

20469

ADOPTION OF "BIRCH POINTE FARMS"
AND
DECLARATION OF RESTRICTIONS THEREFOR

This Declaration, made and entered into by Birch Pointe Farms, Inc., hereinafter referred to as DEVELOPER, this 12th day of July, 1989.

WITNESSETH THAT:

WHEREAS, Developer is the owner of the following described real estate, situated in the Village of Whitehouse, Lucas County, Ohio. viz:

Lots Numbers One (1) through Fifty-Nine (59) both inclusive, in Birch Pointe Farms a Subdivision in the Village of Whitehouse, Lucas County, Ohio.

which real estate is hereafter for convenience referred to as "BIRCH POINTE FARMS"; and.

WHEREAS, Developer desires to establish for its own benefit and for the benefit of all future owners or occupants of an or any part of Birch Pointe Farms, certain easements and rights in, over and to Birch Pointe Farms and certain restrictions with respect to the use thereof,

NOW THEREFORE, Developer, as the owner of such real estate and for the purpose aforesaid, hereby declares as follows:

ARTICLE ONE

SECTION 1. No dwelling or any addition thereto or any alterations thereof shall be erected, reconstructed, placed or suffered to remain upon said premises, unless or until the size, location, type, style or architecture, use, the materials of construction thereof, and the color scheme therefor, the grading plan of the lot, including the grade elevation of said dwellings. the plot plan showing the proposed location of said dwelling upon said premises and the plans, specifications and details of said dwellings shall have been approved in writing by Developer, its successors and assigns, and a true copy of said plans, specifications and details shall have been lodged permanently with Developer, its successors and assigns, and no dwelling except such as conforms to said plans, specifications and details shall be erected, reconstructed, placed or suffered to remain upon said premises. All dwellings shall be constructed with only brick or stone fireplace chases, solid wood window frames, wood siding or masonry construction.

SECTION 2. All lots shall be used and occupied solely and exclusively for private residential purposes by a single family, including their family servants, and no dwelling other than a one single family, private residence purpose building, hereinafter for convenience called "DWELLING" shall be erected, reconstructed, placed or suffered to remain thereon.

SECTION 3. No dwelling shall be erected, reconstructed, placed or suffered to remain upon said premises, nearer the front or street line or lines than the building setback lines, or lines shown upon the Plat of said subdivision, nor nearer to any side line or rear line than shall be determined by Developer in writing at the time of the approval of the plans and said dwelling house shall be placed from the front, side and rear lines of said premises shall apply to and include porches, verandas, portes cochere, and other similar projections of said dwelling. The parcel of land upon which a dwelling is to be constructed and/or maintained together with the land adjacent thereto and used in conjunction therewith may include one lot or part of one, two or more lots delineated on the recorded Plat of Birch Pointe Farms, but only with the written consent of Developer. Developer may require dwellings to be erected farther from the street than the building set-back line or lines.

SECTION 4. No garage or any addition thereto or alteration thereof shall be erected, reconstructed, placed or suffered to remain upon said premises except for the exclusive use of the family occupying said dwelling and the servants thereof, each garage shall be limited exclusively to side or rear loading auto entrances and such garage be made an integral part of said dwelling, and unless, and until the size, location, type, style of architecture, cost, use, the materials of construction thereto, the color scheme therefore, the grade elevation thereof, and the plans, specifications and details of said garage, including the driveway approach, and the garage entrance shall have been first approved in writing by Developer, and a true copy of said plans, specifications and details shall be erected, reconstructed, placed or suffered to remain upon said premises. Such garage shall be subject to all of the covenants, rights, terms, reservations, limitations, agreements and restrictions at any point herein made applicable to said dwelling. No

detached shed, garage, barn, or any type of detached structure whatsoever shall be erected, reconstructed, placed or suffered to remain upon said premises. No radio or television antennas or satellite "dishes" shall be erected, reconstructed, placed or suffered to remain on said premises.

