

LIBER 1237 PAGE 0605

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Michael D. Smith
REGISTER OF DEEDS
LAPEER COUNTY, MICHIGAN**FIRST AMENDED BUILDING & USE RESTRICTIONS**

for

LAKE NEPESSING BLUFFS

The Building and Use Restrictions for Lake Nepessing Bluffs originally recorded at Liber 1232 Pages 1033 et seq. of Lapeer County Records are hereby amended in their entirety to state as follows to correct various scrivener errors and make other revisions:

Know all persons by these presents, that **Rex S. Curtiss, Jr., as Trustee of the Rex S. Curtiss, Jr. Revocable Trust Agreement dated April 10, 1992**, of 4928 Curtiss Drive, Lapeer, Michigan 48446, the undersigned (hereafter referred to as "Developer"), for his benefit and for the benefit of all his assignees and grantees, do, hereby, by the recording hereof in the Office of the Lapeer County Register of Deeds, decree and establish the following restrictions, upon the future use of lots as hereinafter set forth.

These restrictions (hereafter these "restrictions" or this "Agreement") shall be binding upon the undersigned and upon all persons acquiring title to any of said lots through the undersigned, their assignees and grantees and upon their heirs, legal representatives, successors and assigns.

The land covered by the following restrictions and covenants of use is located in the Township of Elba, County of Lapeer, Michigan, and is more specifically described as follows (hereafter referred to as "the Development"):

See legal description attached hereto as Exhibits 1 and 2

I. LAND USE & OTHER RESTRICTIONS

1. Structure Limitations: All the lots in said subdivision shall be known and described as residential lots. No structure shall be erected, altered, placed or permitted to remain on any such lot other than one single family dwelling, not to exceed two (2) stories in height and no more than one residential accessory building/outbuilding. No lot shall be used for other

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than residential purposes. All buildings shall be site built – no modular, mobile or pre-manufactured homes shall be permitted.

2. Animals: No animal, livestock or poultry of any kind shall be raised, bred or kept on any lot except that not more than two (2) domestic animals may be kept as household pets, provided they are not kept, bred or maintained for commercial purposes. Household pets permitted under these restrictions shall be kept only in the residential dwelling on the lot and no outside structures for pets (including but not limited to dog houses) shall be permitted. No noxious or offensive odors or excessive, offensive or objectionable noise, whether arising on account of permitted pets, or otherwise, will be permitted on any lot.

3. Storage of Vehicles, Trailers, etc.: No inoperable motor vehicles nor any trailer, camping units or out-of-season motor-driven sports vehicles, shall remain on any lot for a period of more than one week unless said vehicle, trailer or unit is housed in a permanent garage.

4. Compliance with Laws and Regulations: All buildings, structures, installations, and other improvements to be erected or located on the said land shall comply with all municipal and other applicable governmental laws and regulations.

5. Fences: No fences shall be erected on said property with the exception of fences around swimming pools or if necessary to comply with Township Ordinances or other applicable laws.

6. Signs: No signs or notices of any kind whatsoever, except signs identifying the land and the owner thereof and signs advertising the parcel in question for sale, shall be allowed on said lots after the Developer has made the initial sale of the lot or house.

7. Refuse Containers, Fuel Tanks, Outdoor Trash burning: Outdoor trash cans or collection containers must be hidden from view upon completion of residence structure. Gas tanks shall be concealed by shrubbery. Use of fuel oil tanks shall not be permitted. Outdoor burning of trash, paper or other debris and any receptacle or device designed for such burning will not be permitted.

8. Nuisance Prohibitions: noise, fire, etc.: Noxious, dangerous, offensive or unduly noisy activity of any nature, or any activity that may be or become an annoyance or nuisance to owners of other land, shall not be permitted on the said land. Outdoor fires other than fires in fireplaces or barbecue equipment shall not be permitted on the said land.

9. Temporary Structures: No structure shall be erected or placed on any lot which are of a temporary character (such as a trailer, basement, tent, shack, garage, barn or other outbuilding) nor shall any such be used on any lot at any time as a residence, either

temporarily or permanently. No old or used building or structure shall be moved onto any lot.

