

Certified, Filed and or Recorded on
JULY 20, 2007 AT 09:55:00AM

DIANE POACH

WASHBURN CO REGISTER OF DEEDS

SHELL LAKE WI 54871

Fee Amount: \$23.00

Declaration of Restrictive
Covenant for
East Hills Addition

Document Number

Document Title

This Restrictive Covenant approved this 3rd day of July, 2007, by the Village of Birchwood Board of Trustees for the East Hills addition.

Return to:
Vicki Busick, Clerk
Village of Birchwood
P. O. Box 6
Birchwood, WI 54817

Parcel Identification Number
65-106-2-37-10-25-5 15-696-
728500 65-106-2-37-10-25-0-0-
07285
65-106-2-37-10-25-5-15-696-
7259000 65-106-2-37-10-25-0-
07290
65-106-2-37-10-25-5-15-696-
729500 65-106-2-37-10-25-0-0-
7295
65-106-2-37-10-25-5-15-696-
727500 65-106-2-37-10-25-0-
07275
65-106-2-37-10-25-5-15-696-
728000 65-106-2-37-10-25-0-0-
7280
65-106-2-37-10-25-4-01-000-
002000 65-106-2-37-10-25-4-1-
0020

The Village of Birchwood (the "Developer") is the owner of the real estate which has been platted as the "East Hills Addition Plat", Village of Birchwood, Washburn County, Wisconsin. For the purpose of encouraging development while preserving the value of the lands contained within the East Hills Addition Plat, as well as all lands located in its general vicinity, the Developer hereby declares and provides that, in addition to the Village of Birchwood Zoning Ordinance, all lands within the East Hills Addition Plat, including Lots 1 thru 20, inclusive, shall be subject to the restrictions, covenants and conditions set forth herein.

The Developer has adopted these Covenants to encourage orderly residential development, which is attractive to residents and owners of properties in the East Hills Addition Plat. Additionally, these conditions, covenants and restrictions are for the public benefit pursuant to Wis. Stats. Sec. 236.293 and may not be modified without the written approval of the Village of Birchwood. The enforcement of the Covenant is intended to provide for the enhancement of property values and to the aesthetic and financial success of the East Hills Addition Plat.

DECLARATION OF RESTRICTIVE COVENANTS

East Hills Addition Village of Birchwood, Wisconsin

- I. **INTENT** The Village of Birchwood (the "Developer") is the owner of the real estate which has been platted as the "East Hills Addition Plat", Village of Birchwood, Washburn County, Wisconsin. For the purpose of encouraging development while preserving the value of the lands contained within the East Hills Addition Plat, as well as all lands located in its general vicinity, the Developer hereby declares and provides that, in addition to the Village of Birchwood Zoning Ordinance, all lands within the East Hills Addition Plat, including Lots 1 thru 20, inclusive, shall be subject to the restrictions, covenants and conditions set forth herein.

The Developer has adopted these Covenants to encourage orderly residential development, which is attractive to residents and owners of properties in the East Hills Addition Plat. Additionally, these conditions, covenants and restrictions are for the public benefit pursuant to Wis. Stats. Sec. 236.293 and may not be modified without the written approval of the Village of Birchwood. The enforcement of these Covenants is intended to provide for the enhancement of property values and to the aesthetic and financial success of the East Hills Addition Plat.

II. LAND USE

- A. Permitted Uses The types of uses deemed appropriate for the East Hills Addition Plat are residential uses, as set forth in the Village of Birchwood Zoning Ordinance for Residential Districts, R1
1. R1 uses will be permitted on Lots 1 thru 20 excluding lot 8 for a lift station
 2. Home occupations will be permitted as allowed by the Village of Birchwood Zoning Ordinance.
- B. Prohibited Uses The following uses are expressly prohibited in the East Hills Addition Plat:
1. Dumping of rubbish or refuse.
 2. Any noxious or offensive operation, business or trade of any kind.
 3. Any condition or activity which may constitute a nuisance or an unreasonable annoyance to the neighborhood.

- III. **ARCHITECTURAL CONTROL** The Architectural Control Committee/Developer shall be responsible for controlling and enforcing this declaration.

