

## **President's Message - Reference Material**

1. 2006 LLPOA BOD / BCC Agreement
2. Attorney Flack Opinion
3. Sample Deed Restrictions – Greenbriar Two

## BCC AGREEMENT

This Agreement, effective 9-20-06, 2006, is made between Lake LeAnn Property Owners Association, a non-profit Michigan corporation ("Association"), and William Vette, David Luke, and Bill Stuard, individually ("Members") and as current members of the Building Control Committee as established by the various restrictions of deeds for the subdivisions of Lake LeAnn ("BCC").

Issues have arisen concerning the relationship between the Association and BCC. The parties desire to resolve those issues for the mutual benefit of BCC, Association, and the residents of the Lake LeAnn subdivisions. Accordingly, the Board of Directors, on behalf of the LLPOA, and the BCC, in consideration of the mutual covenants contained herein, agree as follows:

1. Association shall appoint a Board Member by their July association meeting to serve as a voting member of the BCC until the next vacancy of this committee at which time that board member would be appointed to the BCC by the remaining BCC members.
2. The Chairman of the BCC shall relinquish his voting rights to the Board appointed member upon the appointment set forth in Paragraph 1, but continue to serve as Chairman to facilitate and lead the activities of the BCC. Prior to a BCC vacancy being filled, the BCC chair or BCC member's vote, whichever is applicable, would be restored. Both parties agree there will be three votes on the BCC until such time as the deed restrictions are changed.
3. All future vacancies on the BCC will be filled by individuals who are members in good standing of the association, and in accordance with the procedures outlined in the deed restrictions, provided the vacancy was not the Board appointed voting member, in which case the Board would fill the position.
4. If a vacancy has not occurred within one year of the signing of this agreement, the Board appointed BCC member would automatically replace one of the regular BCC Members who would in turn, resign. The member to resign would be decided among the *voting* BCC members. Future vacancies from that point forth would be as outlined in paragraph 3 above.
5. The Board appointed member would also serve as the liaison between the Association Board and the BCC.
6. The Association will resume its support of BCC (facilities, employees, contracted services, and other financial support); as mutually agreed upon by the BCC and the Association. (Addendum to be attached to this agreement outlining agreed upon conditions). ***Please see notes on Addendum.***

7. Board of Directors, and members of the BCC agree to be working partners to revise the Deed Restrictions and the Association By-Laws. Board of Directors, and members of the BCC agree to work cooperatively to present to the membership for their consideration revisions to the Deed Restrictions and the Association By-Laws to include, but limited to the establishment of the BCC as a standing committee of the Association.

8. With the signing of this agreement, both parties agree this partnership would best serve the association membership by eliminating any duplicative services currently performed by the ARC. The ARC would only perform functions as assigned by the board and not performed by the BCC as allowed by the Deed Restrictions. Their role with the BCC would be a primarily advisory and task function as requested by the Board and BCC.

LAKE LEANN PROPERTY OWNERS ASSOCIATION

## **ADDENDUM TO BCC AGREEMENT**

### **Operating Conditions**

**The BCC and the Association agree to operate as follows:**

1. This addendum is to be a living document adjustable with agreement by both parties.
2. The LLPOA Board of Directors will make reasonable accommodation through board members and staff with keys for any BCC member/s to obtain needed paperwork and access to the association office conference room to meet with members, conduct BCC meetings and transfer documents during other than office hours.
3. The contract employee, building inspector would work with the BCC for day to day operations of BCC business. Secretarial support would be provided by the association office including but not limited to record keeping, mailings out letters, handing out BCC packets, collecting fees, data base input, and other duties as assigned by the association office staff working with the BCC.

LAKE LEANN PROPERTY OWNERS ASSOCIATION

**ROBERT D. FLACK**  
**ATTORNEY AT LAW**

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Jackson, Michigan 49202  
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(517) 787-2730

April 25, 2016

Lake LeAnn Property Owners Association  
ATTN: Harty Ausel, Acting President  
P. O. Box 308  
Somerset Center, Michigan 49282

Dear Mr. Ausel:

This letter is in response to your letter dated March 14, 2016 sent to this office along with a copy of the Declaration of Restrictions, "the Declaration", recorded at Liber 364, Page 412, Hillsdale County Records.