10. Completion Deadlines for Structures and Landscaping: A period of time no longer than six months shall be given to complete exterior of residence structure, garage and breezeway. Landscaping, sodding or seeding shall be completed within nine months after date of occupancy.

11. Restrictions on Exterior Finishes: No dwelling shall be occupied until finished on the exterior with wood siding, brick, stone, or other outside finish material, and all woodwork or trim painted or otherwise finished and asphalt or concrete driveways installed. Use of insulbrick, asphalt siding and similar products for exterior finish shall be prohibited.

12. Lot Maintenance: Lot owners shall keep their lots trimmed and neat.

13. Lot Split Prohibition: Except for the parcel identified in Exhibit 2, attached hereto, no lot shall be further split or subdivided. The parcel identified in Exhibit 2 may be split into no more than two (2) additional parcels, subject to the requirements of applicable local ordinances and state laws.

14. Outdoor Telecommunications Apparatus (satellite dishes, etc.): Any satellite dish greater than twenty-four (24) inches in diameter or other similar outdoor telecommunications device and any CB and/or Ham radio tower must be screened from view of the private road and other residences unless otherwise approved by the Architectural Review Committee.

15. Accessory Buildings: No outbuildings or other accessory buildings shall be permitted except carriage house style buildings of no greater than 864 square feet in size. Any outbuilding or accessory building must match the style of the home and be harmonious with the surrounding neighborhood. No portable or temporary sheds shall be permitted. No structures of pole barn type construction shall be permitted.

16. Septic and Water Systems: All septic systems and water wells shall be approved by the Lapeer County Health Department.

17. Hunting Restrictions: No gun hunting shall be permitted on any lots in the Development. No hunting of any kind shall be permitted on any lots except Parcel nos. 15, 16, 17, 18, 19, and 20. Any hunting on lots, where permitted, shall comply with all applicable state and local hunting laws and regulations.

18. Driveways: All driveways on each lot shall be made either of concrete or asphalt.

19. Setbacks on Lake Front Property: In addition to any setback requirements imposed by local ordinance, any parcels with frontage directly on Lake Nepessing are subject

to the following setback requirements: except as set forth below, homes or other buildings may not be constructed closer than 250 feet from the ordinary high water mark of Lake Nepessing. The Architectural Review Committee may grant variances from the setback if the proposed home or other building 1) does not unduly diminish the view of Lake Nepessing from other existing homes in Lake Nepessing Bluffs with frontage directly on Lake Nepessing or other homes that will likely be built in the Development and which front on Lake Nepessing and 2) is aesthetically harmonious with the existing or expected development on properties in the Development which front on Lake Nepessing. For purposes of determining the setback location, the Architectural Review Committee and its agents shall be solely responsible to determine the location of the ordinary high water mark and whether the proposed construction is aesthetically harmonious with the existing or expected development on properties in the Development which front on Lake Nepessing and its determination shall be conclusive. Lot owners shall be responsible for complying with all federal, state and local laws, ordinances and regulations regarding development involving lakes. As used in this paragraph, the term "ordinary high water mark" shall be defined as in Section 30101 of the Inland Lakes and Streams Act, MCL 324.30101.

- II. HOMEOWNERS ASSOCIATION.** There is hereby created an Association which consists of all the owners of parcels located within the Development and shall be known as the Lake Nepessing Bluffs Homeowners Association. Membership in the Association is mandatory for each property owner. The owners of each parcel shall have one (1) vote in the Association (i.e., -- one vote per parcel, regardless of the number of owners of the parcels). The Association shall annually elect a president, secretary, and treasurer, which together shall constitute the Board of Directors of the Association (hereafter "the Board"). In the event that such officers are not elected, the existing officers may serve until the new elections take place. In the event that an officer resigns during the year, the remaining officers may appoint a replacement who shall serve until a new officer is elected. Upon majority vote of the owners of all of the lots in the Development, the Association may choose to convert the Association to a non-profit corporation which shall carry out the same functions as the Association.

