

155 W. Main St.  
Columbus, OH 43215

BENTWOOD FARMS-MALLARD POND

**TRANSFER  
NOT NECESSARY**  
MAY 27 91  
*[Signature]*  
COUNTY AUDITOR, FAIRFIELD COUNTY OHIO

Partnership Filed 8-2-90 **DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF OWNERSHIP**  
In Fairfield County  
Gene Wood, Recorder  
By [Signature] Deputy Recorder

Whereas, LeMac Limited Partnership ("LeMac"), an Ohio limited partnership, is the developer of Bentwood Farms Subdivision Section One and Mallard Pond Subdivision Section One (together "the Development"), adjacent residential subdivision sections in Fairfield County, Ohio, platted of record in Plat Cabinet 103, and Plat Cabinet 104 of the plat records of Fairfield County, Ohio, respectively, and

Whereas LeMac owns all of the residential lots in Bentwood Farms Subdivision Section One (Lots 1 thru 67) and the residential lots in Mallard Pond Subdivision Section One (Lots 1 thru 27) and certain areas ("Common Areas") hereinafter more specifically described which are to be held and maintained for the common use of all lot owners in the Development, and

Whereas, LeMac intends and desires that the further development of Bentwood Farms and Mallard Pond shall be in accordance with an architectural plan to be administered by an "Architectural Control Committee" for the economic and esthetic protection and benefit of all lot owners in the Development,

Now Therefore, LeMac hereby declares that each lot in the Development and the common areas (hereinafter described) is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth which shall run with said real property and be binding on all parties having any right, title or interest in said real property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Architectural Control

1. To ensure architectural continuity and compatibility of the residences within the Development, an Architectural Control Committee composed of three members is hereby

created. The initial members are Sanford Goldston, Scott Rubin and Tom Cegelski, employees of Gemstar Homes, Inc., general partner in LeMac.

2. Members of the Architectural Control Committee shall serve until their incapacity, resignation, death, or termination as provided herein. A member may be terminated at any time and without cause by the owners of a majority of the lots in the Development. Any vacancy on the Committee shall be filled by the owners of a majority of the lots in the development.

3. No building, fence, wall, swimming pool or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration thereto, or any exterior addition to, change or alteration of a residence, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. The action of the Committee shall not be subject to review. In the event said Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection, addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this section will be deemed to have been fully complied with.

4. In requiring the submission of detailed plans and specifications as herein set forth, the parties hereto have in mind the development of said subdivision as an architecturally harmonious, artistic and desirable residential community and in approving or withholding its approval of any detailed plans and specifications so submitted, the Architectural Control Committee, may consider the appropriateness of the improvement contemplated with relation to improvements on contiguous or adjacent lots, its artistic and architectural merits, its adaptability to the lot on which it is proposed to be made, and such other matters as may be deemed to be in the interest and benefit of the owners of the lots in the Development as a whole and any determination made by the Architectural Control Committee in good faith shall be binding on all parties in interest.

5. The Architectural Control Committee, in addition to those remedies granted to it by law, such as the pursuit of court ordered injunctions and other judicial relief, shall have

the right in the event of any action or condition which the Architectural Control Committee determines to be in violation of these restrictions to enter the property upon which such violation is deemed by it to exist and to summarily abate and remove, at the expense of the owner thereof, the structure or condition deemed by it to be in violation hereof, and said Architectural Control Committee shall not by reason thereof be guilty in any manner of trespass for such entry, abatement or removal or be liable for damages by reason thereof to any person whomsoever. Any failure to enforce the conditions, covenants and restrictions of this Declaration shall not be deemed a waiver thereof or any acquiescence in or consent to any continuing, further or succeeding violation hereof. If, in the opinion of the Architectural Control Committee by reason of the shapes, dimensions or topography of a particular lot in the subdivision, enforcement of these restrictions with respect to size of structure would constitute a hardship, the Architectural Control Committee may permit a variation which will in its judgment be in keeping with the maintenance of this subdivision as a desirable subdivision.

