

Lake of the Pines Association, Inc.

Restrictive Covenants for the Plat of Birchwood Heights Subdivision

Updated August 2022

**DECLARATION OF RESTRICTIVE COVENANTS BY
LAKE OF THE PINES DEVELOPMENT COMPANY HEREINAFTER CALLED DEVELOPER
WITNESSETH:**

WHEREAS, Developer is the owner of real property described in Article II of this Declaration together with other contiguous properties and desires to create thereon a residential community with permanent parks, playgrounds, open spaces, and other common facilities for the benefit of said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, playgrounds, open spaces and other common facilities; and, to this end, desires to subject the real property described in Article II together with such additions as may hereinafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restricting and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the State of Michigan, as a non-profit corporation, Lake of the Pines Association, for the purpose of exercising the functions aforesaid;

NOW THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to "covenants and restrictions") hereinafter set forth.

**ARTICLE I
DEFINITIONS**

Section 1. The following words when used in this Declaration or any Supplement Declaration (unless context shall prohibit) shall have the following meaning:

- (a) "Association" shall mean and refer to Lake of the Pines Association.
- (b) "The Properties" shall mean and refer to all such existing properties and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II, hereof.
- (c) "Common Properties" shall mean and refer to those areas designated by the Developer, Lots 1, 2, 3 and 4. These lots are intended to be devoted to the common use and enjoyment of the owners of The Properties.
- (d) "Original Lot" with the exception of Lots in Article I, Paragraph (c) and Lots 98 and 99 which must be sold as one lot, lots 511 and 512 which must be sold as one lot, lots 553 and 554 which must be sold as one lot, and lot 47 to be reserved for easement purposed and maintenance and operation of underground gas line in favor of Michigan Consolidated Gas Company, shall mean and refer to any lot or plat of land shown upon and original recorded and subdivision map of The Properties after the same has been sold by the Developer, or its representatives or assigns, by land contract or by deed but shall not include Common Properties as heretofore defined nor any lot that the Developer has re-acquired following the sale of the same as a result of default by the purchaser and which the Developer or its assigns holds for the purpose of resale.
- (e) "Owner" shall mean and refer to the equitable owner whether one or more persons or entities holding any original lot situated upon the Properties whether such ownership be in fee simple title or as land contract vendee, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgage except if the mortgage has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (f) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1 hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION ADDITIONS THERETO

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, and occupied, subject to this Declaration, is located in the Township of Freeman, County of Clare, Michigan, and is more particularly described as follows:

Plat of Birchwood Heights, Freeman Township, Clare County, Michigan,
all of which real property is referred to (herein) as "Existing Property".

Section 2. Additional Lands may become subject to this Declaration.

- (a) The Developer, its successors and assigns, shall have the right to bring additional lands located in Lake of the Pines, Clare County, Michigan, into the scheme of this Declaration. Such proposed addition, if made, shall become subject to assessment for their just share of Association expenses. The Common Properties within all such additions shall be devoted to the common use and enjoyment of all owners of properties which are subject to this Declaration including Existing Property. The Developer's rights to bring additional lands into the Declaration shall not be held to bind the Developer, its successors and assigns, to make the proposed additions or to adhere to the scheme in any subsequent development of the land described therein. The additions authorized under this and succeeding sub-sections shall be made by filing of record a Supplementary Declaration of Covenants of Restrictions with respect to the additional property which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property. Such Supplementary Declarations may contain such complimentary additions and modifications of the Covenants of Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the Covenants established by this Declaration within the existing property.
- (b) Other Additions. Upon approval in writing of Association pursuant to a vote of its members as provided in its Articles of Incorporation, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file a record of Supplementary Declaration of Covenants and Restrictions, as described in sub-section (a) hereof.
- (c) Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of the law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association, may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the Covenants established by this Declaration within the Existing Property except as hereinafter provided.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership.

- (a) The ownership of each lot within the Properties shall constitute the owners thereof as members of the Association, provided that if more than one lot has common ownership such ownership shall constitute only a single member of the Association, and provided further that ownership shall mean legal ownership of the fee or equitable ownership as land contract vendee when the Developer or its successors or assigns have sold the same on land contract, and provided further that no such lot shall have more than one such ownership, and further, provided that no interest held as security only constitute ownership under this paragraph.

- (b) Persons not holding an interest in any Lot in said Properties may become non-voting members of the Association under terms and conditions prescribed by the Board of Directors.