- 1. ASSOCIATION MEETINGS.** Each year, during the first week of March (or such other date as a majority of the Association members shall designate), the Association members shall meet for the purpose of electing a Board of Directors (the "Board") and officers and approving a maintenance program and budget for the coming year for the road, utility, and drainage easement and, if available, for insurance. A landowner may vote in person or by proxy authorized in writing signed by the lot owners (or one of them). For purposes of the annual meeting and setting of the budget, it is not necessary that a majority of landowners be present in person or by proxy authorized in writing signed by the lot owners (or one of them) in order that a valid meeting be held. Questions shall be approved or disapproved by a majority

of those present in person or by proxy and voting at the annual meeting or any special meeting called for purposes of this Agreement. Written notice of the time and location of the annual meetings shall be provided to all land owners of record in the Development and to any land contract purchasers of record.

Special meetings may be called with ten (10) days written notice to all landowners by the President of the Board or upon request of any four (4) members.

Until such time as seventy-five (75%) percent of the lots in the Development have been sold or sooner if the Developer so chooses, the Developer shall exercise all the powers and duties of the Association and its Board. However, all landowners are entitled to attend the annual meeting and give input into the setting of the forthcoming budget. The Developer may from time to time designate an agent for the purpose of maintaining and enforcing this Agreement. Appropriate written notice of such designation, or any other written notice permitted or required by this Agreement, shall be addressed by ordinary mail to each landowner of record and to each purchaser under any executory land contract.

The Developer may at any time assign and convey all or part of his rights, powers, privileges and duties, which are reserved to it in this Agreement, to the Association, and upon the execution and filing of the appropriate instruments of appointments, the Association shall thereupon have and exercise all the rights, powers, privileges and duties so assigned by this document to the Developer, and upon assigning and conveying such rights, powers, privileges and duties, Developer shall be fully released and discharged from further obligations and responsibilities in connection therewith.

- a. **DUTIES: GENERALLY.** The purpose of the Homeowners Association is to manage the easements for private roads, the sidewalks, utilities, and drainage in the Development and matters incidental thereto for the benefit of all owners and to enforce these restrictions and any by-laws, rules or regulations the Association may adopt. Adoption of by-laws, rules or regulations shall require the affirmative vote of those owning a majority of the lots in the Development at an annual meeting or a special meeting called for that purpose.
- b. **BUDGET.** The Board shall be responsible for drafting a proposed budget for maintenance and repair for the coming year.
- c. **MAINTENANCE AND REPAIR WORK.** The President of the Board shall arrange for such maintenance and repair work as has been approved by the Association. All bills for approved work shall be paid by the treasurer after approval by the officer designated for this purpose by the officers. The

budget may include a reserve for future capital expenditures. The Board may authorize above-budget expenditures for emergency maintenance and repairs where the failure to do so would result in a significant threat to health, human safety, or a serious risk of substantial financial loss to the Association.

- d. **EXTRAORDINARY REPAIRS.** Any deficiencies in the fund for extraordinary costs or repairs and maintenance to the Private Roads, bike path and the utility and drainage easements shall be covered and payment made by the owners on demand in the same proportion as the yearly contribution to the fund is made. Delinquent payments may be collected under the same procedures specified for annual assessments.
- e. **ASSESSMENT.** Each landowner shall pay an annual assessment equal to his proportional share of the budget approved by the Association, however, in no event shall the assessment be less than \$300 each year. The proportion of the budget paid by each landowner shall be equal to the proportion of the total number of parcels of land which each landowner owns to the total number of parcels in the Development.
- f. **ASSESSMENT COLLECTION.** All assessment payments shall be made payable to the treasurer of the Association. Payment is due thirty (30) days after the assessment is mailed. The treasurer shall place all funds collected in the Association account at the banking institution selected periodically by the Board.
- g. **FAILURE TO PAY ASSESSMENT.** If any landowner is in default for any assessment payment of thirty (30) or more days, the Association may bring suit to collect the assessment, together with any costs of collection. Additionally, the Association may file a lien against the land in the public records and foreclose the lien in the same manner as the enforcement and foreclosure of mortgages in Michigan.
- h. **REMEDIES.** By acceptance of title, each landowner vests in the Association the right and power to take any legal action which it may deem necessary or advisable to enforce this Agreement or any of its rules or regulations. Upon violation of any restriction or breach of any covenant, the Association may enforce it by a suit for money judgment, by foreclosing of the lien securing payment, or by an action in equity seeking a mandatory injunction. If a landowner is found to be in violation of any of these restrictions, covenants, or any duly adopted rules or regulations of the Associations, the violator agrees to pay the reasonable attorney fees and other costs incurred by the Association in such enforcement action and authorizes the court to enter on order requiring the violator to so pay.