SECTION 5. The location of any and all driveways shall be determined by Developer in writing at the time of the approval of the plans and specifications for said dwelling. No driveway shall be located, relocated, or suffered to remain upon said premises except as determined in writing by Developer. Complete specifications for construction of driveways shall be submitted to Developer and its approval thereof endorsed thereon in writing.

SECTION 6. No portion of the within described premises nearer to any highway than the building set-back line or lines shown upon the Plat of said Subdivision shall be used for any purpose other than that of a lawn; nothing herein contained however, shall be construed as preventing the use of such portion of said premises for walks (and drives if otherwise permitted), the planting of trees, or shrubbery, the growing of flowers or ornamental plants, or statuary fountains, and similar ornamentations, for the purpose of beautifying said premises, but no vegetables, so called, nor grains of the ordinary garden or field variety shall be grown upon such portion thereof; and no weeds, underbrush or other unsightly objects shall be permitted to grow or remain anywhere upon said premises, and no unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Within six (6) months after a residence has been completed and occupied on any lot in Birch Pointe Farms, the front yard, rear yard, and side yards of said lot shall be seeded and thereafter maintained so as to provide for a first class lawn in keeping with the intended quality of Birch Pointe Farms. No fence, fence hedge, wall or enclosure of any kind, for any purposes shall be erected, place or suffered to remain upon said premises until the written consent of Developer shall having been first obtained therefore, and to be subject to the terms and conditions of said consent as to its type, height, width, color, upkeep and any general conditions pertaining thereto that said consent may name.

SECTION 7. In connection with the provisions contained in Section 3 above, it is hereby provided that if, in the opinion of Developer, by

reason of the shape, dimensions or topography of the premises herein described, or by reason of the type of dwelling to be erected thereon, or for any other reason, satisfactory to it, the endorsement of the provisions of said Section would work a hardship, Developer may modify such provisions so as to permit variations in cost, size, type, location or otherwise that will not, in its judgment, do material damages to any abutting or adjacent property.

SECTION 8. Developer reserves the exclusive right to grant consent for the construction, operation and maintenance of electric light, telephone, telegraph and cable television poles, lines and conduits, and for water, gas, sewer and pipes and conduits or any other public utilities facilities, together with the necessary or proper incidents and appurtenances, in through, under, over and/or upon any and all highways, now existing or hereafter established, upon which any portion of said premises may now or hereafter front or abut.

SECTION 9. Developer reserves to itself, its successors and assigns a perpetual easement in, through, under and/or over those portions of each lot, as shown on the Plat of Birch Pointe Farms designated as "Utility Easement" for the construction, operation and maintenance of electric lights, telephone, telegraph and cable television poles, lines and conduits, and for water, gas and sewer lines and conduits or any other public utility facilities, together with the necessary or proper incidents and appurtenances, and no building or other structure, or any part thereof, shall be erected, or maintained upon any part of the property in Birch Pointe Farms, over or upon which easements for the installation and maintenance of public utilities and storm sewers will be or have been granted. All electrical service to homes shall be underground from the main electrical supply lines.

SECTION 10. No spiritous, vinous or fermented liquors of any kind shall be manufactured or sold, either at wholesale or retail, upon said premises, no industry business or trade, occupation or profession of any kind shall be conducted, maintained or permitted upon said premises, no well for gas, water, oil or other substance, shall at any time, whether intended for temporary or permanent purposes, be erected placed or suffered to remain upon said premises (except wells for lawn and landscape watering, if written approval is first obtained from Developer and all necessary public

authorities and Developer approves the location and other specifications in writing): nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the quiet of the owner or owners of any adjoining land. No advertising sign, billboard or other advertising device shall be erected, place or suffered to remain upon said premises or upon visible from the outside of said dwelling without the consent of developer first having been obtained. A standard real estate sign not exceeding six (6) square feet in area on a side and advertising the lot or dwelling "For Sale" or "For Rent" shall, however be permitted. The right is reserved by Developer to erect small structures and place signs on any unsold lot or improvements thereon.