- A. Developer Control Until such time as the Developer ceases to have title to at least one (1) lot in the Plat, the Developer shall be deemed "Committee" for all purposes as that term is used in this Declaration. Developer may, by a two-thirds vote of the Village Board, abdicate control to a duly elected Committee (as outlined in part III.B) while still holding the title to one (1) or more Lots.
- B. Committee Control When Developer no longer has title to any Lots that are subject to this Declaration, or at such time as control is abdicated by the Developer, the Committee shall be comprised of three Owners elected by the majority of owners. Each lot shall have one vote for this purpose. The election of said Committee shall be held annually on the second Monday in January at a site selected by the Developer or by the prior Committee. Vacancies created between elections shall be filled by persons appointed by the remaining members of the Committee.
- C. Procedures for Approval No building, structure, Fence, deck, antenna, or other improvements may be erected or placed on any Lot, nor may the exterior appearance of existing buildings or structures be altered, including but not limited to exterior remodeling or the construction of patio, decks, or swimming pools, without the prior written approval of the Committee.
1. An Owner desiring to make an improvement must submit plans, specifications and a site plan showing the general plan of work.

2. The Committee may approve, disapprove, or approve subject to stated conditions.
 3. In the event Committee shall fail to act within thirty-five (35) days of submission of plans and specifications, then approval shall be deemed granted.
 4. Owner must make all improvements in conformity with approved plans or specifications. Any change or deviation from any such plans or specifications that would affect the exterior appearance of any building, structure or improvement must be submitted for further approval.
- D. Liability of Committee Neither the Developer nor the Committee shall be responsible for obtaining any approvals required by the ordinances of the Village of Birchwood or Washburn County or any other governmental bodies, nor shall the Developer or the committee be responsible in any way for compliance with applicable building codes. No action by the Developer or the Committee shall be deemed to be a representation that the plans or specifications are structurally sound or shall be liable for any loss suffered on the basis of approval or disapproval of plans and specifications.

IV. DEVELOPMENT STANDARDS

- A. Uniform Dwelling Code All dwellings constructed in the East Hills Addition Plat shall conform to the Uniform Dwelling Code (Wisconsin Administrative Code). In compliance with and/or in addition to said code, all dwellings are subject to the following criteria:
1. Manufactured dwellings (modular homes) will be allowed. No manufactured homes (mobile homes) will be permitted.
 2. All dwellings shall be supported by a structural system placed below the frost penetration level. A basement is preferred.
 3. Roof pitch shall be not less than 4 to 12.
- B. Minimum Living Areas All dwellings shall have no less than the following minimum living areas (excluding garages, porches and basements, even if finished)
1. Single-family dwellings
 - 950 square feet for single-story homes
 - 1,150 square feet for two-story homes, with a minimum of 750 square feet on the main floor
 - 950 square feet for raised or split-level homes.
 2. Two-family dwellings
 - Each unit shall have 75% of the finished area required for a single-family dwelling of similar structure.
 3. These minimum area requirements may be waived by the Committee in the event the proposed architecture of the house is such as to present a pleasing appearance compatible with other houses in the development.
- C. Setbacks No buildings, garages or other structures shall be located so that the front, side and rear yard distances are less than minimums as required by the Village of Birchwood Zoning Ordinance.
- D. Construction of Improvements Once construction begins, Owner shall diligently pursue construction until completion. Any Owner of a structure in violation of the following may, in the discretion of the Committee, be assessed a fine of from One Dollar (\$1.00) to One Hundred Dollars (\$100.00) per day for every day the violation continues.
1. No building shall be permitted to stand with its exterior in an unfinished condition for longer than nine (9) months after commencement of construction.
 2. Within nine (9) months after commencement of construction, the building shall be ready for occupancy. This includes connection to public sewer and water systems, and the following indoor plumbing fixtures: one water closet, one wash basin, one kitchen sink and one bathtub or shower (minimum, per dwelling unit).

3. In the event of fire, windstorm, or other damage, no building shall be permitted to remain in damaged condition longer than four (4) months.

E. Garages and Accessory buildings

1. Each Lot shall have not less than one (1) nor more than four (4) automobile garage stalls. These stalls may be located in an attached garage and/or detached garage(s). Any detached garage(s) shall be considered an accessory building.
2. A maximum of two accessory buildings may be constructed on any lot.
3. In addition to the permissible four (4) automobile garage stalls per lot, the combined area of any accessory buildings shall not exceed 750 square feet.
4. The maximum eave height of one accessory building shall be twelve (12) feet. Any other accessory building must have an eave height of ten (10) feet or less.
5. The exterior facades and roofs of accessory buildings and garages must be constructed with the same architectural style and quality of the house. Accessory buildings (excluding garages) must be set back a minimum twenty feet from the front of the house.

