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LIBER 1074

PAGE 1218

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

DECLARATION, made this 30<sup>th</sup> day of August, 2008, by the Birch Shores Property Owner's Association (the "Declarant"), whose address is 98A Birch Shores Subdivision, Trout Lake, Michigan.

WHEREAS, Declarant is an interested party in certain real property (the "Property") legally described as follows:

Birch Shores, Inc. Plat located in Government Lots 1, 2 and 3 and the Southeast 1/4 of the Southeast 1/4 of Section 23; Government Lots 1, 2 and 3 and the Northeast 1/4 of the Southwest 1/4 of Section 26; Government Lots 1 and 2 of Section 27, Township 44 North, Range 6 West, Township of Trout Lake, County of Chippewa, Michigan.

WHEREAS, the Birch Shores Property Owner's Association and each individual title holder, by execution of this document or acceptance of the rights, benefits and privileges pertaining to ownership in the Birch Shores Inc. Plat hereby desire to be governed by these restrictions.

WHEREAS, at the time the Birch Shores, Inc. Plat was originally recorded, there was no declaration of restrictions, simply a dedication of the roads to the use of the owners.

WHEREAS, the Association and the Owners deem it to be in their mutual best interest to preserve property values by adopting Covenants, Conditions and Restrictions for said Birch Shores, Inc. Plat, and

WHEREAS, the Association, as representatives of said Owners, intends to adopt the Covenants, Conditions and Restrictions for the purpose of preserving the character of Birch Shores Inc. Plat as a community of private, owner-occupied residences, and creating uniformity and consistency in the use and enjoyment of Birch Shores, Inc. Plat.

NOW, THEREFORE, in consideration of the premises and the covenants herein contained, the undersigned, directly or by proxy, hereby adopt this "Declaration of Covenants, Conditions and Restrictions," effective for all purposes from and after the time of execution by the owners of each lot in said plat, as they now stand and as they may in the future be amended by a majority of the then owners, by number of lots, in said plat.

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**ARTICLE I**  
**GENERAL RESTRICTIONS**

1.1 Use. No portion of the Property shall be used in violation of any ordinances of the County or Township or in violation of other pertinent laws and/or public regulations. No Lot shall be used for other than single family residential purposes.

1.2 Leasing. A dwelling on a Lot, but not less than the whole of the dwelling, may be leased for the residential purposes allowed above. In the event that a dwelling shall be rented or leased, the owner shall furnish the tenant or lessee with the restrictions herein and such tenant or lessee shall be bound by them.

1.3 Dwelling Quality and Size. Only one single family residence or dwelling may be constructed on each Lot, subject to the quality, size and other restrictions contained in this Article. All dwellings shall be constructed in accordance with applicable governmental building codes, ordinances and/or regulations and with such further, restrictive standards as may be required (or permitted) by these Covenants.

1.4 Construction. The exterior design construction materials and colors of all dwellings and structures must be compatible with the existing dwellings and harmonious with the character of the land. The visible exterior shall be composed of finish quality materials, which shall include wood, brick, brick veneer, vinyl siding, and/or stone in any combination, stucco and/or ledge rock, reverse board and batten, other wood siding, or vinyl or aluminum siding.

All improvements shall meet all existing construction codes. No mobile homes are to be erected on any Lot. Furthermore, no trailers shall be used for residence or occupancy purposes on any Lot except for a period of one hundred and twenty (120) days during construction of a residence therein. All construction, including but not limited to the equipment and construction materials, must be within the boundaries of each Lot, and all exterior construction must be completed within twelve (12) months of commencement.

Any portion of the roadways which may be damaged, disturbed or altered by reason of any work performed by any Owner, or such Owner's agent, servant, employees, or independent contractors, in erecting any building or structure upon said Owner's Lot, shall be restored by said Owner, at Owner's sole expense to its condition immediately prior to the commencement of such work. Such restoration shall be performed immediately following the completion of said work, or, if such work is not completed, then within a reasonable time after work has stopped.

1.5 Out-building. All out-buildings constructed on each Lot after the recording of this Declaration shall be at least ten (10) feet from any lot line of the land conveyed, except boathouses, which may be erected upon the shoreline. The Association shall not require any owner to alter, move or destroy any buildings existing at the time of the recording of this Declaration with the Chippewa Register of Deeds.

