission required by these restrictions when:
  - a) The plans, specifications, drawings and other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions.
  - b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of said lot or with adjacent buildings or structures.
  - c) The proposed improvement or permission, or any part thereof, would in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of the owners of other lots in the Development.

- d) Any lot owner may appeal the decision of this Committee to the Board of Directors of the Association.
7. Power to Grant Variances. The Committee may allow reasonable variances or adjustments to these Restrictions where literal application thereof would result in unnecessary hardship; provided, however, that any such variance or adjustment is granted in conformity with the general intent and purposes of these Restrictions and that the granting of a variance or adjustment will not be materially detrimental or injurious to any other lots in the Development.
8. Power to Charge Fees. The Committee may, if it deems the same to be reasonably necessary for the accomplishment of its duties and responsibilities, assess a fee not to exceed the fee set by the Board of Directors of the Association for considering the application of any person under this section. However, when a determination has been made that a fee should be charged, it shall be uniformly charged to all applicants.
9. Liability of Committee. Neither the Committee nor any agent thereof, nor the Association, shall be liable in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.
10. Special Provisions Concerning Piers. When the Committee shall permit the construction or placing of a structure, wholly or partly within a lake, such permits shall constitute a mere license from the Association or its successors in title to the lake which may be terminated or restricted. All permits shall be in conformance with Section V, J of these restrictions.
11. Right of the Committee to Inspection. To the extent that inspection of improvements and other items requiring action by this Committee is not provided by appropriate governmental agencies, it shall be the right of the Committee to inspect the property and any work being performed with its permission to assure compliance with these Restrictions and applicable regulations.
12. Enforcement. The Committee shall enforce these restrictions pursuant to regulations approved by the Board of Directors and subject to appeal to the Board of Directors of the Association. Past non-enforcement of any of these restrictions shall not constitute a precedent that would prevent their future enforcement by the committee.
- VII. Easements. The Association creates and reserves unto itself, its successors and assigns, certain easements along, across, over, under and upon the real estate that constitutes the Development. The easements so reserved by the Association are described as follows:
- A. The Association, for itself, its successors and assigns and licensees, reserves a ten (10) foot wide easement on each lot along all road rights-of-way, and a five (5) foot easement along the side and rear lines of each and every lot in the Development and also a ten (10) foot wide easement along the outside perimeter boundary lines of lots situated on the perimeter of the Development for the purpose of installing, maintaining and operating utility lines and mains thereon, together with the right to trim, cut or remove any trees and/or brush, and the right to locate guy wires, braces and anchors wherever necessary upon said lots for installation, maintenance and operation of utilities, together with the right to install and maintain and operate utility lines and mains and appurtenances thereto, and reserving unto itself, its successors and assigns and licensees, the

right to ingress and egress to such areas for any of the purposes heretofore mentioned. No permanent building shall be placed on such easements, but the same may be used for gardens, shrubs, landscaping and other purposes, provided that such use or uses do not interfere with the use of such easements for their intended purposes. In instances where an owner of two or more adjoining lots erects and constructs a dwelling or building which will cross over or through a common lot line, the same shall not be subject to the aforementioned five (5) foot easement along or upon the contiguous or common lot line.

- B. The Association further reserves for itself, its successor and assigns and licensees, for lake and shoreline maintenance and control along that portion of each lot contiguous to the shoreline of a lake, an easement ten (10) feet wide. Any such lot shall also be subject to a flowage easement to an elevation on the lot equal to the high water elevation of such lake.
- C. The Association, for itself, its successors and assigns and licensees, reserves a thirty (30) foot wide easement along all road rights-of-way for the purpose of cutting and filling and drainage. The Association further reserves unto itself, its successors and assigns and licensees, the right to cause or permit drainage of surface water over and/or through said lots, and further, it reserves an easement on, over and under all road rights-of-way for the purpose of installing, maintaining and operating utilities or drainage, and such additional easements for drainage as may be shown on the recorded plat.
- D. Each lot shall further be subject to an easement for the maintenance and permanent stabilization control of slopes.
- E. No owner of any lot in the Development shall have any claim or cause of action against the Association, its successor, assigns or licensees, either in law or in equity, and arising out of the exercise of any easement reserved hereunder, excepting in cases of willful or wanton negligence.

VIII. Ownership, Use and Enjoyment of Streets, Parks and Recreational Facilities, No Dedication of Streets, Etc. Each street, lake, park, recreational facility or other amenity depicted on the recorded plats of the Development, is and shall remain private, and neither the Association's execution or recording of the plats nor the doing of any other act by the Association is, or is intended to be, or shall be construed as, a dedication to the public of any of the streets, lakes, parks, recreation facilities or other amenities. A license upon such terms and conditions as the Association, its successors, assigns or licensees shall from time to time grant, for the use and enjoyment of each of said streets, lakes, parks, recreational facilities and other amenities, is granted to the persons who are from time to time members of the Association hereinafter described. Ownership of the streets, lakes, parks, recreational facilities and other amenities shall remain in the Association, subject to the conditional license described above.

The Association covenants, for itself, its successors, assigns and licensees, fee simple title, free of financial encumbrances, to such streets, lakes, parks, recreational facilities, dams and spillways and other amenities, together with all oil, gas and mineral rights of the Development. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof, upon the recording of a deed or deeds conveying such streets, lakes, parks, recreational facilities, dams and spillways and other amenities to the Association.

IX. Speed Limits. No motorized vehicle shall be driven on any street within the Development at a speed in excess of the posted limits or in violation of the laws of the State of Michigan. A motorized vehicle shall mean any device which utilizes a motor for propulsion. This shall include, but not be limited to: automobiles, trucks, snowmobiles, motorcycles, mopeds, and recreational vehicles of all types.