F. Parking

1. In addition to the parking provided in garage stalls, single family dwellings may have two additional parking spaces in the driveway.
2. Two-family dwellings shall have not less than two (2) nor more than three (3) parking stalls per dwelling unit. These stalls may be located in an attached or detached garage, driveway, or in an off-street parking area which has been approved by the Committee.
3. Any automobile regularly parked on a Lot, but not in a garage or other accessory building, shall be in running condition, currently licensed, and in a reasonable state of repair.
4. Parking shall be prohibited on any portion of the lot except in the driveway, Committee-approved off-street parking area, garage, or other outbuilding.
5. No travel trailer, mobile home, camper or other recreational vehicle shall be kept in the front yard for a period of more than two weeks in any calendar year.

G. Utilities All utilities, including but not limited to electric power, telephone, cable television, gas, water and sewer, shall be underground.

H. Landscaping Owner is required to maintain his Lot and to prevent conditions which detract from the aesthetic appearance of the development.

1. The Lot shall be maintained to the following standards.
 - The lawn shall be mowed as required to maintain a height of 6" or less.
 - Debris and rubbish shall be removed from the Lot within a reasonable period of time.
 - Dead trees and vegetation shall be cut down and removed.
 - Snow and ice shall be removed from public sidewalks.If an Owner neglects Lot maintenance, the Village, or its assigns, may serve notice, and after ten (10) days without compliance, may enter the premises, perform the necessary maintenance and add the cost incurred to the Owner's annual real estate tax bill.
2. No trees shall be planted in utility easements or less than ten (10) feet from public right-of-ways.
3. No fences, wall, hedge, tree or shrub planting which obstructs sight lines at elevations between thirty inches and eight feet above the surrounding grade shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of rounded property corners, from the intersection of the street property lines extended.
4. Each lot shall be landscaped in a way that allows precipitation to run-off to a drainage-way.
5. Owner shall maintain any drainage-ways and drainage easements on his Lot.

V. RESTRICTIONS AND PROHIBITIONS

- A. Re-subdivision No lot shall be re-subdivided into lots of smaller size.
- B. Animals
 - 1. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other normal household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose, or allowed to annoy neighbors.
 - 2. No person shall knowingly keep or harbor any vicious pet which may assault a person peacefully walking or riding on public roads or while lawfully on the premises of such a pet, or elsewhere in the East Hills Addition Plat. Dogs or pets shall not be permitted to run at large, but shall be kept on the premises of the owner unless they are under the control of the owner or responsible person.
- C. Outdoor Lighting In no event shall any resident be permitted to direct any exterior lighting upward or outward toward any neighboring residence.
- D. Outdoor Furnaces Exterior solid fuel burning stoves are prohibited in the East Hills Addition Plat unless a variance is granted by the Village Board. After the Board has received a written request for variance, it will decide to grant or deny said variance based on the following conditions:
 - 1. Set back from lot lines and streets
 - 2. Elevation of proposed smoke stack in proximity to neighboring buildings
 - 3. Distance to closest inhabited dwellings
 - 4. Objections (if any) from neighboring property owners or occupants
 - 5. Other conditions which the affected property owners or occupants or the Village Board feels should be considered in the variance decision.

VI. REPURCHASE AND RESALE OF LOTS

- A. Commencement of Improvement If an Owner has not or cannot start construction and improvements on a Lot within twelve (12) months of the date of payment of the purchase price, the Village of Birchwood shall have the right to repurchase the property from the purchaser at the 90% of original purchase price without interest minus the closing costs. If the Village reclaims the land through non-performance by Owner, the Owner shall convey the property to the Village free and clear of all liens and encumbrances, except these Covenants. The purchase price shall be refunded upon delivery of the Deed to the Village.
- B. Time Extension An Owner may submit to the Developer a request for an extension of this time limit. The request must be received (in writing) not less than 45 days before the deadline for commencement of construction. No extension shall be granted for a period of longer than six (6) months, and no Owner of any given lot shall be granted more than two (2) extensions.
- C. Sale of Unimproved Lot In the event any Owner of an unimproved lot elects to sell said Lot, it shall first be offered for sale, in writing, to the Village of Birchwood at the original purchase price, without interest. The Village shall have sixty (60) days from receipt of such an offer to accept or reject it. If the Village fails to act on said offer within sixty (60) days from receipt thereof, or rejects the offer, the purchaser may then sell the land to any third party.
- D. Sale to a Third Party If an unimproved Lot is sold by an Owner to a third-party, the Village reserves the right to reclaim the land for non-performance if that subsequent purchaser does not or cannot commence and/or complete construction and improvements within the remainder of the time allowed to the previous Owner. The subsequent purchaser shall be subject to applicable zoning, ordinances, restrictions and regulations of the Village of Birchwood, and to these Covenants.