If a landowner makes any payment of any amount less than that due hereunder, the Association may accept the amount as a payment on account without waiver of any remedy otherwise available to it. The Association is not bound by any notation on any check involving such payment.

In addition to all other remedies, the Association may enter upon the land as to which such violation that may exist contrary to the intent and provisions of this Agreement and the Association is not thereby liable for trespass, abatement, removal or in any other manner.

Failure of the Association to complain of any acts or omission on the part of landowner, no matter how long the same may continue, is not a waiver by it of any of its rights under this Agreement. Any and all rights and remedies the Association has under this Agreement or by operation of law upon any violation are separate and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by the Association or not, are to the exclusion of any other, and any two or more of all such rights and remedies may be exercised at the same time.

III. ARCHITECTURAL REVIEW COMMITTEE

(1) No building or structure (including but not limited to residences and outbuildings or other accessory buildings) shall be constructed or altered on any lot until the plans and specifications showing the design of the structure including a plot plan approximate cost of structure to be built and a grading plan have been submitted to and approved by the ARCHITECTURAL REVIEW COMMITTEE.

(2) The ARCHITECTURAL REVIEW COMMITTEE shall have the right to refuse to approve any such plans or specifications or grading plans which are not suitable or desirable in its opinion for aesthetic or other lawful reasons; and in so passing upon such plans, specifications and grading, it shall have the right to take into consideration the suitability of the proposed building or other structure to be built to the site upon which it is proposed to erect the same, and the harmony as planned in view of the outlook from the adjacent or neighboring properties. It is understood and agreed that the purposes of this paragraph are to cause the lots to develop into a beautiful, harmonious and private residential neighborhood and if a disagreement should arise on the points set forth in this paragraph, the decision of the ARCHITECTURAL REVIEW COMMITTEE shall control.

(3) However, in the event the ARCHITECTURAL REVIEW COMMITTEE shall have failed to approve or disapprove such plans and location within thirty (30) days after the same shall have been delivered to the ARCHITECTURAL REVIEW COMMITTEE, then such approval will not be required, provided the plans and location of the lots conform to or are

(4) Any dwelling erected or placed on any lot in the Development shall have a floor area, exclusive of basement, garage, deck, breezeways and one-story open porches of no less than the following square footage:

All homes must have at least a two (2) car attached garage, with no less than 576 square feet of floor area in the garage.

The Developer or his designated representative(s) shall act as the ARCHITECTURAL REVIEW COMMITTEE until such time as the Developer has sold more than seventy-five percent (75%) of the lots in the Development. After the Developer has sold more than seventy-five percent (75%) of the lots in the Development or sooner if the Developer so chooses, then the Architectural Review Committee shall consist of three (3) individuals selected at a meeting by a vote of a majority of members of the Lake Nepessing Bluffs Homeowners Association present at the meeting in person or by proxy authorized in writing by the lot owner. When the Association assumes from the Developer the responsibility for appointing the members of Architectural Review Committee ("the Committee"), the Association shall annually elect the members of the Committee. In the event that the members of the Committee are not elected, the existing Committee members shall serve until the new elections take place. Two members of the Committee shall constitute a quorum for conducting business. A majority affirmative vote of the Committee shall be required for any plans or decisions requiring approval, unless only two members are present, in which case a unanimous affirmative vote of both members shall be required. The Association shall be permitted to adopt rules and regulations regarding the various documents and procedures required for applicants for approvals by the Committee. A vacancy on the Committee due to death, disability, or resignation shall be filled by the Board of Directors to complete the term of vacant member or until the next election, whichever occurs first.