## ARTICLE II

### General Plan Of Restrictions

1. The lots within the Development shall be used for private single family residence purposes only, by the owner, his family and tenants and no buildings shall be erected on any lot except one single private dwelling house with basement, and one attached or integrated garage with space for not less than two automobiles.
2. A two story residence shall contain a minimum of 1500 square feet of living area, exclusive of porches; a one and one half story residence shall have a minimum of 1250 square feet of living area, exclusive of porches; and a ranch or single story residence shall have a minimum of 1000 square feet of living area, exclusive of porches.
3. No structure or any part thereof, other than a fence, hedge, wall, or other enclosure which shall first have been approved as provided in paragraph 3, Article I, shall be erected, placed or maintained on any lot nearer to the front or street line or lines than the building setback line or lines shown on the recorded plats. No structure of any sort shall be erected, placed or maintained on any lot nearer to any side lot line or rear lot line than

shall be required by the appropriate zoning and building requirements of the Fairfield County Building Department.

4. No portion of any residential lot or structure thereon shall be used or permitted to be used for any business purpose whatsoever and no noxious, offensive, or unreasonable disturbing activity shall be carried on upon any part of said Development, nor shall anything be done thereon which may be or become an annoyance or nuisance in said subdivision.

5. No trailer, basement, tent, shack, garage, barn, house, car, or other temporary shelter or housing device shall be maintained or used as a residence, temporarily or permanently, in said Development. No dwelling erected in said Development shall be used as a residence until the exterior thereof has been completed in accordance with the detailed plans and specifications approved therefor as provided in paragraph 3, Article 1 above.

6. No clotheslines shall be located on any lot except for a removable folding umbrella type.

7. Any truck, motorcycle, boat, bus, tent, house, car, camper, trailer or other similar housing or recreational device, if stored on any said lot, shall be housed within a garage building.

8. No portion of any residential lot, except the interior of the residential dwelling located thereon and appurtenant garage, shall be used for the storage of automobiles, trailers, motorcycles or other vehicles whether operative or not, scrap, scrap iron, water, paper, or glass, or any reclamation products, parts or materials, except that during the period an improvement is being erected upon any such lot, building materials to be used in the construction of such improvement may be stored thereon; provided, however, any building material not incorporated in said improvement within ninety (90) days after its delivery to such lot shall be removed therefrom. All improvements must be completed by an owner within one (1) year from the date of the beginning of the construction thereof. No sod, dirt or gravel other than incidental to construction of approved improvements, shall be removed from said lots without the written approval of the Architectural Control Committee.

9. No portion of any lot nearer to any street than the building setback line or lines shown upon the recorded plats of the subdivisions shall be used for any purpose other than

that of a lawn; provided, however, this covenant shall not be construed to prevent the use of such portion of said lot for walks, drives, trees, shrubbery, flowers, flower beds, ornamental plants, statuary, fountains, fence, hedge, wall or other enclosure which shall first have been approved by the Architectural Control Committee which shall act with a view to the aestheticism of the proposed improvement.

10. No weeds, underbrush, or other unsightly growths or objects of any kind, shall be placed, be permitted to grow, or suffer to remain on any part of said premises. No trash burner, outdoor fireplace, or other device expelling gas or smoke shall be placed within twenty (20) feet of any adjoining lot line.

11. No television antennas shall be attached to the exterior of any residence. No towers of any kind, including, but not limited to, television, satellite dish, radio and/or microwave towers, shall be erected, placed or maintained on any lot in said subdivision.

12. No tank for the storage of propane gas, fuel oil, gasoline or similar liquid or fluid shall be located on a lot either below or above ground.

13. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, that they are limited in number so as not to cause a nuisance or disturbance of others, and that they are not permitted to run loose.

14. No sign or billboard of any kind shall be erected or maintained on any lot except signs used by Owners to advertise lots and residences for rent or for sale, provided such signs shall be first approved by the Architectural Control Committee.