1.6 Aesthetics. The Lots and Birch Shore Drive, Crego Road and River Road, now known as West Birch Shores Drive and South River Run Drive, which shall hereinafter be



collectively referred to as the "private road easement," shall not be used for storage of supplies, materials, personal property, trash or refuse of any kind, except as provided in duly adopted rules and regulations of the Association. No unsightly condition shall be maintained on any Lot or on private road easements and no furniture or equipment shall be stored thereon during seasons when such areas are not reasonably in use. In general, no activity shall be carried on nor condition maintained by an Owner, either on a Lot or within the private road easement, which is detrimental to the appearance of the development.

1.7 Restricted Activities. No improper, unlawful or offensive activity shall be carried on upon any Lot or upon the private road easement, nor shall anything be done which may be or become an annoyance or a nuisance to any Lot Owner. No unreasonably noisy activity shall occur on a Lot at any time.

1.8 Signs. No signs of any kind shall be placed upon any lot or any building or structure located on any Lot, or any portion thereof, except for the following:

A. One sign of not more than five (5) square feet advertising a Lot for sale shall be permitted;

B. One sign of not more than five (5) square feet identifying the builder of the dwelling shall be permitted;

C. One sign identifying the Lot Owner and/or the Lot number shall be permitted; and

D. Any sign required by legal ordinance.

1.9 Vehicles. No inoperable or unlicensed vehicles of any type may be left unattended or stored outside upon a Lot or upon Birch Shore Drive or River Road either temporarily or permanently.

1.10 Roads. Roads and common areas shall not be obstructed in any way nor shall they be used for purposes other than for which they are reasonably and obviously intended.

1.11 Animals. No farm animals, livestock or wild animals shall be kept, bred or harbored on any lot, nor shall any animals be kept or bred for commercial purposes. Domestic animals commonly deemed to be household pets may be kept by the Owner and members of the household so long as such pets shall have such care as not to be objectionable or offensive to others. Any dog kept by a resident on his premises shall be kept either on a leash, in a fenced in backyard, or under its Owner's control. Under no circumstances shall any animals be allowed to run loose or unattended.

1.12 Birch Shores Property Owners' Association. It is mandatory that all purchasers of lots in the Birch Shores Inc. Plat described land shall become members of the Birch Shores Property Owners' Association, at the time of closing on the purchase of their lot or upon the transfer of ownership of their lot.



**ARTICLE 2**  
**MAINTENANCE ASSESSMENTS**

2.1 Assessments. Each Owner agrees to pay to the Association a minimum annual assessment of \$150.00 for vacant lots and \$200.00 for a lot with a structure. Furthermore, each owner agrees to pay any special assessments for the maintenance, insurance, and capital improvements as provided for in this Article. The annual and special assessments, together with interest and costs of collection, including reasonable attorney fees, shall be a charge upon each Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest and costs of collection, including reasonable attorney fees, shall also be the personal obligation of the Owner of the Lot at the time when the assessment fell due. The sale or transfer of any Lot shall not affect the existence of an assessment lien.

2.2 Purpose of Assessments. The assessments and charges levied by the Association shall be used exclusively to operate, maintain, repair and improve private road easement, (not including private driveways that serve individual lots), alleys, and Outlots B, D, E, F, and G of the Birch Shores, Inc. Plat. Additionally, assessments will pay for the road snow removal and administrative expenses of the Birch Shores Property Owners' Association, including but not limited to legal fees, mailing expenses, and annual fees to the State of Michigan, etc.

2.3 Amount of Assessment. The Board of Directors of the Association shall propose the amount of the annual assessment to meet the anticipated expenses and costs to be incurred over the next year, and to provide for a capital reserve fund for anticipated capital improvements as the Board of Directors deems adequate. Written notice of the annual assessment shall be sent to every Owner.

The due date of an assessment shall be established by the Board of Directors. In addition to the annual assessment, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement within or upon the private road easements, including fixtures and personal property related thereto, provided that any such special assessment shall have the assent of two-thirds of the votes of the Owners voting in person or by proxy at a meeting duly called for this purpose.

2.4 Effect of Non-payment. Any assessment not paid within 30 days after the due date shall bear interest from the due date at the rate of twelve (12%) percent per annum, or the highest rate allowed by law, until paid in full. To the fullest extent permitted by law, the Owner of any Lot agrees that the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot for the amount of the unpaid assessment plus interest and costs of collection, including reasonable attorneys fees (not limited to statutory fees). No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of either the private road easement or by abandonment of his or her Lot.

2.5 Sale or Conveyance. Upon the sale or conveyance of a Lot, all unpaid assessments, interest, late charges, fines, costs, and attorney fees against the Lot shall be paid out of the sale



price or by the purchaser in preference over any other assessments or charges of whatever nature, except the following:

- a. Amounts due the State of Michigan, or any subdivision thereof, or any municipality for taxes and special assessments due and unpaid on the Lot.
- b. Payments due under a first mortgage having priority thereto.