SECTION 11. No animals, rabbits or poultry of any kind, character or species of fowl or livestock shall be kept upon or maintained on any part of any lot or tract. Developer reserves the right to adopt reasonable regulations governing the keeping within any dwelling house of domestic dogs, cats, or other household pets, calculated not to become a nuisance to the owners or inhabitants of Birch Pointe Farms.

SECTION 12. No boats, trailers, motor homes, recreational vehicles, motor coaches or trucks (except pick-up trucks not exceeding one (1) ton and window and panel vans not exceeding one (1) ton, so-called) shall be parked, stored or suffered to remain upon said premises or in the streets within Birch Pointe Farms unless parked or stored within a garage on said premises out of view.

SECTION 13. No clothes lines, clothes, sheets, blankets or other articles shall be hung out or exposed on any part of said premises.

SECTION 14. All dwellings shall be equipped with a "rustic cedar" mailbox (so-called) approved by the United States Postal Service. Furthermore, each builder of dwellings on any lots in Birch Pointe Farms shall comply with the site grading plan prescribed by the Lucas County Ohio engineer. Said Lucas County Ohio Engineer may determine that certain lots may require retaining walls in order to preserve trees presently located on said lots. If said retaining walls are necessary and if the owner of said lots desires to preserve said trees, then said retaining walls will be constructed only after the plans have been approved by the Developer as herein provide. If the owner of any said lots does not wish to

construct retaining walls which may be necessary, then in that event the site grading plan prescribed by the Lucas County Ohio Engineer shall be complied with including grading to accomplish the required slope along the public road right-of-way.

SECTION 15. No above ground swimming pools shall be constructed, reconstructed, allowed or suffered to remain upon said premises unless said above ground swimming pools have a total water surface of less than seventy-five (75) square feet and a depth of less than twenty-four (24) inches.

SECTION 16. Developer, subject to Section 14 above, reserves the sole and exclusive right to establish grades and slopes on the premises herein described, and to fix the grade at which any dwelling shall hereafter be erected or placed hereon, so that the same may conform to a general plan.

SECTION 17. All rubbish and debris, combustible and noncombustible, and all garbage shall be stored in underground containers or stored and maintained in containers entirely within the garage, basement or in the rear or at the side of the dwelling. In no event shall any rubbish, debris or containers be visible from any street in the front or at the side of the dwelling. The burning of any trash or other combustibles shall be conducted in accordance with local law but in no event shall any trash burners, outdoor fireplaces, outdoor barbecue grills or other devices expelling ashes or smoke be placed nearer any adjoining lot lines than twenty (20) feet. Additional regulations for the storage, maintenance and disposal of rubbish, debris, leaves, and garbage may, from time to time, be established by Developer.

SECTION 18. Developer reserves and is hereby granted the right in case of any violation or breach of any of the restrictions, rights, reservations, limitations, agreements, covenants and conditions herein contained, to enter the property, upon or as to which such violation or breach exists and to summarily abate and remove, at the expense of the owner thereof, any erection, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof as interpreted by Developer and Developer shall not, by reason thereof, be deemed guilty of any manner of trespass for such entry, abatement, or removal. A failure of Developer to enforce any of the restrictions, rights,

reservations, limitations, agreements, covenants and conditions contained herein shall in no event be construed, taken or held to be a waiver therefor or acquiescence in or consent to any continuing, further or succeeding breach or violation thereof, and Developer shall at any and all times have the right to enforce the same.

SECTION 19. No grantee or successor in title shall subdivide or convey less than the whole of any lot without first obtaining the written consent of Developer.

SECTION 20. In all instances where plans and specifications are required to be submitted to and are approved by Developer, if subsequent thereto there shall be any variance in the actual construction and location of any alteration or addition, fence, wall, hedge or roadway, any such variance shall be deemed a violation of these restrictions.

SECTION 21. Whenever any of the foregoing covenants, reservation, agreements or restrictions provide for any approval, designation, determination, modification, consent or any other action by Developer, any such approval, designation, determination, modification, consent or any other such action shall be valid if accomplished by Developer, or its successors and assigns or by any other person authorized in writing to sign deeds on behalf of Developer.

