

Lori D. Jarvis Register Of Deeds
Berrien County, Michigan

Rec \$40.00
Remon \$4.00
Tax Crt \$0.00



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Liber 2810 Page 575-585
Receipt # 38547 MISC #2007071547



Liber 2810 Page 575

**RESTRICTIVE COVENANT AGREEMENT BY AND
BETWEEN, DUNESCAPE AT NEW BUFFALO II LTD.,
AND LAKE MICHIGAN YACHT CLUB, INC.**

It is hereby agreed by and between Lake Michigan Yacht Club, Inc., a Michigan non-profit corporation whose address is 300 Lake Drive, Sunset Shores, New Buffalo, Michigan 49117 ("Yacht Club") and Dunescape at New Buffalo II Ltd., a Michigan corporation, whose address is 5201 Fountain Drive, Suite A, Crown Point, Indiana 46307 ("Dunescape") as follows:

Dunescape at New Buffalo II, Ltd. is the owner of property described in Exhibit 1 attached hereto and made a part hereof ("Dunescape Peninsula"); and that

The Yacht Club is the owner of the property described in Exhibit 2 attached hereto and made a part hereof ("Yacht Club"), and

Dunescape has submitted development plans including a 12 unit site condominium project with broadside mooring generally depicted on Sheet X-5257-5B dated March 8, 2005 prepared by Wightman & Associates, Inc. ("12 Unit Plan") and a 34 unit hotelminium plan generally depicted on Sheet No. X-5257-1 dated March 8, 2005 and prepared by Wightman & Associates, Inc. ("34 Unit Plan"), and

The Yacht Club and Dunescape desire to enter into this Restrictive Covenant Agreement.

Now, therefore it is agreed as follows:

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1. That Dunescape represents and warrants to the Yacht Club, that it has duly approved the Agreement, in accordance with its Articles of Incorporation and Bylaws, and has appointed William McLinden, its Secretary/Treasurer, to execute this Agreement and bind Dunescape to the terms of this Agreement.

2. That the Yacht Club represents and warrants to Dunescape, that it has duly approved this Agreement, in accordance with its Articles of Incorporation and Bylaws, and has appointed Robert R. Wott, its Commodore and JoAnn Norton, its Secretary to execute this Agreement and to bind the Yacht Club to the terms of this Agreement.

3. That Dunescape and the Yacht Club acknowledge and agree that the Consent Judgment dated May 20, 1991, Berrien County Circuit Court, recorded on December 26, 1991 at Liber 1489 page 1335, Berrien County Register of Deeds remains in full force and effect.

4. That Dunescape, hereby irrevocably, withdraws the 34 Unit Plan.

5. In consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Yacht Club hereby withdraws its objection to the 12 Unit Plan subject to the following restrictive covenants, conditions and restrictions:

- (a) That the Dunescape Peninsula shall be developed with no more than 12 site condominium units in the manner depicted in the 12 Unit Plan.
- (b) That the Dunescape Peninsula shall be developed in a manner as depicted in the 12 Unit Plan.
- (c) That notwithstanding anything to the contrary contained in the 12 Unit Plan, including, but not limited to the mooring of boats, and the construction and development and use of the Dunescape Peninsula, the

100 foot navigation channel easement (hereinafter referred to as "Easement") as recorded at Liber 186, page 612, Berrien County Register of Deeds, and as depicted in the 12 Unit Plan as the "100' channel" shall remain in full force and effect.

(d) That Dunescape may in the manner depicted in the 12 Unit Plan provide for a broadside mooring of vessels/boats ("Boats") subject to the following terms, conditions and restrictions:

- (1) That each residential unit on the Dunescape Peninsula, shall be limited to the mooring of one Boat per unit. This restriction of mooring of one Boat per unit, shall not prohibit the storage use and maintenance of personal watercrafts such as jet skis and kayaks and wind surfboards provided that such personal watercraft do not interfere with or encroach into the Easement.
- (2) That at all times, there shall be no more than one Boat tied up and/or moored and/or anchored at the designated places for mooring on the Dunescape Peninsula as identified in the 12 Unit Plan. There shall be no rafting or other form of temporary tie up or anchoring from one boat to another boat, with the exception that a temporary tie up shall be permitted if there is no other boat at the unit, and subject again to the preservation of the Easement.
- (3) That the maximum length per Boat for units 1 through 8 shall not exceed 45 feet measured from the swim platform, if any, to the bow sprit, if any.