A purchaser or grantee is entitled to a written statement from the Association setting forth the amount of unpaid assessments, interest, late charges, fines, costs, and attorney fees against the seller or grantor, and the purchaser or grantee is not liable for, nor is the Lot conveyed or granted subject to a lien for any unpaid assessments, interest, late charges, fines, costs, and attorney fees against the seller or grantor in excess of those set forth in the written statement. Unless the purchaser or grantee requests the written statement from the Association as provided in the Act, at least five (5) days before the sale, the purchaser or grantee shall be liable for any unpaid assessments against the Lot together with interest, costs, fines, late charges, and attorney fees incurred in the collection thereof.

### **ARTICLE 3** **PRIVATE ROAD PROVISIONS**

3.1 **Road Maintenance.** The Association shall be responsible for the maintenance, repair and replacement of Birch Shore Drive, Crego Road and River Road, now known as West Birch Shores Drive and South River Run Drive, the private roads located on the Property (not including the private driveways that serve the individual Lots), which shall include, but not be limited to, the following: snow plowing, repairing, grading, mowing, trimming, maintaining clear vision at intersections, and maintaining any structures located within the private road easements. Birch Shore Drive, Crego Road and River Road, now known as West Birch Shores Drive and South River Run Drive, are private roads and are not subject to the maintenance jurisdiction of the Chippewa County Road Commission. Birch Shore Drive, Crego Road and River Road, now known as West Birch Shores Drive and South River Run Drive, shall not be maintained or improved at the expense of Trout Lake Township unless the maintenance or improvement is funded by a special assessment on the Owners of the Lots served by the private road. Birch Shore Drive, Crego Road and River Road, now known as West Birch Shores Drive and South River Run Drive, shall be maintained in such a manner so as to ensure access by emergency and service vehicles during all weather conditions which are reasonably expected in Trout Lake Township. Improvements to and maintenance of the abovementioned private roads shall be accomplished so as to provide for a consistent surface maintained to meet the requirements of the Trout Lake Township ordinance throughout the entire length of the private road.

3.2 **Costs.** The cost of the maintenance, repair and replacement of the private road located on the property shall be shared equally among all of the Owners of the Lots by the payment of annual and special assessments. No public funds of the Trout Lake Township may be used to build, repair or maintain the private road, except as provided in Article 3.1 above.



3.3 Use. The private road shall be used for access to US 123 and all other surrounding county roads, and the Lots located on the Property, including such use by emergency and other public vehicles for whatever public services are necessary. An Owner shall not use the private road in any manner inconsistent with the intent of this Declaration or in violation of the rights of any other Owner or the ordinances of the State of Michigan and Chippewa County. An Owner shall not prohibit, restrict, limit, or in any manner interfere with normal ingress and egress and use by any other Owner, their guests, trade persons, vendors, delivery persons and others having a need to use the private road.

#### **ARTICLE 4** **GENERAL PROVISIONS**

4.1 Enforcement. The Association or any Lot Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration. Failure by the Association or any Lot Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. No court proceedings shall be instituted for the enforcement of the provisions hereof until the person against whom such proceedings are to be brought have been given at least thirty (30) days prior written notice of the alleged violation.

4.2 Duration and Amendment. The covenants set forth in this Declaration shall run with and bind the Property and all Lots into which the property may be divided for a period of twenty (20) years from and after the date of this Declaration, and thereafter such term shall be automatically extended for successive periods except as provided below. This Declaration may be neither amended nor terminated during the first ten (10) year period hereof except by an instrument signed by not less than all Lot Owners. Thereafter, this Declaration may be amended or terminated by an instrument signed by not less than two-thirds of all Lot Owners. Any instrument of amendment or termination must be recorded in the Office of the Chippewa County Register of Deeds. Notwithstanding anything to the contrary contained herein, Declarant may, by recording a document in the Office of the Chippewa County Register of Deeds, modify, amend, delete.

4.3 Severability. Invalidation of any provision of this Declaration, or the application of any provision to any person or circumstance, by a court of competent jurisdiction, shall not in any manner whatsoever affect the validity of any other provision, or the application thereof to any person or circumstance and this Declaration shall otherwise remain in full force and effect.



**AFFIDAVIT OF OWNERS ACCEPTANCE OF THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

I/We, \_\_\_\_\_, being the owner(s) of Lot \_\_\_\_\_ of the Birch Shores Inc. Plat hereby agree on behalf of myself/ourselves and my/our successors, heirs, and assignees to be bound by the terms and conditions contained in the Declaration of Covenants, Conditions and Restrictions recorded in Liber \_\_\_\_\_, Page \_\_\_\_\_ of the Chippewa County Register of Deeds.