ARTICLE TWO

SECTION 1. Upon the completion, sale and occupancy of all lots in Birch Pointe Farms, Developer may cause to be incorporated a nonprofit corporation under the laws of the State of Ohio, to be called the "Birch Pointe Farms Property Owners Association" or a name similar thereto, and upon the formation of such Association, every owner (meaning a full building site) shall become a member thereof, and each such owner, including Developer shall be entitled to one vote on each matter submitted to a vote of members for each lot owned by him: provided, however, that where title to a lot is in more than one person, such co-owners acting jointly shall be entitled to but one vote. Until such association is formed, Developer shall retain all the rights, privileges and powers as are herein provided. Developer reserves the right to incorporate one (1) nonprofit corporation under the laws of the State of Ohio for a Property Owners Association made up of all

single family homeowners in the entire Birch Pointe Farms Development. In such event the membership and voting rules set forth above and below in Article Two shall apply to all single family Plats of Birch Pointe Farms which exists at the time the Association is formed and also to future single family Plats in Birch Pointe Farms Development.

SECTION 2. The Association, by vote of two-thirds (2/3) of its members may adopt such reasonable rules and regulations, including the right to levy reasonable assessments for the maintenance of common areas or other activities undertaken by the Association as it may deem advisable for the maintenance, conservation and beautification of the property, and for the health, comfort, safety, general welfare of residents of said property and all parts of said property shall at all times be maintained subject to such rules and regulations.

SECTION 3. Developer, by an instrument in writing in the nature of an assignment, shall vest the Association, if and when formed, with the rights privileges and powers herein retained by said Developer, which said assignment shall be recorded in the office of the Recorder of Deeds of Lucas County, Ohio.

ARTICLE THREE

SECTION 1. Each grantee of Developer, by the acceptance of a Deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, easements, and the jurisdiction, rights and power of Developer, created or reserved by this Declaration of restrictions or by Plat or Deed restrictions heretofore recorded, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed, shall run with the land and bind every owner of any interest therein, and inure to the benefit of such owner, in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every Deed of conveyance. The violation of any restriction or conditions, or the breach of any covenant or provision herein contained shall give Developer or its successors and assign, or the association, the right (a) to enter upon the land upon which or as to which such violation or breach exists, and to summarily abate and remove, at the expense of the owner of said lot or

lots any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and Developer or its successors and assigns, or the Association, or its agents shall not thereby be deemed guilty of any manner of trespass: or (b) to enjoin, abate or remedy by appropriate legal proceedings, either in law or equity, the continuance of any breach.

SECTION 2. In the first instance, this DECLARATION OF RESTRICTIONS shall not apply to Lot Number 32 (32) in Birch Pointe Farms. The Developer specifically excludes said lot from this DECLARATION OF RESTRICTIONS to provide for the future expansion of Birch Pointe Farms to land Westerly and adjacent to the existing Birch Pointe Farms Development. In that event, Briarwood Lane shall be extended through the present Lot Number Thirty Two (32) Westerly to said adjacent land. However, in the event Briarwood Lane is not extended as provided for herein, then in that event, Developer shall be entitled to impose all of the provisions of this instrument upon said Lot Number Thirty Two (32) by merely referring to this document in a deed of conveyance of said Lot Number thirty Two (32) and including language to the effect the lot shall thereafter be subject to this instrument by referring to this instrument and including the recording information in the office of the Lucas County Recorder. In no event shall any portion of Lots Numbers Twenty Seven (27), Twenty Eight (28), Thirty One (31), Forty (40) or Forty One (41) in Birch Pointe Farms be used for the extension of any street or right of way.

SECTION 3. No restrictions imposed hereby shall be abrogated or waived by any failure to enforce the provisions hereof, no matter how many violations or breaches may occur.

SECTION 4. The invalidity of any restriction hereby imposed, or of any provision hereof, or any part of such restriction or provision, shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration.

SECTION 5. Developer reserves the right to change, modify, alter, or rescind any of the restrictions and covenants herein contained, except those set forth in Section 8 of Article One hereof.

