

**Declaration of Covenants, Restrictions,
Reservations, Easements and Conditions**

Of

Benjamin Farm Homeowners Association, Inc.

This Declaration of Covenants, Restrictions, Reservations, Easements and Conditions ("Declaration") made, executed, and delivered this ____ day of _____, 1994 at the City of Brunswick, County of Medina, and State of Ohio, by Benjamin Farm Limited Partnership, and Ohio limited partnership by its General Partner, Benjamin Farm, Inc. ("Declarant"), being the owner of all of the land described upon Exhibit A attached hereto, incorporated herein by this reference and to be included in the Benjamin Farm Subdivision, declares, establishes and imposes the following covenants, restrictions, reservations and easements:

W I T N E S S E T H

Whereas, Grantor is the Owner of the parcel of real estate described in Exhibit "A" attached hereto and hereby made a part hereof (hereinafter referred to as the "Premises"); and,

Whereas, Grantor has established a general plan for the improvement and development of the Premises including the construction of single family residential dwellings upon various portions of the Premises; and,

Whereas, Grantor intends to utilize a portion of the real estate for the common benefit of all of the owners and occupants of the Benjamin Farm Subdivision (as hereinafter described), and to landscape and preserve in its natural state a portion of the real estate as Grantor shall from time to time determine; and,

Whereas, the Grantor desires to establish a general plan for the use, occupancy, and enjoyment of the Benjamin Farm Subdivision, for the preservation of the value and amenities thereof, and for the maintenance of the Common Area thereof (as hereinafter defined) which Grantor may designate for the benefit of all owners and occupants, and, in connection therewith, to subject the Premises described in Exhibit "A" now owned by the Grantor to the restriction, covenants, charges, liens, and obligations hereinafter set forth;

Now, therefore, Grantor shall and does hereby declare that for the benefit of present and future owners, the Premises described in Exhibit "A", are and shall be held, used, occupied, transferred, sold and conveyed subject to the following restriction, reservation, conditions and covenants:

A. Definitions

The terms used in this Declaration shall be defined as follows:

1. "Association" shall mean and refer to Benjamin Farm Homeowners Association, Inc., its successors and assigns.
2. "City" shall mean the incorporated municipality of Brunswick, Media County, Ohio.
3. "Common Area" shall mean all interests (fee simple, easement or otherwise) in real property owned by the Association for the common use, benefit and enjoyment of the Owners.
4. "Assessments" shall mean the obligation to pay for all costs, charges, fees, taxes, assessments, liens and other expenses pertaining to the Common Area and its maintenance, repair, upkeep, preservation and replacement with respect to the Common Area and any appurtenances or improvements thereto, for the common use and enjoyment of the Owners.
5. "Declaration" shall mean this Declaration of Restrictions, Covenants, Easements and Conditions for Benjamin Farm Limited Partnership.
6. "Developer" shall mean Benjamin Farm Limited Partnership, an Ohio limited partnership.
7. "Family Homes" or "Dwellings" shall mean those homes built on Lots (as hereinafter defined).
8. "Lot" shall mean a single-family residence building lot in the Subdivision.
9. "Member" shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration which shall include all Owners.
10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
11. "Plat" shall mean the plat of each phase of the Benjamin Farm Subdivision as recorded in the records of the Recorder of Medina County, Ohio, together with the terms, conditions, restrictions, covenants and easements set forth in this Declaration, the first phase of which contains 75 Lots as recorded in Plat Book _____, Page _____.
12. "Plats" shall mean collectively the plats for all phases of the Subdivision as and when recorded.
13. "Subdivision" shall mean and refer to that certain real property described on Exhibit A attached hereto, which depicts 217 Lots and the Common Area comprising the Benjamin Farm Subdivision.
14. As used herein, the word "person" shall include natural person, as well as any other legal entity, including, but not limited to a corporation, a

partnership, a trustee, an executor, executrix, administrator or administratrix of a decedent's estate and a guardian duly appointed by a court of competent jurisdiction.