1. If any lot owner at any time shall violate or attempt to violate any of the covenants, conditions, restrictions, agreements, reservations or easements herein provided, it shall be

lawful for any other person or persons designated in Article IV(2) below or pursue to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate and to prevent them from so doing and/or to recover damages or other dues for such violations. If a court determines that a lot owner has violated any of the covenants, conditions, restrictions, agreements, reservations, or easements provided herein the violator agrees to pay the reasonable attorney fees and other costs incurred by the party initiating the enforcement action and authorizes the court to enter an order requiring the violator to so pay.

2. The provisions herein contained shall inure to the benefit of and be enforceable by (a) the Developer, its successors or assigns (b) the grantees in deeds conveying land in said development, their respective heirs, executors, administrators, or assigns (c) any subsequent owners of any land in said Development including land contract purchasers and (d) the Lake Nepessing Bluffs Homeowners Association and the failure of any of the above enumerated persons or corporations to enforce any restrictions, conditions, covenants or agreements herein contained, shall in no event be deemed a waiver of a right to do so thereafter as to the same breach or as to any breach prior to subsequent thereof.

3. All restrictions shall be perpetual restrictions.

V. AMENDMENT OF RESTRICTIONS

(1) The Developer may amend those restrictions in writing until such time as seventy-five percent (75%) of the lots covered by these restrictions have been sold. Thereafter these restrictions may be changed or altered by the owners of seventy-five percent (75%) of the lots with prior written notice by regular mail to each owner and signed instrument. Notice shall be provided at the address provided by the lot owner to the Association and to any land contract purchaser. If no address is provided, notice shall be provided at the address listed on the real property tax rolls.

VI. APPLICATION OF PRIVATE ROAD, SIDEWALK, UTILITY, AND DRAINAGE MAINTENANCE AGREEMENT

(1) All parcel owners or purchasers in the Development shall automatically become mandatory members of the Lake Nepessing Bluffs Homeowners Association and be benefitted and bound by the Lake Nepessing Bluffs Private Road, Sidewalk, Utility and Drainage Maintenance Agreement executed the same date as the execution of these Restrictions.

VII. SEVERABILITY

(1) If any section, paragraph, clause or phrase of this Agreement is for any reason held invalid by a court of competent jurisdiction, it is the intent of the undersigned that such

decision should not affect the validity of the remaining provisions of the Agreement, which shall be enforced as if the invalid provision did not exist.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 10th day of December, 1999.

WITNESSES:

Developer: Rex S. Curtiss, Jr., as Trustee of
the Rex S. Curtiss, Jr. Revocable Trust
Agreement dated April 10, 1992

Vickie G. Alexander
Vickie G. Alexander

By: Rex S. Curtiss, Jr.
Rex S. Curtiss, Jr., Trustee

Timothy W. Denney
Timothy W. Denney

State of Michigan)
) ss
County of Lapeer)

On this 10th day of December, 1999, before me personally appeared REX S. CURTISS, JR., as Trustee of the Rex S. Curtiss, Jr. Revocable Trust Agreement dated April 10, 1992, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Timothy W. Denney
Timothy W. Denney, Notary Public
Lapeer County, Michigan
Commission expires: 4-11-2002

Drafted By and Return To:
RICKARD, DENNEY & ASSOC.
Timothy W. Denney
350 North Court Street, Ste. 202
Lapeer, Michigan 48446
(810) 664-0750
12/10/99