SECTION 6. A violation of any of the rules and regulations adopted by Developer or by the property owners shall be deemed a violation of this

Declaration and may be enjoined as herein provided.

SECTION 7. The rights, privileges and powers herein retained by Developer shall be assignable to, and shall inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, Birch Pointe Farms, Inc. has caused this Declaration to be signed by its President and assistant Secretary on the day and year first above written.

Witnesses: Margaret Hutchinson
Mary Ann Ruff

BIRCH POINTE FARMS, INC.
By Richard G. Moses
Richard G. Moses, President
By Philip C. Davis
Philip C. Davis, Assistant Secretary

STATE OF OHIO, COUNTY OF LUCAS, ss:

The forgoing instrument was acknowledged before me this date by Richard G. Moses, President and Philip C. Davis, Assistant Secretary of Birch Pointe Farms, Inc. on behalf of said corporation.

MARGARET J. HUTCHINSON
Notary Public, State of Ohio
My Commission Expires Aug. 7, 1992

Margaret Hutchinson
Notary Public

ADOPTION OF DECLARATION OF RESTRICTIONS BY TRUSTEE

The undersigned, The Port Lawrence Title and Trust Company, Trustee, which is acting as Trustee for the Birch Pointe Farms, Inc. and holds legal title to Birch Pointe Farms hereby adopts the foregoing Declaration of Restrictions and by the execution hereof imposes said Declaration of Restrictions upon Birch Pointe Farms.

Witnesses:

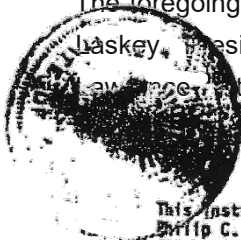
THE PORT LAWRENCE TITLE
AND TRUST COMPANY, TRUSTEE

Margaret Hutchinson
Mary Ann Ruff

By John A. Laskey
John A. Laskey, President
By Margretta R. Laskey
Margretta R. Laskey, Vice President

STATE OF OHIO, COUNTY OF LUCAS, ss:

The foregoing instrument was acknowledged before me this date by John A. Laskey, President and Margretta R. Laskey, Vice President of the Port Lawrence Title and Trust Company, as Trustee, on behalf of said



This instrument prepared by:
Philip C. Davis, Attorney
626 Madison Avenue, Suite 700
Toledo, Ohio 43604

Margaret Hutchinson
Notary Public
MARGARET J. HUTCHINSON
Notary Public, State of Ohio
My Commission Expires Aug. 7, 1992

**ASSIGNMENT OF DEVELOPERS POWERS PURSUANT TO
DECLARATION OF RESTRICTIONS FOR
BIRCH POINTE FARMS, INC.**

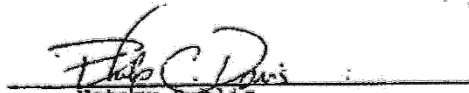
Now comes Birch Pointe Farms, Inc. in its capacity as developer of the Birch Pointe Farms Subdivision situated in the Village of Whitehouse, Lucas County, Ohio, and being Lots Numbers One (1) through Fifty-nine (59), both inclusive, in said Subdivision and does hereby assign to the Birch Pointe Farms Homeowners Association, Inc. all rights, powers and privileges conferred upon said developer by the Declaration of restrictions for said Subdivision.

This assignment is pursuant to the provisions of Article Two Section 3 of the Declaration of Restrictions for said subdivision previously recorded at Microfiche No. 89-1016B07 and following, of Lucas County, Ohio Records.


Harold M. Shunck, President
Birch Pointe Farms, Inc.

STATE OF OHIO, COUNTY OF LUCAS, ss:

Sworn to before me and subscribed in my presence this 14th day of December, 1992, by Harold M. Shunck, President of Birch Pointe Farms, Inc.


Notary Public
PHILIP C. DAVIS, ATTORNEY AT LAW
NOTARY PUBLIC - STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
SECTION 147.03 R. C.

RECEIVED & RECORDED

DEC 16 1992

SUE KNOX

RECORDER, LUCAS COUNTY, OHIO

10:00

12:05 PM

92/3671B05