15. No lot owner shall impair any easement without first obtaining the written consents of the Association and the lot owner or owners for whose benefit such easement exists.

16. The Architectural Control Committee shall have the sole and exclusive right to establish grades and slopes on all lots in said Development and to fix the grade at which any residence shall hereafter be erected or placed thereon so that the same may conform to the general plan of development. All such grades and slopes shall be established on the engineering plans submitted to and approved by the Architectural Control Committee.

17. All rubbish and debris, combustible and non-combustible, and all garbage shall be stored and maintained in containers entirely within the garage or basement. However, rubbish, debris, combustible and non-combustible, and garbage may be stored in outside

containers if approved by the Architectural Control Committee. Additional regulations for the storage, maintenance, and disposal of rubbish, debris, leaves and garbage may from time to time be established by the Architectural Control Committee or their successors and assigns.

18. No well for the production of gas, water, oil or otherwise, whether intended for temporary or permanent purposes, shall be drilled or maintained on any lot, nor shall such premises be otherwise used in any way which may endanger the health or unreasonably disturb the peaceable use of adjoining premises.

19. An owner of a lot upon which a home has been constructed shall preserve the exterior of such home in good condition and repair and shall maintain such home in such condition that it does not detract, financially or aesthetically, from the overall appearance of the Development as an upper middle financial class community. An owner of an unimproved lot in the Development shall keep it free of all debris, weeds and bushes (other than ornamental bushes) and shall keep any grass therein mowed to a height not exceeding eight inches.

20. Any violation or attempt to violate any of the covenants or restrictions herein while the same are in force shall be unlawful. Any person or persons owning any lot in said Development may prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions to prevent him or them from so doing to cause the removal of any violation and to recover damages or other dues for such violation or attempted violation.

### ARTICLE III

#### Home Owners Association

1. Mallard Pond-Bentwood Farms Association ("Association") is a non profit corporation formed or to be formed by Declarant under the laws of Ohio to manage the affairs of the Development not otherwise delegated to the Architectural Control Committee.

2. Every person or entity who is a record owner of a lot in the Development shall be a member of Association. Membership shall be appurtenant to and not be separated from

ownership of a lot. Owner-members shall be bound by the regulations of Association and all agreements and determinations lawfully made by Association in accordance with its regulations and this Declaration. An owner-member shall have one vote for each lot owned.

3. Association shall be empowered to levy, assess and collect, and each lot owner by accepting a deed therefor, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to Association an annual assessment and such special assessments as Association determines from time to time to be necessary to manage the affairs of the Development, including the maintenance of the common areas conveyed or to be conveyed to Association in accordance with Article IV herein. Assessments against lots within the same subdivision shall be equal in amount. Assessments as between lots in Mallard Pond subdivision and lots in Bentwood Farms subdivision shall be in the ratio of 1.2 to 1, respectively. The annual and special assessments, together with such interest and costs of collection thereof as are hereafter provided, shall be a charge and a continuing lien upon the lot against which such assessment is made. Each such assessment, together with interest and cost of collection thereof shall also be the personal obligation of the person who was the owner of the lot at the time the assessment became due.

4. The annual assessment and any special assessment levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association and for the improvement and maintenance of the common area hereafter described. No officer or member of the board of trustees of the Association shall receive any fee or compensation for serving in such office.

5. The annual assessment shall be on a calendar year basis commencing on the first day of the month following the conveyance of the common areas in accordance with Article IV, paragraph 2 herein. Any annual assessment for the first year shall be adjusted according to the number of months remaining in the calendar year. The Board of Trustees of Association shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be mailed to each owner by US mail first class postage prepaid. The payment date shall be established by the Board of Trustees. The Association shall, up-

on demand, furnish a certificate signed by an officer setting forth whether the assessments, annual or special, on a specified lot have been paid. The notice provisions for the annual assessment shall also apply to any special assessment levied by the Board of Trustees.

6. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten per cent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment or conveyance of his lot.

7. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE IV

##### Common Areas

1. The Common Areas of the Development consist of a approximately 6.878 acre pond, a drainage way and wooded area and a landscaped buffer strip of land between the Development and Refugee Road, which areas are shown as Reserve A on Exhibit "A" attached hereto and incorporated herein.

2. Declarant, LeMac, will convey the Common Areas to Association, free and clear of all liens and encumbrances when in Declarant's opinion Association is able to maintain the same, but no later than the sale by LeMac of all lots in Bentwood Farms Section One and Mallard Ponds Section One subdivisions.

3. Subject to the right of the Board of Trustees of the Association to promulgate rules for the use and protection of the Common Areas, every member of the Association shall have a right to use and enjoy the Common Areas in common with every other member of the Association.

4. Every Association member may delegate, in accordance with any rules adopted by the Board of Trustees, his right to enjoyment of the Common Areas to the members of his family, his tenants, or contract purchasers who reside on the property.

#### ARTICLE V

##### Expansion Of Development Property

1. In addition to Bentwood Farms Section One and Mallard Pond Section One, the "Development" herein, Developer owns additional adjacent land (described in Exhibit "B"), which it intends to subdivide, or has subdivided, into additional sections of Bentwood Farms and Mallard Pond subdivisions. Developer reserves the right to extend or add to this Declaration such additional sections or any part thereof.

2. Developer's right to extend or expand the Declaration hereunder shall continue for as long as it owns any lots or lot in Bentwood Farms Section One and Mallard Pond Section One or until December 31, 1998, whichever earlier occurs. Lots within additional sections of Bentwood Farms and Mallard Pond subdivisions may be added from time to time without requirement as to the number added at any one time or the total number added. Nor is any proportion required as between subdivisions.

3. All lots added by Developer shall thereafter be held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, easements, charges and liens contained in this Declaration and the owner or owners thereof shall be entitled to all rights and subject to all obligations imposed upon owners hereunder. Expansion lots shall be assessed at the same rate as the original lots in the same subdivision.

4. Additions of lots to this Declaration shall be effected by amendment or amendments executed by Developer and filed for record with the Recorder of Fairfield County.

#### ARTICLE VI

##### General Provisions

1. The Association or any lot owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, liens and charges now or here-

after imposed by the provisions of this Declaration. Failure by the Association or by any lot owner to enforce any covenant or restriction or other obligation herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. Invalidation of any one or more of the restrictions, covenants or other provisions contained in this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

3. The covenants, restrictions and other provisions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of its recording with the Recorder of Fairfield County, Ohio and shall be automatically extended for successive periods of ten (10) years unless terminated as provided herein. This Declaration may be amended or terminated during the initial term by an instrument in writing signed by the owners of not less than seventy-five percent (75%) of the lots within the Development and thereafter by an instrument signed by the owners of not less than sixty-six percent (66%) of the lots in the Development. Any instrument of termination or amendment shall be recorded with the Recorder of Fairfield County, Ohio.

IN WITNESS WHEREOF the Declarant has executed this Declaration this 17<sup>th</sup> day of MAY, 1991.

Witnesses:  
Lynda J. Hill  
Frank Jones  
77980 LeMac Limited Partnership  
by Gemstar Homes, Inc., General Partner  
**RECEIVED** IN FAIRFIELD COUNTY, OHIO  
MAY 28 1991  
RECORDED 11:20 AM  
VOL. 592 PAGE 58  
Scott A. Rubin, President

County of Franklin  
State of Ohio, SS

34-  
Gene Wood  
Recorder - Fairfield County, Ohio

The foregoing Instrument was acknowledged by Scott A. Rubin, President of Gemstar Homes, Inc., a Ohio corporation, and general partner in LeMac Limited Partnership, a limited partnership, on behalf of Limited Partnership, this 17<sup>th</sup> of May, 1991.

Frank Jones  
Notary Public

This instrument prepared by:  
GEMSTAR HOMES, INC.  
6880 Tussing Road, Reynoldsburg, Ohio 43068

SUSAN K. JONES  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES NOV. 15 1994