- (4) That the maximum length per Boat for units 9 through 12, shall not exceed 35 feet measured from the swim platform, if any to the bow sprit, if any.
- (5) That while Dunescape may maintain floating docks/walkways adjacent to units 10 through 12, at no time will there be any tie up or mooring or anchoring of Boats and/or personal watercraft to said floating docks/walkways, but that at all times, any and all Boats and/or personal watercraft to be used by units 10, 11 and 12, shall be moored in the area east of those units, as depicted in the 12 Unit Plan.
- (6) That in no event, will any Boat or personal watercraft while moored, tied or anchored at any of the 12 units, encroach in any manner into the Easement.

6. It is understood and agreed, that the covenants, terms, duties, restrictions and obligations provided for in this Agreement shall run for and be for the benefit of the Yacht Club Parcel and for the Yacht Club and its assigns, successors, guests, invitees, licensees, members, vendees, trustees, grantees, tenants and the like and shall be deemed a burden upon and against the Dunescape Peninsula, and Dunescape and their assigns, successors, guests, invitees, licensees, members, vendees, trustees, grantees and the like in perpetuity.

7. Breach of the restrictive covenants shall be subject to a reasonable cure period under the circumstances, with the understanding that repetitive violations will not be subject to any cure period. Remedies shall include injunctive relief and such other remedies provided by law and equity and shall be in addition to such other rights and remedies provided in the Consent

Judgment and the Navigation Easement and as otherwise provided by law and equity, including the recovery of costs and reasonable attorney fees to the prevailing party.

8. That this Agreement is governed by the laws of the State of Michigan. In the event of a dispute between the parties arising out of and relating to this agreement, it is agreed, that the jurisdiction and venue for the resolution of such dispute shall be the Berrien County Trial Court.

9. The restrictive covenants, conditions and restrictions set forth in this Agreement shall be incorporated into any and all approvals by the City of New Buffalo Planning Commission, City Council and Zoning Board of Appeals regarding the 12 Unit Plan, and shall be deemed a part of said 12 Unit Site Plan.

10. That this Agreement shall also be made a part of the Condominium documents for the 12 Unit Plan as restrictions within the Master Deed and Condominium Bylaws.

11. That this Agreement shall be recorded with the Berrien County Registered Deeds at the cost and expense of the Yacht Club.

Prepared by and when
recorded return to:
Bennett S. Schwartz P36044
TROFF PETZKE & AMMESON
811 Ship Street, #202
St. Joseph, MI 49085
269.983.0161

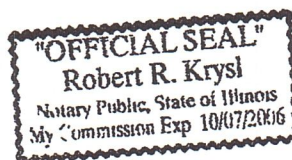
STATE OF ILLINOIS)
COUNTY OF COOK)

LAKE MICHIGAN YACHT CLUB,
INC., a Michigan Non-Profit
Corporation

By: *Robert R. Wott*
Robert R. Wott
Its: Commodore

Subscribed and sworn to before me this
23rd day of June, 2005.

Robert R. Krysl
Notary Public
COOK County, ILLINOIS
Acting in the County of: COOK
My Commission Expires: 10/17/06



STATE OF ILLINOIS)
COUNTY OF COOK)

LAKE MICHIGAN YACHT CLUB,
INC., a Michigan Non-Profit
Corporation

By: JoAnn Norton

JoAnn Norton

Its: Secretary

Subscribed and sworn to before me this
26th day of June, 2005.

Heidi Rogan

Notary Public

Cook County, ILLINOIS

Acting in the County of: COOK

My Commission Expires: 10/3/06



STATE OF INDIANA)
COUNTY OF LAKE)

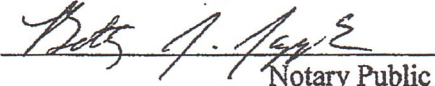
DUNESCAPE AT NEW BUFFALO II
LTD., a Michigan Corporation

By: 

William McLinden

Its: Secretary/Treasurer

Subscribed and sworn to before me this
8th day of August, 2005.


Notary Public

Lake County, Indiana

Acting in the County of: Lake

My Commission Expires: 9-14-06

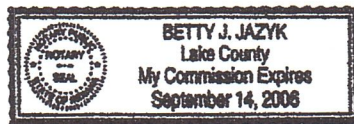


EXHIBIT 1
LEGAL DESCRIPTION
DUNESCAPE AT NEW BUFFALO II, LTD.