B. General Provisions

The following are General Provisions applicable to the Subdivision:

1. This Declaration is adopted so as to comply with Ordinance Number ____ of the City of Brunswick passed _____, 19___. All Plats and amendments and additions to the Subdivision must be approved by the City.
2. The Plats, and all parts thereof, and the Articles of Incorporation and the By-Laws of Benjamin Farm Homeowners Association, Inc., when adopted and recorded, shall constitute covenants running with the land, inuring to the benefit of and binding upon: all Lots and other property shown on the Plat; all present and future Owners of any Lot or portion thereof; Declarant, Benjamin Farm Limited Partnership; and, Benjamin Farm Homeowners Association, Inc. and his, her its and their heirs, executors, administrators, successors and assigns, and each of the foregoing benefited and bound person shall have the right to enforce the provisions of the Plats, or any part thereof, and such Articles of Incorporation and By-Laws, at law or in equity.
3. The Subdivision contains approximately 13.8 acres of "Common Area," marked "Open Space" and "Block A" on Exhibit A. Such Common Area shall not be for the benefit of the public, but for the exclusive use and benefit of the Members (and their guests). When 175 Lots have had Family Homes or Dwelling built upon them and transferred from the builder to an Owner, the Association will be turned over to the Owners and the Common Area (if not previous so conveyed) will be conveyed to the Association. Developer may: (a) amend this Declaration or the By-Laws of the Association, without affecting substantial changes until turnover of the Association to Owners, and (b) may grant easements over any property in the Subdivision or the "Common Area" until January 1, 2004.
4. After the Association has been turned over to the Owners as provided in paragraph 3 above, and, except as stated in paragraph three (3), above, the By-Laws of the Association may be amended by Owner having more than seventy-five percent (75%) voting power of the Association, provided that any such amendment is reduced to writing, executed by such Owners, witnessed and acknowledged with the formalities of a deed of conveyance of real property, and recorded with the Medina County Recorder.
5. Pursuant to City Ordinance No. _____, the City shall have the right of entrance to any open space or Common Area and recreation facility for emergency purposes. In the event of non-performance of maintenance or improvements affecting the public interest, the City shall have the right

after proper notice to the Association to make necessary improvements and perform necessary maintenance function with costs so incurred to be levied as an assessment against the Lots in the Subdivision. Advance notice is not required for such entrance onto the Common Area by the City's agents or its designee(s) for emergency entrance.

C. Concerning Benjamin Farm Homeowners Association, Inc.

The Association shall be established and operated in accordance with the following:

1. Declarant hereby establishes The Benjamin Farm Homeowners Association, Inc., (herein called the "Association") which shall be a non-profit corporation organized under the laws of the State of Ohio, the Articles of Incorporation of which are attached hereto as Exhibit B, and the By-Laws for which are attached hereto as Exhibit C.
2. The Members of the Association shall be the Owners of the Lots in the Subdivision. One Owner of each Lot is required to be a Member of the Association.
3. The principal purpose of the Association is to administer the Common Area, including all rights therein and obligations relative thereto, to the end that each Lot shall have equal rights in the Common Area and equal obligations relative to the Common Area; accordingly, the Association shall have the power to impose charges, dues and assessments against and collect the same from each Lot, as follows:
 - (a) To create a continuing fund adequate in amount to pay the operating expenses and all other obligations relative to the Common Area, including, but not limited to insurance, taxes and assessments incidental to the ownership of the Common Area which shall be paid for by the Association, which has the right to assess the Lot Owners therefore.
 - (b) To do and accomplish all other acts and things necessary for the general good and welfare of the Association and its Members.
4. Until January 1, 1996, the maximum annual assessment shall be Ten Dollars (\$10.00) per month per Lot, which shall be assessed and shall be due and payable in advance each year on or before January 1 of each calendar year.

In 1994, Developer shall pay all costs of operating and maintaining the Common Area. The Association will assess the Owners as herein provided in this Declaration, commencing January 1, 1995, and annually, Developer will pay all costs of operating and maintaining the Common Area to the extent in such costs exceed revenues from assessments to Owners until turnover of the Association to the Owners. The following additional conditions shall also apply:

- (a) From and after January 1, 1996, the maximum annual assessment may be increased each year not more than four percent (4%) above the maximum assessment for the previous year without a vote of the membership.
 - (b) The Board of Trustees of the Association may fix the annual assessment at an amount not in excess of the maximum.
 - (c) Until such time as the Developer shall have turned over the Association to the Owners, Developer shall be obligated to fund any operating deficit of the Association. After turnover of the Association to the Owners, Developer shall, with respect to all Lots (whether developed or undeveloped) which it continues to own, be a full voting and assessment paying Member.
5. In any event, management, control and full responsibility of the Association shall pass to the Members no later than January 1, 1999.
 6. In the conduct of all affairs of the Association the number of votes shall be one (1) vote per Lot; and a majority of the Lot Owners shall, for all purposes, control, except for purposes of amending the Plats in which event a vote of ninety percent (90%) during the first twenty (20) year period, and thereafter, by a vote of more than seventy-five percent (75%), shall be required except Developer's right to amend.

