

Rec'd 2/5/93  
okay per Rick cTom  
to sign Plat

**DECLARATION OF COVENANTS, EASEMENTS,  
RESTRICTIONS AND ASSESSMENT LIENS  
BIRKENSTOCK FARMS**

This Declaration of ~~Covenants, Easements, Restrictions and Assessment~~ Liens is made the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ by B & V Realty Development, Inc. a Michigan corporation ("Declarant"), 48400 West Road, P.O. Box 6070, Wixom, Michigan 48393-6070, which is the owner of the land in Genoa Township, Livingston County, Michigan described in attached Exhibit "A" (the "Land") which is being platted in a subdivision known as Birkenstock Farms (the "Subdivision").

RECITAL:

Declarant is the owner of the Land fee in simple which having been approved by the proper governmental authorities will be subdivided and described as follows:

Lots one (1) through forty five (45) inclusive, of the Birkenstock Farms Subdivision, as the same is numbered and delineated upon the recorded plat thereof, of record in Liber \_\_\_\_\_ Page \_\_\_\_\_ of the Genoa Township, Livingston County, State of Michigan Land Records.

Each of the lots described above is referred to herein as a "Lot" and collectively they are referred to as the "Lots." A "Lot Owner" is each owner of a fee simple or land contract vendee (purchaser) interest in a Lot.

Declarant desires to retain plan approval of the dwelling units to be constructed on the Lots, to establish a general plan of uniform restrictions, and to secure each Lot Owner the full benefit and enjoyment of his home by preserving the general character and aesthetics of the Land.

**COVENANTS, RESTRICTIONS, EASEMENTS  
AND ASSESSMENT LIENS:**

NOW THEREFORE, Declarant hereby declares that the Land as shown in the recorded plat of Birkenstock Farms shall be held, sold, conveyed, and occupied subject to the following covenants, restrictions, easements, and assessment liens, which are for the purpose of protecting the value and desirability of the Land, which shall run with the Land and each part thereof, including all Lots, and which shall be binding on all parties having any right, title or interest in the Land and their respective heirs, successors, and assigns and shall insure to the benefit and be enforceable by Declarant, its successors and assigns, including the Birkenstock Farms Property Owners Association, a Michigan non-profit corporation, which shall be formed in the future pursuant to the terms of this Declaration:

I. GENERAL USE OF PROPERTY

- A. Each Lot, shall be used for residential purposes only.
- B. Only one dwelling shall be constructed on each Lot and such dwelling shall consist of a single family residential structure only with attached enclosed garage. No carports shall be constructed or utilized on the premises.
- C. House trailers, boats, boat trailers, recreational vehicles, trucks or commercial vehicles (except while making normal deliveries) and currently unlicensed vehicles or vehicles which are inoperable or in the course of repair shall not be stored or parked on any Lot or driveway, except within a private enclosed garage.

- D. Migratory birds and fowl, or birds and fowl in a state of nature, shall not be injured or killed by any Lot Owner. No fowl shall be kept, sheltered, or confined on any Lots. Nor shall any animals be kept or maintained on any Lot, except domesticated household pets for the enjoyment of the Lot Owner and members of his family. Household pets shall have such care as not to be objectionable or offensive on account of noise, odor or unsanitary conditions.
- E. No signs, billboards, or other advertising devices or symbols shall be displayed anywhere in the Subdivision except "For Sale" signs not more than six (6) square feet in area, advertising a single Lot or dwelling and except those signs of a larger size which may be erected and displayed by Declarant or its authorized developer or agent advertising the Subdivision during its development, construction and sales. All such signs allowed must be maintained in good condition and must be removed promptly upon the termination of their use.
- F. No fences or walls, outbuildings, sheds, above ground pools, and satellite dishes shall be placed or constructed on any Lot.
- G. No Lot shall be used or maintained as a dumping ground for rubbish. Garbage, trash and other waste shall be disposed of by burning in an incinerator. Non-burnable waste or residue shall be kept in covered sanitary containers. All containers must be kept under cover in a garage, utility room or basement.