OWNER(S):

Dated: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

Acknowledged before me in \_\_\_\_\_ County, \_\_\_\_\_  
on \_\_\_\_\_, 20\_\_\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_, Notary Public  
\_\_\_\_\_  
County, \_\_\_\_\_  
My Commission expires: \_\_\_\_\_  
Acting in \_\_\_\_\_ County, \_\_\_\_\_

Prepared by: Heather S. Frick, Esq.  
Stefan J. Scholl, P.C.  
3280 Woods Way, Suite 4  
Petoskey, MI 49770  
(231) 347-3836  
www.NorthernMichiganLawyer.com

Dated 08-05-09.

Fred H. Borcherts  
By: FB  
Its: FB

STATE OF Michigan )  
COUNTY OF Wayne ) ss

Acknowledged before me in Wayne County, MI  
on August 5th, 20 2009 by Fred H. Borcherts  
of Birch Shores Property Owners' Association.. a Michigan Nonprofit Corporation. for the Corporation.

J. Elonzoe



County, \_\_\_\_\_  
My Commission expires: \_\_\_\_\_  
Acting in \_\_\_\_\_ County, MY COMMISSION EXPIRES Jul 24, 2012  
ACTING IN COUNTY OF Wayne



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Dated: 8-03-09

Paul D. Cherry  
By: P.D.C. Paul D. Cherry  
Its:

STATE OF Michigan )  
                                  ) ss  
COUNTY OF Mackinac )

Acknowledged before me in Mackinac County, \_\_\_\_\_  
on August 03, 2009 by \_\_\_\_\_,  
\_\_\_\_\_  
of Birch Shores Property Owners' Association.. a Michigan Nonprofit Corporation, for the Corporation.

**JODI MISNER**  
Notary Public, Mackinac County, MI  
My Commission Expires December 17 2011  
Jodi \_\_\_\_\_

Jodi Misner \_\_\_\_\_  
\_\_\_\_\_. Notary Public  
Mackinac County, Michigan  
My Commission expires: Dec 17, 2011  
Acting in Mackinac County, Michigan



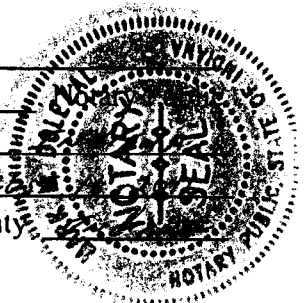
Dated: Aug 3 2009

Ralph W Robb  
By: RWR RALPH W. Robb  
Its: RWR RALPH W. Robb

STATE OF INDIANA )  
 ) ss  
COUNTY OF ALLEN )

Acknowledged before me in ALLEN County, INDIANA  
on AUGUST 3, 2009 by RALPH W. Robb  
                                 of Birch Shores Property Owners' Association.. a Michigan Nonprofit  
Corporation. for the Corporation.

Mark Dolezal  
MARK DOLEZAL  
ALLEN County.  
My Commission expires: AUGUST 2015  
Acting in ALLEN County.



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Dated: 8/03/09

By: Darlene K. Payne  
Its: Darlene K. Payne

STATE OF Michigan )  
COUNTY OF Chippewa ) ss

Acknowledged before me in Chippewa County,  
on Aug 3, 20 09 by Crystal Willobee Darlene K. Payne  
of Birch Shores Property Owners' Association., a Michigan Nonprofit  
Corporation, for the Corporation.

CRYSTAL WILLOBEE  
Notary Public, Chippewa County, MI  
My Commission Expires 09-07-2011

Crystal Willobee, Notary Public  
Chippewa County, MI  
My Commission expires: 9-7-2011  
Acting in Chippewa County, MI



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Dated: 08-10-09

By: John P. Shepard  
Its: J.P.S.

STATE OF Michigan )  
 ) ss  
COUNTY OF Mackinac )

Acknowledged before me in Mackinac County, Michigan  
on August 10, 20 09 by \_\_\_\_\_,  
\_\_\_\_\_ of Birch Shores Property Owners' Association., a Michigan Nonprofit  
Corporation, for the Corporation.

ANGELA M. FRASER, Notary Public  
Mackinac County, State of Michigan  
My Commission Expires: 9-27-13

Angela M. Fraser  
Angela M. Fraser, Notary Public  
Mackinac County, Michigan  
My Commission expires: 9-27-13  
Acting in Mackinac County, Michigan

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