Appropriate postings of these speed limits shall be made by the Association. The Association shall have the power to assess fines for the violation of such speed limits in accordance with the schedule of fines promulgated by the Association. Every such fine shall be paid promptly upon its being assessed, and if it is not, the Association may add the amount of the fine to the annual charge made by the Association, and the amount of such fines shall be collectable by the same means as are prescribed for the collection of delinquent annual charges of the Association.

X. Provisions with Respect to Lakes and Lots Contiguous Thereto.

A. In General. Certain lots in the Development are, as aforesaid, contiguous to a lake which has been established within the boundaries of the Development.

1. The water in and the land under all lakes is and will be owned by the Association. All lakes are depicted on the recorded plats of the Development. The title that is acquired by the grantee of lots contiguous to a lake (and by the successors and assigns of such grantee) will and shall extend only to the shoreline of the lake as is provided on the plats of the Development, as recorded.
2. No such grantee, nor any of such grantee's successors or assigns shall have any right with respect to any stream that is a tributary to a lake, or with respect to a lake, the land thereunder, the water therein, or its elevation, use of condition, and none of said lots shall have any riparian rights or incidents appurtenant; provided further that title shall not pass by reliction or submergence or changing water elevations.
3. The Association, its successors, assigns and licensees shall have the right, but not the duty, at any time to dredge or otherwise remove any accretion or deposit from any of said lots in order that the shoreline of the lake to which the lot is contiguous may be moved toward, or to, but not inland, beyond the location of said shoreline as it would exist as of the date hereto if the water elevation in said lake was at an elevation one vertical foot above the normal pool water elevation indicated in said Development plats, and title shall pass with such dredging or other removal as by erosion.

B. Reservation of Right in Association to Change Water Elevation in Lake. The Association reserves to itself, and its successors and assigns, the right to raise and lower the water elevation of any lake, but neither the Association, nor any successor or assign of the Association shall have an easement to raise the high water elevation of a lake to an elevation above that indicated on said Development plats.

XI. Rights of First Refusal

Whenever the owner of a residential lot in the Development shall either (a) receive a bona fide offer to purchase a lot at a price and terms acceptable to him/her, or (b) offer for sale, either through a real estate broker or by him/herself, the selling owner shall offer said lot to the owner of the adjacent lot on the right of the prospective seller's lot and to the owner of the adjacent lot on the left

of the prospective seller's lot and to the Association, or its assigns (offerees). Such offerings shall be made concurrently and in writing and sent by registered mail to owners' last known address. Each of said offerees shall have ten (10) days after receipt of such offering within which to accept or refuse such offer in writing. The owner of the lot on the right shall have the first right of refusal; the owner of the lot on the left shall have the second right of refusal; the Association shall have the third right of refusal. Failure to respond in writing shall be considered a refusal. If all of said offerees refuse to purchase said lot at a price and terms acceptable to the selling owner, the selling owner shall be free to sell the lot to the public. The "lot on the right", for the purposes of this paragraph XI, shall be the next lot on one's right as one faces one's own lot from the road.

## XII. Remedies.

- A. The Association or any party to whose benefit these Restrictions inure, including the Association, its successors and assigns, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, and shall have the right to obtain a prohibitive or mandatory injunction to enforce the observance of these Restrictions in addition to and cumulatively with any other remedy provided for herein, as well as the right to recover damages for the breach of these Restrictions. However, the Association shall not be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.
- B. No delay or failure on the part of an aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.
- C. Any violation of any section of these Covenants and Restrictions constitutes a nuisance per se, which may be abated by the Association (as herein described) in any manner provided by law or in equity. Further, the cost or expense of abatement (including court costs and attorney fees where applicable) shall become a charge or lien upon said lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt. Neither the Association, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement.

## XIII. Effect of Owner's Acceptance of Deed, Etc.

- A. The owner of any lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Association or a subsequent owner of a lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. Further, that by acceptance of such deed or execution of such contract, such persons do acknowledge the rights and powers of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representative, successors and assigns, they do covenant and agree and consent to and with the Association and to and with the grantees and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and Agreements.
- B. Each such person also agrees, by such acceptance of a deed or execution of a contract for the purchase of a lot, to assume, as against the Association, its successors and assigns, all of the risks

and hazards of ownership or occupancy attendant to such lot, including, but not restricted to, its proximity to any lake.

XIV. Titles, Etc.

The underlined titles preceding the various paragraphs and sub-paragraphs of the Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Restrictions. Whenever and wherever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

XV. Duration

The foregoing covenants and restrictions are to run with the land and shall be binding on all parties, their successors and assigns, and all persons claiming under them unless changed in whole or part by a majority of the voting members of the Association.

XVI. Severability.

Every one of the Restrictions is hereby declared to be independent of, and severable from the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the restrictions.

IN WITNESS WHEREOF, the Undersigned on behalf of WHITE BIRCH LAKES RECREATIONAL ASSOCIATION, and pursuant to a Resolution of the Board of Directors of said Association sets his hand and seal, this Eighth day of June, 2002.

WITNESSES:

Priscilla Moore  
Priscilla Moore

Anne Hobart  
Anne Hobart

Gail White  
GAIL WHITE  
PRESIDENT OF THE BOARD OF  
DIRECTORS  
White Birch Lakes Recreational Association

The foregoing instrument was acknowledged before me this Eighth day of June 2002, by, Gail White.

This instrument prepared by:  
Priscilla Moore, Secretary/Treasurer  
White Birch Lakes Recreational Association  
4730 Lake Dr, Farwell, MI 48622

Tim K Fall  
Tim K Fall, Notary Public  
Clare County, Michigan  
My commission expires: August 14, 2005