- H. Lot owners shall keep and maintain their Lot (occupied or unoccupied) and all property thereon in an orderly manner and shall cause weeds and other growth to be seasonable cut and shall also prevent the accumulation of rubbish and debris on the Lot.
- I. All driveways shall be surfaced with concrete or bituminous paving with suitable sub-base support. The grading, installation and paving of driveways shall be completed within a ninety (90) day period after occupancy of residential structures as construction activities and weather permits.
- J. The Declarant may grant exceptions to the general use of property restrictions as it deems suitable.

## II BUILDING, HEALTH AND STRUCTURAL RESTRICTIONS

- A. No residential structure shall be erected, altered, placed or remain on any Lot which shall have an area less than the designations below, which areas may be computed by including exterior walls and heated areas but may not be computed by including garage areas:
- 1) One story dwelling shall have no less than 1800 square feet of living area on the ground floor, above grade.
  - 2) Two-story dwellings shall have no less than 1100 square feet of living area on the main ground floor, above grade, and an aggregate living area of 2000 square feet.
  3. One and one-half story dwelling shall have no less than 1400 square feet of living area on the ground floor, above grade, and an aggregate living area no less than 2100 square feet.
  - 4) A tri-level or quad-level dwelling shall have no less than 1800 square feet on the top two levels, above grade, and an aggregate living area no less than 2200 square feet.

- B. No residence structure shall be erected that does not include and attached garage. The garage entrance can face the street. Garage doors must be sectional type.
- C. All structures shall be erected upon a foundation constructed on suitably permanent material extending below the frost line. Any exposed exterior foundation shall be covered with brick.
- D. Fireplace chimneys can only be brick, wood or vinyl. Pre-fab fireplaces can be cantilevered on rear of house only.
- E. Sloping roof pitches are to be a minimum of 6/12 for functional and aesthetic reasons. Roof shingles to be a minimum 235#. Gutters and downspouts are required.
- F. Only new materials and no used materials shall be used in the construction of a residence structure. Aluminum siding is not allowed.
- G. The exterior of a residential structure shall be completed, including painting, within one (1) year of commencement of construction. Solid opaque stains only.
- H. During construction and upon completion, the Lot shall be kept free and clean of construction debris and rubbish and an orderly and neat appearance shall be maintained. Within sixty (60) days after substantial completion of construction of a residential structure, all unused construction materials, equipment and supplies shall be removed from the site. Areas of the Lot disturbed by excavation and

construction work shall be finish-graded and seeded, sodded, or otherwise suitable landscaped as soon as construction activities and weather permits.

I. No structure shall be occupied as living quarters unless and until said structure shall be completed, including exterior painting, according to approved plans and until a temporary or permanent occupancy permit has been issued by the governmental unit having jurisdiction over the construction and use of such structure.

J. No construction of a residential structure shall be commenced on any Lot unless and until written approval of building and site plans for such construction has been given by the Declarant. Architectural design, quality of construction and aesthetic presentation will be a consideration of approval.

K. All residential buildings shall conform to the following setbacks.

- 1) Front - 50 feet minimum
- 2) Side - 30 feet minimum
- 3) Rear - 80 feet minimum

L. The Declarant may grant exceptions to the building restrictions as it deems suitable.

M. Lots 15, 16, 17, 24 & 25 shall be the only Lots within Birkenstock Farms Subdivision with access rights to Ackerman Lake. Said Lots shall be restricted to individual ownership, and shall not be owned nor shall lake access rights be sold, rented or otherwise assigned

- for the purpose of allowing persons other than the owners, their family , and guests access to Ackerman Lake.
- N. Ownership of boats docked or launched at Lots 15, 16, 17, 24 & 25 shall be restricted to owners of said lots.
- O. Any building used or capable of being used for residential purposes, within or affected by the flood plain, shall have an elevation of the lower floor, exclusive of a closed basement, of not less than 963.0 feet above sea level. All residential buildings having basement walls and floors lower than 963.0 feet above sea level, shall be constructed water tight and reinforced to withstand hydrostatic pressure from a water level equal to 963.0 feet above sea level.
- P. The basement openings of any residential buildings shall not be less than 963.0 feet above sea level.
- Q. All residential buildings having any construction at or lower than 963.0 feet above sea level shall be equipped with a positive means of preventing sewer backup from sewer lines and drains which serve the building, and shall be securely anchored to prevent flotation.
- R. No filling, building or occupation of the flood plain area, which is the area elevation below 963.0 feet (N.G.V. datum) will be allowed without prior approval of the Department of Natural Resources and this restriction and all other flood plain restrictions shall be observed in perpetuity and shall not be amended.
- S. The Livingston County Health Department restrictions, section II, S paragraphs 1 through 16 following, shall be observed in perpetuity and shall not be amended without the consent of the Health Department.