D. Concerning the Common Area

With respect to the Common Area, the following conditions shall apply:

1. The Common Area shall at all times be and continue to be owned by the Association, in fee simple, free and clear of all liens and encumbrances with such title being confirmed by appropriate title insurance or other locally acceptable evidence of title.
2. The sale or consumption of alcoholic beverages, including but not limited to beer, wine and spirits in the Common Area is prohibited.
3. The ownership of an Lot shall carry with it membership in the Association which membership is non-divisible and non-severable, by partition or otherwise, from ownership of such Lot. The conveyance (or encumbrance) of title to a Lot shall also convey (or encumber) such membership interest if the instrument of conveyance (or encumbrance) does not mention or purport to convey (or encumber) such membership interest.
4. Each Lot in the Subdivision, whether owned by one person or more than one person, shall have one vote in voting for and participating in the activities of the Association, and shall have equal obligations with respect thereto. Ownership of each Lot shall carry with it a right to and an easement for use and enjoyment in and to the Common Area which shall pass with the title to every Lot, subject to the easement rights granted and

reserved by the provisions contained in the Plats, if any, and any restrictions or conditions promulgated by the Association. The Owner or Owners of any Lot may delegate the right to the use and enjoyment of the Common Area and facilities thereon to the members of such Owner's family, and to those individuals who reside in the residence on the Lot. As among themselves, all Owners of a Lot, whether such ownership be vested in a single person, or in more than one person as tenants in common, tenants by the entirety or joint tenants, with or without rights of survivorship, or divided between legal ownership and equitable ownership, shall have both joint and several personal liability concerning obligations relative to the Association.

5. To the extent now or hereafter permitted by law, any due and unpaid obligations relative to the Association shall also constitute a lien against such Lot in default of payment of such obligations, it being the intention of Developer that each Lot in the Subdivision shall be equally responsible along with all other Lots shown in the Subdivision, for the full and prompt payment of all obligations relative to the Common Area and the Association.
6. If any Owner shall fail to pay any charge, dues or assessment to the Association within thirty (30) days from the date it is due, such amount shall bear interest at the maximum legal rate beginning at the expiration of such thirty (30) day period. The Association shall be entitled to collect from each delinquent Owner all reasonable collection expenses, including but not limited to court costs and reasonable attorney's fees. In addition thereto, the Association shall have the right to enter upon any property and correct any violation of this Declaration, as now existing or as may hereafter be amended. The Association shall assess the costs of all such correction or repairs or any related expense, including attorney's fees against such Owner. Such expenses and costs shall be added to any other assessment and shall bear interest at the maximum legal rate beginning on the date the Association notifies such Owner that such expenses and costs are due. All such assessments, charges, dues, expenses and costs shall be chargeable as a lien against the Lot, the Owner of which is obligated to pay the same; and in addition thereto, the Association shall have the right to go into any court of equity and, in addition to any claims for damages, require the correction of violations.

The Association shall have the power to place a lien on a Lot to secure payment as follows:

Assessment and Lien of Association

- (a) General. Assessments for the operating cost of the Common Area and liability insurance for the protection of the Owners arising out of their ownership in the Common Area, shall be made in the manner provided

herein, and in the manner provided by the By-Laws of the Association. Included in said assessments shall be costs imposed upon the Common Area by virtue of certain easements and restrictions previously recorded.