EXHIBIT 1

Part of the South $\frac{1}{4}$ of Section 15 and part of the Northwest $\frac{1}{4}$ of Section 14, T7N-R9E, Elba Township, Lapeer County, Michigan, described as: Beginning at the East $\frac{1}{4}$ corner of Section 15; thence N $01^{\circ}23'04''$ W, 751.79 feet; thence N $60^{\circ}50'21''$ E, 74.48 feet; thence N $34^{\circ}41'00''$ W, 120.03 feet; thence N $01^{\circ}23'04''$ W, 10.77 feet; thence on a non tangent curve to the left, with a radius of 167.00 feet and a delta angle of $62^{\circ}09'19''$ and a chord bearing and distance of S $37^{\circ}37'36''$ W, 172.41 feet along the centerline of Longview Drive; thence on a curve to the right, with a radius of 273.00 feet and a delta angle of $36^{\circ}13'56''$ and a chord bearing and distance of S $24^{\circ}39'55''$ W, 169.78 feet along the centerline of Longview Drive; thence S $42^{\circ}46'53''$ W, 301.74 feet along the centerline of Longview Drive; thence on a curve to the left with a radius of 273.00 feet and a delta angle of $46^{\circ}38'40''$ and a chord bearing and distance of S $19^{\circ}27'34''$ W, 216.16 feet along the centerline of Longview Drive; thence on a curve to the left, with a radius of 600.00 feet and a delta angle of $44^{\circ}28'35''$ and a chord bearing and distance of S $18^{\circ}22'31''$ W, 454.15 feet along the centerline of Longview Drive; thence on a curve to the left with a radius of 500.00 feet and a delta angle of $20^{\circ}57'45''$, and a chord bearing and distance of S $30^{\circ}07'56''$ W, 181.91 feet along the centerline of Longview Drive; thence on a curve to the right with a radius of 260.00 feet and delta angle of $109^{\circ}54'53''$, and a chord bearing and distance of S $74^{\circ}36'30''$ W, 425.74 feet along the centerline of Longview Drive; thence N $50^{\circ}26'04''$ W, 64.63 feet along the centerline of Longview Drive; thence on a curve to the left, with a radius of 273.00 feet and a delta angle of $102^{\circ}23'17''$, and a chord bearing and distance of S $78^{\circ}22'17''$ W, 425.48 feet along the centerline of Longview Drive; thence N $62^{\circ}49'21''$ W, 321.49 feet; thence S $77^{\circ}40'04''$ W, 711.14 feet; thence S $80^{\circ}00'30''$ W, 1357.84 feet; thence S $00^{\circ}50'24''$ E, 1926.93 feet; thence N $89^{\circ}03'48''$ E, 1315.85 feet to the South $\frac{1}{4}$ corner of Section 15; thence N $89^{\circ}15'17''$ E, 2556.49 feet to the Southeast corner of Section 15; thence N $00^{\circ}05'12''$ E, 2677.30 feet to the point of beginning. Reserving therefrom that part used, taken or deeded for Golf Road, so-called. Containing 204.60 acres more or less.

EXHIBIT 2

Part of the South $\frac{1}{4}$ of Section 15, T7N-R9E, Elba Township, Lapeer County, Michigan, described as: Beginning at a point that is S $87^{\circ}52'05''$ W, 2570.25 feet along the East-West $\frac{1}{4}$ line of Section 15 to the interior corner of said Section from the East $\frac{1}{4}$ corner of Section 15; thence S $00^{\circ}10'43''$ E, 82.55 feet along the North-South $\frac{1}{4}$ line of Section 15; thence N $87^{\circ}52'05''$ E, 2044.88 feet; thence on a non-tangent curve to the right, radius 600.00 feet and a delta angle of $16^{\circ}44'00''$ and a chord bearing and distance of S $32^{\circ}14'48''$ W, 174.61 feet along the centerline of Longview Drive; thence along a curve to the left, radius of 500.00 feet, a delta angle of $20^{\circ}57'45''$ and a chord bearing and distance of S $30^{\circ}07'56''$ W, 181.91 feet along the centerline of Longview Drive; thence on a curve to the right, with a radius of 260.00 feet and a delta angle of $109^{\circ}54'53''$ and a chord bearing and distance of S $74^{\circ}36'30''$ W, 425.74 feet along the centerline of Longview Drive; thence N $50^{\circ}26'04''$ W, 64.63 feet along the centerline of Longview Drive; thence on a curve to the left, with a radius of 273.00 feet and a delta angle of $102^{\circ}23'17''$ and a chord bearing and distance of S $78^{\circ}22'17''$ W, 425.48 feet along the centerline of Longview Drive; thence N $62^{\circ}49'21''$ W, 321.49 feet; thence S $77^{\circ}40'04''$ W, 711.14 feet; thence S $80^{\circ}00'30''$ W, 1357.84 feet; thence N $00^{\circ}50'24''$ W, 701.25 feet; thence N $89^{\circ}38'11''$ E, 1346.08 feet along the East-West $\frac{1}{4}$ line of Section 15 to the point of beginning. Containing 33.71 acres more or less.