- S-1) All wells shall be drilled by a licensed Michigan well driller and be drilled to a depth that will penetrate a minimum of a 10 ft. protective clay barrier or be drilled to a depth of 100 ft. if clay is not encountered.
- S-2) The test wells used to determine onsite water supply adequacy have been drilled on lots 18, 27, 29, 39, and 45. If these wells are not intended for the use as potable water supplies, they must be properly abandoned according to Part 127, Act 368 of the Groundwater Quality Control Act.
- S-3) The wells and septics shall be located in the exact areas as indicated on the preliminary plan submitted by Boss Engineering, last revision date January 7, 1993, which is on file at the Livingston County Health Department.
- S-4) There shall be no underground utility lines located within the areas designated as active and reserve septic system.
- S-5) The reserve septic locations as designated on the preliminary plan on file at the Livingston County Health Department must be maintained vacant and accessible for future sewage disposal uses.
- S-6) All lots must maintain a minimum of 25 ft. from proposed storm drain easement and catch basins with both active and reserve onsite sewage disposal.
- S-7) A 2800 sq. ft. area has been designated on each lot for the active and reserve sewage disposal systems to accommodate a typical four bedroom single family home. Proposes homes



- S-7) exceeding four bedrooms must show that sufficient area exists for both active and reserve sewage systems which meet all acceptable isolation distances.
- S-8) The onsite sewage disposal systems for Lots 1, 2, 4, 8, 10, 12, 20, 21, 25, 26, 27, 28, 30, 31, 33, 35, 37, 39, 41, and 43 will require the excavation of slow permeable soils to a more permeable soil ranging between 4 ft. to 9.5 ft. in depth. Due to the fact that unsuitable soils will be excavated in the area and replaced with a clean sharp sand, the cost of the system may be higher than a conventional sewage disposal system.
- S-9) The onsite sewage disposal systems for Lots 9, 11, 13, 14, 15, 16, 18, 19, 22, 23, 24, 32, 36, and 42 will require shallow cutdowns to more permeable soils within the top 4 ft.
- S-10) Lot 17 will require striping the top soil only, then backfill with a clean sand to elevation of 968.30 then install the system. A 3200 sq. ft. area will be required for a four (4) bedroom house.
- S-11) Lots 33 will require that the bottom of the stone be no than 24 inches below the original grade.
- S-12) Lots 31 and 32 will require that the bottom of the stone be no deeper than 36 inches below the original grade.
- S-13) Due to the storm drainage easement, no septic system on Lots 36, 37, 38, and 40 shall be allowed within 40 ft. of the northerly lot line.
- S-14) Due to the storm drainage easement, no septic system on lots 42, 43, and 44 shall be allowed within 40 ft. of the southerly lot line.

S-15) All restrictions placed on "Birkenstock Farms" Subdivision by the Livingston County Health Department are not severable and shall not expire under any circumstances unless otherwise amended or approved by the Livingston County Health Department.

S-16) "Birkenstock Farms" Subdivision has been approved for 45 single family lots. These 45 lots can not be further divided to create additional building sites within the development.

T. Prior to issuance of the Certificate of Occupancy for each lot, a 2 1/2" caliper deciduous tree shall be planted in an area beginning 10 feet behind the back of curb of the roadway and extending to 17 feet behind the back of curb. The exact location of the tree must be approved by the Livingston County Road Commission because of specific sight distance requirements for each lot. If the Road Commission does not approve any location for a particular lot, then one 2 1/2" caliper deciduous tree shall be planted behind the private easement for public utilities. The tree shall be one of the following species:

U. No structures, trees or landscaping, other than grass, are allowed within the clear vision easement on Lots 22 and 23 without the approval of the Livingston County Road Commission.