Your letter has many questions which hopefully will be adequately responded to in this letter.

Several of your questions involve the Building Control Committee, "BCC". Reviewing your questions, I feel a discussion of the BCC issues can perhaps be addressed by discussing the BCC as it is referred to in the recorded Declaration.

The last paragraph in Part 2 of the Declaration describes the principal function of the BCC. The language in the Declaration reads as follows:

"The Building Control Committee shall approve plans for all structures erected in this subdivision. The Committee may reject any plan because of too great a similarity to nearby existing structures."

The top paragraph of Part 2 of the Declaration reads:

"any dwelling erected, placed or altered on any lot in this subdivision must be approved in writing by the \*BCC prior to start of construction."

Part 2 of the Declaration in Sections (a) through (k) provides minimum standards by which "dwellings shall be constructed".

Paragraph 1 provides that "any structure" shall be a private residence for use by the owner or occupant.

Given the above portions of the Declaration, it is my opinion that the Lake LeAnn Development Company's, "the Development Co." establishment of the Building Control Committee was primarily concerned about construction standards and aesthetics applicable to residential dwellings, garages and boat houses only, not to other structures.

It does not appear the Development Co. was trying to subject every type of structure to the review of the BCC. It appears that if the structure was not a dwelling, garage or boat house, the BCC review did not apply. An exception is in Paragraph 5 "Docks" which reads:

"any dock erected shall not extend more than 35 ft. out from the water's edge.  
No dock may be erected without approval of the Building Control Committee."

There are no guidelines in the Declaration as to how the dock must look or be constructed. Consequently, it appears the only issue the BCC has discretion over as to a dock is whether or not the dock is more than 35 feet out from the water's edge.

It is my opinion, based upon the entire document, the Building Control Committee's function is to:

Determine if a plan for a dwelling has too great a similarity to nearby existing structures;

Determine if the building plans for a dwelling conform to the construction standards outlined in paragraph two;

Determine if a garage or a boathouse conforms in appearance to the residence structure;

Approve a dock without having any guidelines except the dock cannot extend more than 35 feet into the water;

Have the ability to waive setback lines under certain circumstances;

Approve fences (with no directions as to construction standards) along with certain guidelines as to the location of fences.

For a point of interest, Michigan Courts in several cases have ruled that deed restrictions are construed strictly against the grantor and all doubts are resolved in favor of the free use of property. Given the preceding concept, the deed restrictions need to be interpreted carefully should the BCC assert it has duties or abilities not clearly defined in the Declaration. Consequently, I do not believe the BCC must consent to all "structures" as used in the dictionary definition of the term.

Your letter further notes concerns about the "jurisdictional hierarchy of the law". I am viewing the question as to what has precedence in the event of a governmental rule of some nature which conflicts with the Declaration and vice versa.

I cannot immediately think of a situation where a provision of the recorded restrictions would negate or override a governmental rule of some nature except to be more restrictive. An example, your deed restrictions allow a dock to extend 35 feet into the water, but the township ordinance only allows docks to extend 25 feet into the water. Both rules apply to docks and both

are enforceable. However, when there is a difference between a governmental rule and a deed restriction, you should assume the most restrictive rule will be able to be applied to the situation. For docks, the 25 feet becomes the applicable dimension. The same concept also applies to township zoning setback requirements.

Given the language in the Declaration, I agree that the BCC cannot waive the requirements that a fence may not be closer than 25 feet to the front lot line. The BCC may waive certain setback requirements of the restrictions per Declaration setback rules. However, this does not give the BCC the ability to override any township setback rules. Other than the circumstances in this letter to the contrary, the BCC does not have the ability to waive other restrictions or grant variances on any restriction. In addition, the Lake LeAnn Property Owners Association may not issue variances relating to the Declaration.

If you have any questions or concerns regarding the contents of this letter, please let me know. Thank you for letting this office be of help.

Sincerely,

LAW OFFICE OF ROBERT D. FLACK

Robert D. Flack

RDF/bl

Enc.