- (b) Division of Common Expenses. The proportionate shares of the Owners of the expenses of the operation of the Common Area is based upon the proportion of the total of the number of Lots in the Subdivision. Each Lot shall bear the same cost as every other Lot. No Owner shall be exempt from liability for contribution to the expenses of the Common Area by waiver of the use or enjoyment of any of the Common Area.
- (c) Lien of Association. The Association shall have a lien upon the estate or interest in any Lot and Dwelling thereon of an Owner for the payment of that portion of the expenses of operating the Common Area chargeable against such Lot, which remain unpaid for ten (10) days after the same have become due and payable, from the time a certificate therefore, subscribed by the President of the Association, is filed with the Recorder of Medina County, Ohio, pursuant to authorization given by the Board of Trustees of the Association. Upon filing such a lien, notification thereof shall be by regular mail to the Owner and his or her or its mortgagee as shown on the books of the Association. Such certificate shall contain a description of the Lot, the name or names of the record Owner or Owners thereof and the amount of such unpaid portion of the expenses of operating the Common Area. Such lien shall remain valid for a period of five years from the time of filing thereof, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of the Court having jurisdiction thereof in an action brought to discharge such lien as hereinafter provided. In addition, the Owner of the Lot and any occupant of the Dwelling thereon shall be personally liable for such expenses chargeable for the period of such ownership or occupancy.
- (d) Dispute as to Common Expenses. Any Owner who believes that the portion of the expenses of operating the Common Area chargeable to his, her or its Lot for which a certificate of lien has been filed by the Association, has been improperly charged may bring an action in the Court of Common Pleas for Medina County, Ohio, for the discharge of such lien.
- (e) Non-Liability of Foreclosure Sale Purchaser. Where the mortgagee of a first mortgage of record or other purchaser of a Lot and Dwelling thereon acquires title to, thereto as a result of foreclosure of the first mortgage, or in the event a first mortgagee should accept a deed in lieu of foreclosure, such party and his, her or its heirs, successors and

assigns, shall not be liable for the share of the common expenses or other assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such party. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Owners, including that of such acquiring party.

- (f) Liability for Assessments upon Voluntary Conveyance. In a voluntary conveyance of a Lot, the grantee of such Lot shall be jointly and severally liable with the grantor of such Lot for all unpaid assessments of the Association against the grantor and such Lot for such share of common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of all unpaid assessments against such grantor due the Association, and such grantee shall not be liable for nor shall the Lot be conveyed subject to a lien for any unpaid assessments made by the Association against such grantor in excess of the amount set forth in such a statement for the period reflected in such statement. As used in this paragraph "grantor" shall include a decedent and "grantee" shall include a legatee or intestate heir of said decedent.

E. Easements

The following easements shall hereby be created with respect to the Subdivision:

1. Easements for storm sewage purposes, drainage and any other utilities in the Common Area, as shall be reflected on the Plats.
2. Developer and its successor, the Association, hereby reserves the right to amend the Plats and to grant further rights and easements, within, upon, over, under and across the Common Area of the Subdivision for the benefit of the Owners or the Developer.

F. Deed Restrictions

The following restrictions shall apply to the Lots in the Subdivision:

1. Each Lot and the Common Area shall be subject to the ordinances of the City.
2. Each Lot shall be used exclusively for construction of one single-family residence with a minimum of 1,800 square feet of habitable space (not including basement, breezeways, garages or porches) and every such residence shall include a minimum of a two-car attached garage.
3. Tents, above-ground swimming pools, clotheslines, satellite dishes, exterior antennas, dog houses and shelters or enclosures for animals are prohibited throughout the Subdivision. Nothing herein shall be construed

to limit the authority of the Association to permit construction of any other kind of structure, fence, shed, in-ground swimming pool or other similar building or structure which in its opinion is not detrimental to the Subdivision and as may be permitted by the City. The Association's approval is required before an Owner may construct or install any such structure.