Section 2. Voting Rights. Each lot shall be entitled to one vote but only one vote. A member shall be entitled to as many votes as the number of lots which he (and his common owners, if any) owns. Each lot shall have but one vote irrespective of the number of common owners thereof, which vote shall be cast as such common owners agree.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment subject to the provisions of Article IV in Section 3, every member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Original Lot.

Section 2. Title to Common Properties. The Developer shall retain the legal title to the Common Properties but not longer than such time as it has sold 90% of the lots in The Properties including all additions thereto and the aggregate of the outstanding balances of the sales prices therefore has been reduced to 80% thereof, but not later than fifteen (15) years from the date of the recording of this document, convey to the Association such Common Properties with all the improvements thereon which conveyance and transfer said Association shall accept in consideration of which transfer said Association shall pay to Developer, for a period of ten (10) years after the date of such transfer, an annual payment equal to 20% of the gross assessments received by it under Article V, Section 3, above, during the fiscal year immediately preceding the date of transfer, which amount shall be paid ninety (90) days following the date of transfer, and an amount similarly determined for each succeeding year on the annual anniversary of such date of payment thereafter until ten (10) such payments have been made. The acceptance of such transfer and the liability to make payment in consideration thereof as above specified is consented to by all members of the Association by the acceptance of a land contract or deed subsequent to the date of the recording hereof.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Developer and of the Association, in accordance with its Articles and By-laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. The members' rights and easements in the common Properties shall be subordinate to any mortgage given by the Developer or Association as security for funds borrowed for said improvements. Any indebtedness which shall be created for the purpose of making improvements to the Common Properties shall be an obligation of the Association. In the event of a default upon any such mortgage, the lender or mortgagee shall have all the rights afforded under the mortgage or security agreement and under the laws of the State of Michigan including the right after taking possession of The Properties, to charge admission and other fees as a condition to continued enjoyment by the members, and if necessary to open the enjoyment of such properties to a wider public. If the mortgage indebtedness is satisfied and possession of The Properties returned to the Association, all rights of the members hereunder shall be restored; and
- (b) the right of the Association to take such steps as reasonably necessary to protect the above described properties against foreclosure; and
- (c) The right of the Association, as provided in its Articles and By-laws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and
- (d) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer being the owner of all The Properties hereby covenants and such subsequent owner by acceptance of a land contract and/or a deed therefore, whether or not it shall be expressed in any such deed or conveyance, be deemed to covenant and agree to pay to the Association; (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The Properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and to the use and enjoyment of the Common Properties and improvements thereon and thereto, including but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto and for the cost of labor, equipment, materials, management and supervision thereof.

Section 3. Basis and Amount of Annual Assessments. The annual assessments. The annual assessment shall be \$200.00 per each Original Lot sold by Developer, its representatives or assigns, by Land Contract or Deed and the assessment shall be distributed evenly against each Original Lot, provided that in cases where an Owner owns more than one lot in a single plat or subdivision, the assessment for the first lot owned shall be \$200.00 but each additional lot in the same subdivision shall bear an annual assessment of \$30.00. All secondary lots remain the same unless sold or deeded to other than children. All secondary lots sold to other than children will become a primary lot beginning April 1, 1999 and thereafter. Any home currently built on two (2) lots when sold and the title changed, one lot remains a primary assessment and the secondary lot remains a secondary assessment. When selling a primary lot with any adjoining secondary lot(s) the assessment remains the same. Any secondary lot that contains a separate residential structure shall be assessed as a primary lot if a Certificate of Occupancy has been issued. From all such assessments, the Association shall pay for the cost of maintenance of pool, dam, parks, and equipment, general upkeep of the Lake of the Pines area, management and operation thereof. In no event shall any assessment or charge be levied against or be due from the Developer for any lots owned by it, or otherwise.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year on each Original Lot sold by the Developer, its representatives or assigns, a special assessment, applicable to that year only, for the purpose of defraying, in whole or part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided any such assessment shall have the affirmative of two-third (2/3) of the vote of all votes of voting members who are voting in person or by absentee ballot at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 3 hereof, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the vote of the members who are voting in person or by absentee ballot at a meeting duly called for this purpose written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as on incident to a merger or consolidation in

which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2, hereof.