LAKE LE ANN DEVELOPMENT COMPANY, A MICHIGAN CORPORATION, AS DEVELOPERS OF THE FOLLOWING DESCRIBED PROPERTY:

LAKE LE ANN - GREENBRIAR PLAT TWO, BEING A SUBDIVISION PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 5 AND PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 4, TOWN 5 SOUTH, RANGE 1 WEST, SOMERSET TOWNSHIP, HILLSDALE COUNTY, MICHIGAN,

AND AS DEVELOPERS OF THE ABOVE DESCRIBED PLAT, IT DESIRES TO IMPOSE THE FOLLOWING RESTRICTIONS:

1. USE

ANY STRUCTURE ERECTED ON ANY LOT IN THIS SUBDIVISION SHALL BE A PRIVATE RESIDENCE FOR USE BY THE OWNER OR OCCUPANT, EXCEPT LOT No. 157. ONLY ONE RESIDENCE MAY BE ERECTED ON A SINGLE LOT AND NO PART OF SAID PREMISES SHALL BE USED FOR COMMERCIAL OR MANUFACTURING PURPOSES, EXCEPT LOT No. 157, WHICH MAY BE USED FOR RETAIL SALES AND SERVICE, INCLUDING THE SALE OF FUEL AND OIL PRODUCTS.

NO TRAILER OR TEMPORARY STRUCTURE SHALL BE OCCUPIED OR STORED WITHIN THE SUBDIVISION AT ANY TIME. NO POULTRY OR LIVESTOCK SHALL BE KEPT WITHIN THE SUBDIVISION EXCEPT HOUSEHOLD PETS.

2. TYPE, SIZE AND CONSTRUCTION

ANY DWELLING ERECTED, PLACED OR ALTERED ON ANY LOT IN THIS SUBDIVISION MUST BE APPROVED IN WRITING BY THE \*BUILDING CONTROL COMMITTEE PRIOR TO START OF CONSTRUCTION. SUCH APPROVAL WILL BE MADE UPON SUBMISSION OF SATISFACTORY PLANS INCLUDING A GRID MAP SHOWING LOCATION OF STRUCTURE ON THE LOT. ANY STRUCTURE ERECTED MUST CONFORM TO THE FOLLOWING MINIMUM STANDARDS:

- (A) ANY DWELLING ERECTED, PLACED OR ALTERED ON ANY LOT IN THIS SUBDIVISION SHALL HAVE A MINIMUM ENCLOSED LIVING AREA OF: RANCH TYPE, ONE FLOOR ON SLAB OR CRAWL SPACE 850 SQ. FT. TWO LEVEL, A FRAME, STORY AND ONE-HALF, EXPOSED BASEMENT, 720 SQ. FT. ABOVE GRADE ON GROUND FLOOR.
(B) NO DWELLING SHALL BE ERECTED IN EXCESS OF 1 1/2 STORY ABOVE GRADE ON WATER FRONT LOTS. THE SIDE WHICH FACES THE STREET SHALL BE CONSIDERED TO BE THE FRONT OF ANY DWELLING ERECTED IN THIS SUBDIVISION.
(C) ALL CONSTRUCTION MATERIALS MUST BE NEW.
(D) ALL RESIDENCES MUST HAVE PRIVATE INSIDE BATHROOM FACILITIES.
(E) ALL STRUCTURES SHALL BE COMPLETED ON THE EXTERIOR WITHIN SIX (6) MONTHS FROM START OF CONSTRUCTION INCLUDING TWO (2) COATS OF PAINT OR VARNISH ON ANY EXTERIOR WOOD SURFACES.
(F) EXTERIOR WALLS MUST BE FINISHED WITH APPROVED SIDING MATERIALS OR IF CONCRETE BLOCK TO BE USED AS AN EXTERIOR SURFACE, IT MUST BE PAINTED WITH TWO (2) COATS OF MASONRY PAINT.
(G) ANY GARAGE OR BOAT HOUSE MUST CONFORM IN APPEARANCE TO THE RESIDENCE STRUCTURE ON SAID LOT.
(H) ANY GARAGE OR CAR SHELTER ERECTED ON ANY LAKE FRONT LOT MUST BE ATTACHED TO THE DWELLING.
(I) ANY FENCE ERECTED MUST BE APPROVED BY THE BUILDING CONTROL COMMITTEE AND IN NO CASE SHALL A FENCE BE ERECTED CLOSER THAN 25 FT TO THE FRONT LOT LINE.
(J) ALL SEPTIC TANKS OR OTHER DEVICES FOR THE SANITARY DISPOSAL OF WASTE SHALL BE INSTALLED IN COMPLIANCE WITH COUNTY HEALTH DEPT. REGULATIONS. A GRID MAP OF THE LOT SHOWING LOCATION OF WELL AND SEPTIC TANK IS TO BE SENT TO THE HILLSDALE COUNTY HEALTH DEPT.
(K) NO UNSIGHTLY RECEPTACLE FOR THE STORAGE OR DISPOSAL OF GARBAGE OR TRASH SHALL BE PLACED ON ANY LOT IN THE SUBDIVISION.