4. No noise, vibration or odor, offensive or irritating to a person of ordinary sensibilities, shall originate on and thereafter emanate from any Lot.
5. The outside storage or property (including but not limited to boats, trailers, campers, buses, tools, toys, lumber, wood, debris, trash, junk, paper, bottles and cans) is prohibited throughout the Subdivision. Nothing shall be construed to prohibit the reasonable necessary storage on a Lot of building materials during the course of construction of a house and garage on such Lot or during the course of adding to or remodeling a house or garage on such Lot.
6. The exterior surface and dimensions of each house and garage shall not be altered in appearance, building materials or color from that which prevails generally in the Subdivision without approval of the Association. The Association shall have sole discretion to determine generally prevailing conditions as to appearance, building materials, or color. In the event that an Owner undertakes repair or rebuilding of a unit which is destroyed in whole or in part, the repair or rebuilding shall be in accordance with these standards.
7. Each Owner shall maintain the exterior of his house and garage in the manner in which others in the Subdivision maintain their, including periodic house painting or periodic cleaning of aluminum or vinyl siding.
8. Sidewalks and driveways shall be maintained by the Owner of each Lot in the same material and reasonably in the same condition as prevails throughout the Subdivision, and in accordance with all applicable ordinances and regulations of the City of Brunswick, Ohio.
9. Each Dwelling shall have a mailbox and post constructed in accordance with the following:
 - (a) Required mailbox and post is pictured on Exhibit D;
 - (b) Mailbox post must be constructed of treated lumber, 4x4, put together with galvanized screws;
 - (c) Bottom of mailbox must be between 44" and 48" from ground;
 - (d) Front of mailbox must be perpendicular to the edge of pavement so that carrier can deliver from vehicle, approximately 6" to 10" from curb; and

- (e) Post should be set 4' from driveway apron.
10. No change shall be made in the original grade position of any Lot.
 11. The exterior walls, siding, trim, face brick and roof of Family Homes and Dwellings shall be maintained in their original condition, subject to ordinary wear.
 12. No animals are permitted to be kept by residents in the Subdivision except pets, which shall be limited to cats and dogs. All permitted pets shall at all times be confined indoors, except a cat and a dog may occasionally be kept outdoors, provided such pet does not, by barking or otherwise, disturb the Owner of occupant of any other Lot in the Subdivision.
 13. No vehicle not in operating condition, commercial truck, motor home, boat or other similar commercial or recreational vehicle shall be parked on any street or in any driveway or parking area in the Subdivision or kept other than in an Owner's garage, except while engaged in transportation to or from a residence or in the event that it is necessary or incidental to the construction or repair of any building.
 14. No owner shall own or permit any activity which will increase the insurance rate or cause the cancellation of insurance of any other Owner.
 15. No window air conditioners shall be permitted in the Subdivision.
 16. Other than a political sign, a for sale sign, or a sign placed by the Developer, by any builder purchasing a Lot from the Developer, or by the City of Brunswick, no sign is permitted to be put on any Lot, Family Home, or Dwelling in a place which would make the sign visible from any street or any other Lot in the Subdivision. The Association shall have the power and right to enforce this deed restriction against signs, and all Lot Owners agree that the Medina County Court of Common Pleas has the power and right to enjoin, on a preliminary and permanent basis, all such signs.

G. Enforcement

Declarant reserves unto itself, so long as Declarant owns any part of the Land and for one (1) year after the last sale of Lot in the Subdivision, and thereafter to the Association, the right, in case of any violation or breach of any of the terms of this Declaration, either to restrain such violation or breach and/or to recover damages therefore, or to enter upon the property as to which such violation or breach exists and summarily to abate and remove the same at the expense of the Owner thereof, any building, thing, or condition that may be or exist thereon contrary to the intent and meaning of the terms of this Declaration, and Declarant or the Association shall not by reason thereof deemed guilty of any manner of trespass for such entry, abatement, or removal. Failure of Declarant or the Association to enforce any of the terms of this Declaration shall in no event be construed, taken, or held to be in any manner a waiver thereof, or acquiescence in or any consent to any further or

succeeding breach or violation of the terms of this Declaration, and Declarant and the Association shall at any and all times have the right to enforce the terms hereof and to prevent any other violations and breaches of this Declaration; however the failure, refusal or neglect of Declarant or the Association to enforce the same shall in no manner and to no extent whatsoever, make the Declarant or the Association liable in connection therewith, or constitute a waiver of the provisions of this Declaration.

In witness whereof, the Declaration has hereunto set its hand at _____, Ohio, this ____ day of _____, 1994.

Benjamin Farm Limited Partnership

By: Benjamin Farm, Inc.,
General Partner

By: _____
Victor J. Cohn, President

State of Ohio)
) SS:
County of Cuyahoga)

Before me, a Notary Public in and for said County and State, personally appeared the above named Victor J. Cohn, President, of Benjamin Farm, Inc., General Partner of Benjamin Farm Limited Partnership, who acknowledged that he did sign the foregoing instrument on behalf of the partnership, in the capacity therein shown.

In witness whereof, I have hereunto set my hand and seal this ____ day of _____, 1994.

Notary Public

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