VII. GENERAL PROVISIONS

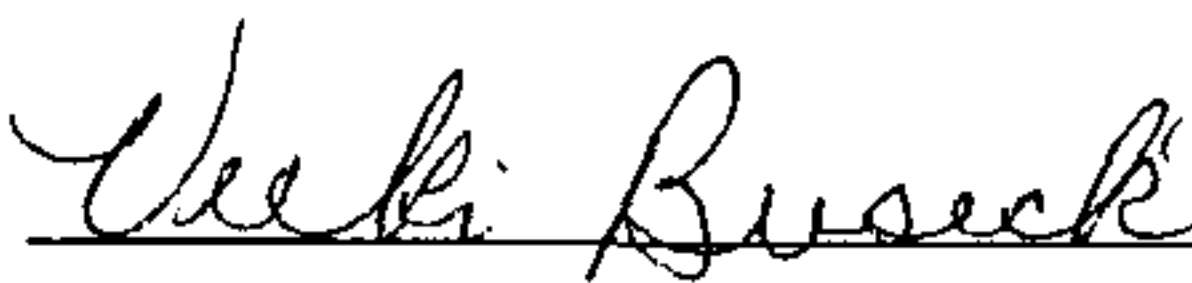
- A. Termination These conditions, covenants and restrictions shall run with the land and shall be binding upon all owners of property covered by this document for a period of twenty-five (25)

years from the date this document is recorded, after which time it shall automatically stand renewed for successive ten (10) year periods unless there is recorded an instrument terminating this Declaration executed by the owners of at least sixty-six percent (66%) of the lots in the East Hills Addition Plat, upon approval of the Village Board, in which event the Declaration shall terminate upon the expiration of the term in effect at the time of recording such instrument of termination.

- B. Amendment The restrictions and covenants set forth herein may be modified and amended only upon the execution and recording of a written instrument to said effect by the Village Board as evidenced by a resolution duly adopted by at least three fourths favorable vote of all members of the Village Board at any time.
- C. Variances The Developer reserves the right to grant variances to any or all of these covenants and restrictions as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of these restrictions will result in a practical difficulty or unnecessary hardship. A variance shall be granted by a resolution duly adopted by at least two-thirds favorable vote of all members of the Village Board at any time.
- D. Enforcement The enforcement of the restrictions and covenants contained in this Declaration of Restrictions and Covenants shall be by proceedings at law or equity against any person or persons violating or attempting to violate any restrictions or covenants, to restrain violation, obtain substantial compliance, and recover any damages. Such proceedings may be commenced by the Village of Birchwood, or by any Owner or Owners of said lots in said East Hills Addition Plat. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppels of that party) to assert any right available to him upon the occurrence, recurrence or continuation of such violation or violations of this Declaration.
- E. Applicable Laws Notwithstanding the provisions contained herein this Declaration of Restrictions and Covenants, all development with the East Hills Addition Plat shall be in accordance with all applicable local, State and Federal Laws.
- F. Partial Invalidity Invalidation of any one of these covenants or any severable part of any covenant by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

The Village of Birchwood has executed this Declaration on this 3rd day of July, 2007 with a 7 to 0 vote of the Village Board.


Virginia Hurckman, Village President


Vicki Busick, Village Clerk

STATE OF WISCONSIN }
COUNTY OF WASHBURN } SS

Personally came before me this 19th day of July, 2007 the above-named Virginia Hurckman, Village President and Vicki Busick, Village Clerk of the Village of Birchwood, to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of the same.

Linda A. Schuh

Print Name: Linda A. Schuh

Notary Public, Washburn, County

State of Wisconsin

My Commission expires: 2/1/09