\*THE BUILDING CONTROL COMMITTEE SHALL CONSIST OF THREE (3) MEMBERS APPOINTED BY THE LAKE LE ANN DEVELOPMENT COMPANY. THE COMMITTEE MAY DESIGNATE ONE OF ITS MEMBERS TO ACT IN ITS BEHALF. IN THE EVENT OF THE RESIGNATION OR DEATH OF ANY MEMBER, THE REMAINING MEMBERS SHALL APPOINT A REPLACEMENT. THE BUILDING CONTROL COMMITTEE SHALL APPROVE PLANS FOR ALL STRUCTURES ERECTED IN THIS SUBDIVISION. THE COMMITTEE MAY REJECT ANY PLAN BECAUSE OF TOO GREAT A SIMILARITY TO NEARBY EXISTING STRUCTURES.

3. SETBACK

ANY STRUCTURE ERECTED MUST BE SET BACK NOT LESS THAN 25 FT. FROM THE FRONT LOT LINE AND NOT LESS THAN 25 FT. FROM ANY SIDE STREET LOT LINE. SIDE LINE SETBACKS SHALL NOT BE LESS THAN 10% OF THE WIDTH OF THE LOT AT BUILDING LINE. THE BUILDING CONTROL COMMITTEE MAY WAIVE THIS SETBACK REQUIREMENT IF IN ITS OPINION, TO DO SO WOULD PROVIDE BETTER UTILIZATION OF THE LOT WITHOUT DETRACTING FROM THE USE OF ANY ADJOINING LOT.

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4. SIGNS

NO FOR SALE SIGN OR ADVERTISING DEVICE OF ANY KIND SHALL BE ERECTED ON ANY LOT EXCEPT ON A NEW HOUSE PREVIOUSLY UNOCCUPIED WHICH IS OFFERED BY THE DEVELOPER OR BUILDER (ALSO EXCEPT LOT No. 157).

5. DOCKS

ANY DOCK ERECTED SHALL NOT EXTEND MORE THAN 35 FT. OUT FROM THE WATER'S EDGE. NO DOCK MAY BE ERECTED WITHOUT APPROVAL OF THE BUILDING CONTROL COMMITTEE.

6. CONTROL

LAKE LE ANN IS DESIGNATED AS A PRIVATE LAKE AND AS SUCH, THE RIGHT TO USAGE, LEVEL AND CONTROL REMAIN WITH THE DEVELOPER OR ITS AUTHORIZED AGENT. CONVEYANCE OF ANY LOT BY THE DEVELOPER AND ANY SUBSEQUENT CONVEYANCE BY OTHER PARTIES IS MADE SUBJECT TO THE CONTROL OF ALL LAND BELOW WATER LEVEL, IT BEING HEREIN ESTABLISHED THAT THE WATER LEVEL MAY BE MAINTAINED AT ANY POINT BELOW ELEVATION 1044 G.S.C. DATUM. SAID CONTROL TO BE HELD BY LAKE LE ANN DEVELOPMENT CO., ITS AGENTS OR ASSIGNS. NO WATERFRONT LOT MAY BE FILLED WITHOUT THE WRITTEN CONSENT OF THE LAKE LE ANN DEVELOPMENT CO., ITS AGENTS OR ASSIGNS.