THAT PART OF FRACTIONAL SECTION 9, TOWNSHIP 8 SOUTH, RANGE 21 WEST, CITY OF NEW BUFFALO, BERRIEN COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE EASTERLY MOST CORNER OF LOT 16, BLOCK 1 OF THE RECORDED PLAT OF "SUNSET SHORES No. 1", BEING A SUBDIVISION THE SAID CITY OF NEW BUFFALO, ACCORDING TO THE PLAT THEREOF, RECORDED IN LIBER 12 OF PLATS, PAGE 42; THENCE NORTH 59 DEGREES 15' EAST ON THE NORTHERLY LINE OF WATER STREET 726.50 FEET TO A POINT WHICH IS 66.00 FEET NORTH 30 DEGREES 45' 45" WEST OF THE MOST WESTERLY CORNER OF BLOCK "C" OF THE RECORDED PLAT OF WEST ADDITION TO THE VILLAGE, NOW CITY, OF NEW BUFFALO, ACCORDING TO THE PLAT THEREOF, RECORDED IN LIBER E OF DEEDS, PAGE 289; THENCE SOUTH 59 DEGREES 15' WEST ON SAID NORTHERLY LINE 33.00 FEET; THENCE NORTH 30 DEGREES 45' WEST 31.92 FEET TO THE EASTERLY LINE OF "THE MOORINGS" CONDOMINIUMS; THENCE NORTH 58 DEGREES 02' EAST 340.42 FEET; THENCE SOUTH 30 DEGREES 45' EAST 39.15 FEET; THENCE NORTH 59 DEGREES 15' EAST 143.70 FEET; THENCE NORTH 30 DEGREES 45' WEST 67.35 FEET; THENCE NORTH 61 DEGREES 16' 20" WEST 29.00 FEET; THENCE SOUTH 47 DEGREES 28' 30" WEST 30.82 FEET; THENCE SOUTH 33 DEGREES 13' 30" WEST 42.60 FEET; THENCE NORTH 31 DEGREES 15' 30" WEST 676.90 FEET ALL ON SAID EASTERLY LINE OF "THE MOORINGS" CONDOMINIUMS; THENCE NORTH 48 DEGREES 15' 00" EAST 26.37 FEET; THENCE NORTH 43 DEGREES 15' 00" EAST 52.44 FEET TO A MEANDER POINT ON THE NORTHWESTERLY LINE OF "SOUTHCove" CONDOMINIUMS, REPLAT No. 15, BERRIEN COUNTY CONDOMINIUM SUBDIVISION No. 15, WHOSE COORDINATES ARE: NORTH 5970.80 FEET, EAST 5009.05 FEET, AND TO THE PLACE OF BEGINNING OF THE LAND HEREIN DESCRIBED; THENCE NORTH 43 DEGREES 15' 00" EAST ON A MEANDER LINE 172.56 FEET; THENCE NORTH 48 DEGREES 45' 00" EAST 790.25 FEET; THENCE NORTH 30 DEGREES 45' 00" WEST 26.24 FEET; THENCE SOUTH 85 DEGREES 57' 38" EAST 38.39 FEET; THENCE SOUTH 32 DEGREES 16' 45" EAST 131.92 FEET; THENCE SOUTH 57 DEGREES 21' 41" WEST 189.48 FEET; THENCE SOUTH 84 DEGREES 07' 39" WEST 60.76 FEET; THENCE SOUTH 03 DEGREES 34' 05" WEST 40.90 FEET; THENCE SOUTH 64 DEGREES 17' 45" WEST 106.72 FEET; THENCE SOUTH 34 DEGREES 59' 33" WEST 89.20 FEET; THENCE SOUTH 47 DEGREES 48' 23" WEST 409.19 FEET, ALL ON SAID MEANDER LINE, TO A MEANDER POINT; THENCE SOUTH 58 DEGREES 44' 30" WEST 67.68 FEET; THENCE NORTH 31 DEGREES 15' 30" WEST 50.34 FEET; THENCE SOUTH 58 DEGREES 44' 30" WEST 42.03 FEET; THENCE NORTH 81 DEGREES 15' 30" WEST 14.96 FEET TO THE PLACE OF BEGINNING.

ALSO ALL THAT LAND LYING BETWEEN THE MEANDER LINE AND THE WATERS EDGE OF THE CHANNEL, GALIEN RIVER, AND MARINA BASIN.