### III. INSTALLATION OF UTILITIES AND EASEMENTS

Easements are provided as shown on the final plat for the installation or maintenance of telephone or electric lines or conduits, sewer, gas or water lines or mains, but all such installed utilities must be placed underground at a depth specified by the applicable utility company. This underground installation requirement shall be a covenant running with the Land and shall not be amended unless the applicable utility refuses to supply service in accordance with these restrictions or makes compliance so burdensome as to be economically unfeasible.

### IV. HOMEOWNERS ASSOCIATION

A. Declarant shall form a Homeowners Association (the "Association") pursuant to the Michigan Non-profit Corporation Act, no earlier than at a time when 80% of the Lots have been sold.

B. The Association shall assume control of the Subdivision at its first annual meeting and shall thereafter have all rights and duties reserved to Declarant hereunder and shall be deemed Declarant's successor and assign. At that time, Declarant shall also be deemed fully released from any continuing obligations pursuant to this Declaration and the Association shall be deemed to have indemnified Declarant against any liability or obligations incurred thereafter.

C. The Board of Directors of the Association shall determine at each annual meeting the total budget required for the forthcoming year and may levy an annual assessment against each Lot within the Subdivision. Each Lot Owner shall be required to pay such annual assessment levied by the Association.

within thirty (30) days after notice to the Lot Owner. Any assessment unpaid after thirty (30) days shall be considered delinquent and shall bear interest at a rate of eight (8%) percent per annum from the date of notice to the date of payment. Delinquent assessments shall be considered a lien against the applicable Lot prior to all other liens, except that of a first mortgage held by an institutional lender, and the Association shall be entitled to perfect and foreclose such lien pursuant to applicable Michigan Law.

V. REMEDIES FOR DEFAULT

A. A violation of the terms of this Declaration shall entitle Declarant to proceed against the offending Lot Owner in all manners allowed in a court of law or equity. Such relief shall include but not be limited to an action to recover sums due for damages, injunctive relief, and in the instance of assessments, foreclosure. If successful, Declarant shall be entitled to recover its actual costs, including attorney fees, incurred in the process.

B. The failure of Declarant to enforce any provision of this Declaration shall not constitute a waiver by the Declarant or Declarant's successor or assign to enforce such provisions in the future.

C. All rights, remedies, and privileges granted to the Declarant shall be deemed to be cumulative and the exercise of any one or more shall not preclude Declarant from exercising such other rights, remedies, or privileges as may be available at law or in equity.

IV. VIOLATION OF STATUTE OR GOVERNMENTAL REGULATION

Violation by Lot Owner of any statute or governmental regulation regarding use of the Land, including but not limited to, building or zoning and use restrictions, shall be deemed a violation by the Lot Owner of the

terms of this Declaration and entitle Declarant to all relief afforded hereunder.

VII. NOTICES

All notices contemplated by this Declaration shall be deemed received upon either personal service to the applicable Lot Owner or mailed first class, postage prepaid, addressed to the Lot Owner at the address of the applicable Lot.

VIII. SEVERABILITY

Each provision contained in this Declaration is intended to be severable. In the event any provision is held illegal or void as to any person or circumstance, it shall not effect the validity of the remaining provisions or the enforcement of the provision to persons or in circumstances other than to those which it is held invalid or enforceable.

IX. INTERPRETATION

A. All references to Declarant shall include its successors and assigns. Any reference to Lot Owner shall include the successors in interest by ownership of the Lot.

B. As used in this Declaration, any gender includes the other gender, and the plural includes the singular wherever appropriate.

C. This Declaration shall be interpreted, construed and enforced in accordance with the laws of the State of Michigan.

IN WITNESS WHEREOF, Declarant has executed this Declaration the 5  
day of FEBRUARY, 19 93

WITNESSES:

David J. Park  
David J. Park

SIGNED:

B & V REALTY DEVELOPMENT INC. a  
Michigan Corporation

Marie Griffith  
Marie Griffith

By: Leo M. Volpe

Leo M. Volpe, President

STATE OF MICHIGAN )  
                          ) SS:  
COUNTY OF OAKLAND )

This instrument acknowledged before me this 5th day of February  
19 93 by Leo M. Volpe, President of B & V Realty Development, Inc.  
corporation, as a duly authorized act in behalf of the corporation.

Karen K. Kolke  
Karen K. Kolke, Notary Public

Oakland County, Michigan  
My Commission Expires 4-17-94