7. MAINTENANCE FUND

THE OWNER OF EACH LOT SHALL PAY TO THE LAKE LE ANN MAINTENANCE COMPANY \$20.00 ON MARCH 1ST OF EACH YEAR STARTING MARCH 1, 1964. FUNDS SO COLLECTED SHALL BE USED AT THE DISCRETION OF THE LAKE LE ANN MAINTENANCE COMPANY TO MAINTAIN ALL DAMS, REGULATE THE LAKE LEVEL, PAY SALARIES AND ADMINISTRATIVE COSTS AND GENERAL BEAUTIFICATION AND BETTERMENT OF LAKE LE ANN.

8. EASEMENTS

EASEMENTS FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OR DRAINAGE FACILITIES ARE RESERVED ALONG AND WITHIN 5 FT. OF ALL REAR, FRONT AND SIDE LOT LINES IN THIS SUBDIVISION. SUCH OTHER EASEMENTS ARE HEREBY RESERVED TO ENTER UPON THE PREMISES IF NECESSARY TO CONSTRUCT, OPERATE AND MAINTAIN ANY OTHER PUBLIC IMPROVEMENTS, PIPES, POLES, WIRES, ETC., WHETHER UNDER OR ABOVE GROUND.

IT SHALL NOT BE CONSIDERED A VIOLATION OF THE PROVISIONS OF THE EASEMENT IF WIRES OR CABLES CARRIED BY SUCH POLE LINES PASS OVER SOME PORTION OF SAID LOTS NOT WITHIN THE 5 FOOT EASEMENT.

IF AN OWNER OF TWO ADJOINING LOTS ERECT A BUILDING IN THE CENTER OF THE TWO LOTS SO THAT THE BUILDING SETS ON THE COMMON LOT LINE, THE SIDELINE RESTRICTION MENTIONED ABOVE SHALL AUTOMATICALLY BE INOPERATIVE AS TO THE LINE UPON WHICH THE BUILDING IS ERECTED.

9. REPURCHASE OPTION

THE LAKE LE ANN DEVELOPMENT COMPANY SHALL HAVE THE OPTION TO REPURCHASE ANY PROPERTY OFFERED FOR SALE IN THE SUBDIVISION. ANY OWNER CONTEMPLATING A SALE OF PROPERTY IN THIS SUBDIVISION, SHALL PRESENT TO THE LAKE LE ANN DEVELOPMENT COMPANY A BONA FIDE PURCHASE AGREEMENT, EXECUTED BY HIS PROSPECTIVE PURCHASER. THE LAKE LE ANN DEVELOPMENT COMPANY SHALL HAVE THE OPTION FOR 30 DAYS TO PURCHASE SUBJECT PROPERTY FOR AN EQUIVALENT PRICE.

10. INVALIDATION

THESE COVENANTS SHALL RUN WITH THE LAND AND SHALL BE BINDING ON ALL PARTIES CLAIMING UNDER THEM FOR A PERIOD OF 20 YEARS AND SHALL BE EXTENDED FOR SUCCESSIVE PERIODS OF TEN YEARS UNLESS AND PRIOR TO THE EXPIRATION OF ANY SUCH TEN YEAR PERIOD, AN INSTRUMENT SIGNED BY THE OWNERS OF RECORD OF A MAJORITY OF LOTS IN THE SUBDIVISION HAS BEEN RECORDED CHANGING OR MODIFYING SAID COVENANTS IN WHOLE OR IN PART.

INVALIDATION OF ANY ONE OF THESE COVENANTS BY JUDGMENT OR DECREE SHALL IN NO WAY EFFECT ANY OF THE OTHER PROVISIONS HEREOF WHICH SHALL REMAIN IN FULL FORCE AND EFFECT.

LAKE LE ANN DEVELOPMENT COMPANY,  
A MICHIGAN CORPORATION

WITNESS:

Beulah M. Walker  
BEULAH M. WALKER

Carl A. Hager  
CARL A. HAGER

BY Don L. Foote  
DON L. FOOTE, PRESIDENT

BY Robert M. Andrews  
ROBERT M. ANDREWS, SECRETARY