EXHIBIT 2
LEGAL DESCRIPTION
LAKE MICHIGAN YACHT CLUB

That part of the Southeast Fractional Quarter of Section 4 and the Northeast Fractional Quarter of Section 9, Township 8 South, Range 21 West, City of New Buffalo, New Buffalo Township, Berrien County, Michigan, described as: from the Southeasterly corner of Lot 34, Sunset Shores No. 2, being a recorded plat in the deed or records of Berrien County, Michigan, measure S. 30° 17' 30" E (S. 30° 45' E. Record) 54.05 feet and N. 47° 12' 30" E. 698.67 feet (N. 46° 45' E.; 700.00 feet Record) to the point of beginning of the herein described parcel; thence N. 30° 14' 56" W., 281.06 feet; thence N. 53° 13' 27" E., 891.69 feet to the original water's edge of the Galien River; thence along the said original water's edge S. 21° 02' 29" E. 190.20 feet to the boat navigation channel; thence along the ends of the boat docks along said navigation channel S. 40° 18' 16" W., 92.50 feet; thence S. 44° 32' E., 4.70 feet; thence S. 45° 28' W., 61.82 feet; thence S. 29° 20' W., 17.81 feet; thence S. 13° 54' W. 24.52 feet, thence S. 27° 08' W. 27.71 feet; thence S. 33° 40' W. 33.57 feet; thence S. 39° 10' W., 18.97 feet; thence S. 46° 45' W. 29.00 feet; thence S. 29° 18' W 33.02 feet; thence S. 46° 45' W., 35.30 feet; thence S. 46° 45' W., 23.33 feet; thence S. 35° 38' W. 35.26 feet; thence S. 49° 10' W., 37.45 feet; thence S. 56° 06' W., 23.41 feet; thence S. 47° 24' W., 25.20 feet; thence S. 45° 44' W., 28.40 feet; thence S. 34° 15' W., 33.29 feet; thence S. 46° 25' W., 30.01 feet; thence S. 54° 51' W., 33.33 feet; thence S. 37° 21' W., 32.44 feet; thence S. 45° 38' W., 31.01 feet; thence S. 39° 37' W.; 31.33 feet; thence S. 44° 53' W., 33.82 feet; thence S. 51° 59' W. 31.83 feet; thence S. 45° 38' W., 30.79 feet; thence S. 88° 43' W. 18.02 feet; thence S. 34° 24' W. 27.12 feet; thence S. 61° 57' W. 15.64 feet; S. 51° 09' W., 15.69 feet; thence N. 30° 14' 56" W. 70.34 feet to the point of beginning;

ALSO that part of the Southeast Fractional Quarter of Section 4 and the Northwest Fractional Quarter of Section 9, T. 8 S., R. 21 W., City of New Buffalo Township, Berrien County, Michigan described as: from the Southeasterly Corner of Lot 34, Sunset Shores NO. 2, being a recorded plat in the Deed Records of Berrien County, Michigan, measure S. 30° 17' 30" E. (S. 30° 45' 00" E., Record), 54.06 feet and N. 47° 12' 30" E., 698.67 feet (N. 46° 45' 00" E 700.00 feet, Record) and N. 30° 14' 56" W., 281.06 feet to the point of beginning of this tract; thence N. 30° 14' 56" W. 57.82 feet thence N. 41° 22' 47" E. 249.06 feet, thence N. 38° 24' 27" E., 186.57 feet, thence N. 18° 08' 35" E., 71.13 feet thence S. 19° 04' 47" E. 206.98 feet thence S. 53° 13' 27" W. 426.00 feet to the point of beginning;

ALSO that part of the Southeast Fractional Quarter of Section 4, T. 8 S., R. 21 W., City of New Buffalo, New Buffalo Township, Berrien County, Michigan, described as: From the Southeasterly corner of Lot 34, as shown on the recorded Plat of Sunset Shores No. 2, as recorded in the office of the Recorder of Berrien County, Michigan, measure S. 30° 17' 30" E., (S. 30° 45' 00" E., Record), 54.06 feet and N. 47° 12' 30" E. 698.67 feet (N. 46° 45' 00" E. 700.00 feet Record) and N. 30° 14' 56" W., 281.06 feet and N. 53° 13' 27" E., 426.00 feet to the point of beginning; thence N. 19° 04' 47" W., 125.57 feet to the Southerly end of a 30 foot wide rubble mound breakwater; thence along the Southerly line of said breakwater N. 70° 55' 13" E., 30.00 feet to the Easterly line of said breakwater; thence along said Easterly line N. 19° 04' 47" W. 88.63 feet; thence N. 49° 43' 41" E. 23.67 feet thence S. 47° 01' 51" E. 80.17 feet thence S.

87° 01' 41" E. 133.89 feet thence N. 81° 53' 02" E. 66.56 feet, to the Northerly line of Lake Michigan Yacht Club Parcel, thence S. 53° 13' 27" W. 292.94 feet to the point of beginning.