Section 6. Quorum for Any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of Members or of absentee ballots, entitled to cast sixty (60) percent of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement as set forth in Sections 4 and 5, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The Annual assessments provided for herein shall commence on the first day of April, 1969. The assessment for each succeeding year shall become due and payable on the first day of April of each year. No adjustments or pro-rations of assessments shall be made by the Association. For purposes of levying the assessment, assessments shall be considered as paid in advance and shall be levied against any Original Lot which is subject to this Declaration or Supplementary Declarations. The due date of any special assessment under Section 4 hereof shall be fixed in the Resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall prepare a roster of the properties and assessments applicable thereto at least thirty (30) days in advance of such assessment due date. Such assessment roster shall be kept in the office of the Association and shall be open to inspection by any owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto. The Association shall upon demand at any time furnish to any owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner. The Lien. Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereon becoming a continuing lien on the property which shall bind such property in the hands of the owner, his heirs, devisees, personal representative and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the delinquency date, a penalty fee not to exceed \$25.00 shall be added thereto and from that date interest at the rate of 12% per annum may be added to the delinquent balance and penalty and the Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property. There shall be added to such assessment, delinquent fee and interest and the cost of preparing and filing Complaint in such action and in the event that Judgment is obtained, such Judgment shall include interest on the total amount as above provided and reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages. The line of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article I thereof; (c) all properties exempted from taxation by the laws of the State of Michigan, upon the terms and to the extent of such legal exemption; (d) all properties owned by the Developer, its successors and

assigns, and held by them or any of them for sale or re-sale. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE VI
ARCHITECTURAL CONTROL COMMITTEE

Section 1. Review by Committee. No building, fence, wall or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board or its designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will have been deemed to have been fully complied with.

ARTICLE VII
BUILDING AND USE LIMITATIONS

Section 1. All lots shall be used for residential purposes only, and no business, commercial or manufacturing enterprise shall be conducted on said premises. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling not exceeding two and one-half stories in height, and one private garage or boathouse, or combination garage and boathouse for family automobiles and boats.

Section 2. No trailer, mobile home, or similar type structure, basement, tent, shack, garage, barn or other out-building shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character or any building in the process of construction, be used as a residence.

No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in a sanitary container. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

The outside finishing of all buildings must be completed within one (1) year after construction has started, and no asphalt shingles, imitation brick, building paper, insulation board or sheathing or similar non-exterior materials shall be used for the exterior finish of any such building; exterior finish shall be wood or asbestos shingles or siding, logs, brick, stone or concrete.

Every dwelling house shall have not less than 480 square feet of enclosed living space exclusive of porches, breezeways, carports, patios, pool areas, garages and other accessory uses.

Section 3. Building Location. No building shall be located on any property nearer than 30 feet to the front property line or nearer than 30 feet to any side street line. No building shall be located nearer than 10 percent to the width of the property on which such building is to be placed to any sideline, except that a three foot minimum side yard shall be permitted for a garage or other permitted accessory building which is located to the rear of the property. For the purpose of this Covenant, eaves, steps and open porches shall not be considered as a part of the building provided, however, that this shall not be construed to permit any portion of the building to encroach upon adjoining property.

Section 4. Easements are reserved along and within 10 feet of the rear line and sideline of all original lots in the subdivision for the construction and perpetual maintenance of conduits, poles, wires and fixtures for electric lights, telephone and other public and quasi-public utilities and drainage and to trim any trees which at any time may interfere or threaten to interfere with the maintenance of such lines with right of ingress to and egress from and

across said premises to employees of such utilities. Said easement to also extend along any owner's side and rear property lines in cases of fractional lots. The person owning more than one lot may build on such lot line and the easement shall be inoperative as to said line provided that such building shall be placed thereon prior to the instigation of use of this easement for one of the foregoing purposes.

It shall not be considered a violation of the provision of easement if wires or cables carried by such pole lines pass over some portion of said properties not within the 10 foot wide easement as long as such lines do not hinder the construction of buildings on the property.

Each residence shall be provided with and maintain only inside toilets with septic tanks and drain fields or dry well installations meeting the requirements of the Michigan State Board of Health.

Any owner of real property in said Plat of Birchwood Heights shall have the right to prosecute any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant contained herein, either to prevent him or them from doing so or to recover damages or other dues for such violations. Invalidation of any one of these covenants by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

The foregoing Building and Use Limitations shall not apply to the Common Properties.

ARTICLE VIII GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of this Declaration is recorded, after which time said covenants shall automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of two-thirds of the lots, subject to this Declaration, including all lots if any still owned by the Developer or its successors or assigns, has been recorded, agreeing to change said covenants and restrictions in whole or part. Provided, however, that no such agreement to change shall be effective unless made by and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every owner at least ninety (90) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants or restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect