

**AMENDED COVENANT TO ESTABLISH A NATURAL SURFACE TRAIL
FOR USE BY THE GENERAL PUBLIC FOR
EQUESTRIAN AND OTHER SPECIFIED RECREATIONAL USE**

THIS AMENDED DECLARATION, made this 10th day of September, 2015 by BARNESVILLE OAK FARMS, LLC, a Maryland Limited Liability Company, on behalf of itself, its successors and assigns (“BOF” or the “Applicant”) in its capacity as agent for the Balsamah Corporation, N.V. a Curacao corporation, its successors and assigns, (hereafter the “Farm Owner”) authorized to do business in the State of Maryland (collectively “Declarant”) ESTABLISHES A NATURAL SURFACE TRAIL FOR USE BY THE GENERAL PUBLIC FOR EQUESTRIAN AND OTHER SPECIFIED RECREATIONAL USE subject to the terms, conditions and restrictions hereinafter set forth.

WITNESSETH

WHEREAS, Declarant is the authorized agent of the Farm Owner of that certain parcel of land containing 840 acres, known of record as Parcel P579 on Tax Map DU13; and

WHEREAS, Declarant is authorized by the Farm Owner to execute and record this Amended Declaration of Covenant; and

WHEREAS, Declarant submitted Preliminary Plan Number 120090110 for subdivision approval for the 840 acre parcel of land known of record as Parcel P579 on Tax Map DU53 (hereafter the “Property”); and

WHEREAS, the Property is located on the east and west sides of Peach Tree Road in Montgomery County, Maryland; and

WHEREAS, on July 22, 2010 the Montgomery County Planning Board (“the Planning Board”) of the Maryland-National Capital Park and Planning Commission (the “Commission”) approved Preliminary Plan Number 120090110 subject to certain conditions; and

WHEREAS, pursuant to Section 50-30(c)(3) of the Montgomery County Subdivision Regulations, being also Chapter 50 of the Montgomery County Code 2004 as amended, the Planning Board is empowered to require the establishment of recreational equestrian trails through the subdivision process for use by the general public; and

WHEREAS, on September 28, 2010, the Planning Board issued MCPB Resolution Number 10-129 approving the Preliminary Plan subject to conditions (the “Approval Resolution”); and

WHEREAS, Approval Resolution Condition Number Three (“Condition Number 3”) requires the establishment of a trail for recreational use by the general public (the “Public Use Trail”) at the precise location and in the exact alignment as shown on the Approved Preliminary Plan; and

WHEREAS, the Approved Preliminary Plan depicts the precise location and exact alignment of the Planning Board approved recreational Public Use Trail; and

WHEREAS, Subtitle 11 of Title 5 of the Natural Resources Article of the Maryland Annotated Code encourages landowners to permit the use of private property by the general public for recreational purposes, under certain limited circumstances; and

WHEREAS, Subtitle 11 of Title 5 of the Natural Resources Article of the Maryland Annotated Code limits the liability of a landowner who permits such use of private property for recreational purposes without charge; and

WHEREAS, By a Declaration of Covenant dated September 11, 2014 and recorded in Liber 49221 at folio 445, *et. Seq.* among the Montgomery County Land Records Declarant established a natural surface trail for equestrian use by the general public; and

WHEREAS, on September 3, 2015, the Planning Board conducted a public hearing on Subdivision Record Plat Applications 220120040, 220120060 and 220120510 entitled Greentree Farm Subdivision prior to approving the Final (Record) Plats for recordation; and

WHEREAS, the Planning Board's approval of Subdivision Record Plat Applications 220120040, 220120060 and 220120510 is subject to a condition requiring that non-motorized bicycle riding and hiking be included as additional permissible recreational uses of the Public Use Trail on the Subdivision Property;

WHEREAS, use of the Public Use Trail is solely at the user's own risk, subject to Declarant's absolute immunity from any and all liability and the additional limitations on liability enumerated in the Natural Resources Article of the Maryland Annotated Code as currently codified and the terms, conditions and restrictions set forth in the aforesaid Declaration of Covenant; and

WHEREAS, Declarant desires to amend the aforesaid Declaration of Covenant in compliance with the Planning Board's conditional Final Plat approval to permit, non-motorized bicycle riding and hiking as additional permissible recreational uses of the Public Use Trail by the general public, at the user's own risk, and to permit routine maintenance of the trail within its defined boundaries by members of the general public, subject to Declarant's absolute immunity from any and all liability and the additional limitations on liability enumerated in the Natural Resources Article of the Maryland Annotated Code as currently codified and the terms, conditions and restrictions hereinafter set forth.

WHEREAS, This Amended Declaration of Covenant implements the general scheme of development intended by the Preliminary Plan and approved by the Planning Board's Approval Resolution and is recorded to benefit the land upon which the approved residential development will be located and establish the restrictions and limitations applicable to the use of the Public Use Trail hereby established.

NOW THEREFORE, in consideration of the above recitals each of which is incorporated herein as if fully set forth below, and the covenants, terms, and restrictions hereinafter set forth, Declarant hereby amends the aforesaid recorded Declaration of Covenant to include recreational hiking, non-motorized bicycle riding and routine maintenance as additional recreational uses of the Public Use Trail by the general public, in addition to the equestrian use, permitted by the Declaration of Covenant recorded in Liber 49221 at folio 445 that established the Trail in the precise location and exact alignment as approved by the Planning Board and as depicted on Exhibit "A" to this Declaration.

1. Recreational Natural Surface Trail Established.

In compliance with Condition Number three of MCPB No. 10-129, the Approval Resolution, and the condition of approval of the Final Record Plats by the Planning Board on September 3, 2015, a Natural Surface Public Use Trail is hereby established on the Property as depicted on Exhibit "A" attached hereto and incorporated herein by this reference. The Public Use Trail hereby established is for the benefit of the general public to be used solely for the following recreational uses at no charge and at the users own risk: horseback riding, hiking and non-motorized bicycle riding only ("Permitted Recreational Uses"), pursuant to the express terms and conditions set forth in the Special Notes required by Paragraph 7(b) of this Amended Declaration and the express terms and conditions set forth below.

- (a) In order to protect the residential use of the Property any activity by persons using the Public Use Trail for permitted recreational purposes, including routine maintenance that disrupts the quiet enjoyment and privacy of residents is prohibited.
- (b) In order to protect the agricultural use of the Property, any activity by persons using the Public Use Trail for permitted recreational purposes, including routine maintenance that disrupts or interferes with the agricultural use of the Property is prohibited.
- (c) In order to assure the safe use of the trail, persons under the age of 18 are not permitted to use the Public Use Trail for permitted recreational purposes, unless accompanied at all times by an adult over the age of eighteen.
- (d) In order to protect the residential and agricultural uses of the Property persons using the Public Use Trail for permitted recreational purposes, including routine maintenance are restricted to the precise trail location depicted on Exhibit "A". Access to any other part of the Property is strictly prohibited.
- (e) In order to protect the Declarant and the residential and agricultural uses of the Property the Public Use Trail may not be used for fundraising purposes or for Equestrian tours or events, hiking tours or events or bicycle tours or events.
- (f) No person or entity may charge a fee or solicit a donation from any person using the Public Use Trail.

- (g) No person or entity has been granted the right to name the Trail or to post any sign purporting to identify the trail by any name.

2. Use and Maintenance

As required by the Planning Board, a member of the general public using the trail may, at such person's own risk and expense, perform routine maintenance of the natural trail surface within the trail boundaries. Because the trail is located on private property it is subject to a Category I Conservation Easement (the "Conservation Easement"). Except as provided in the Conservation Easement in connection with routine maintenance of the surface of the trail, within the trail boundaries as depicted on Exhibit A and as shown on the approved Conservation Easement, no living trees or shrubs (of any size or type) shall be cut down, moved, or destroyed without the prior written approval of the Montgomery County Planning Director. Hazardous trees or tree limbs obstructing the trail may be cut down after notice to the Planning Director as required by the Conservation Easement. All cut tree limbs and wood from trees located on the trail that are cut down remain the property of the Property Owner and may not be removed from the Property. The use of any motorized equipment or motorized vehicles, for any purpose is strictly prohibited. Smoking and fires for any purpose are strictly prohibited. Any member of the general public that engages in any routine maintenance of the trail surface is solely liable for their own actions and for any damage to the trail or the Property caused by such activities, and any such person is solely liable for any injury to themselves or persons or property damage resulting from such actions or maintenance activities. Any member of the general public who engages in such routine maintenance activities, by so doing or entering the trail agrees to be liable for any expense, damage, injury or death and agrees to defend and hold the Property Owner or Owners harmless from any claim resulting from such actions, including but not limited to any fines imposed for a violation of Chapter 22A of the Montgomery County Code 2004 as amended.

3. Declaration of Covenant Superseded

This Amended Declaration of Covenant supersedes and replaces the declaration of covenant recorded in Liber 49221 at folio 445, *et. Seq* among the Montgomery County Land Records.

4. Effective Date.

This Amended Declaration shall become effective and the Public Use Trail shall be accessible to the general public for permitted recreational purposes following the recordation of the Final Subdivision Plats for the approved lots on the Property among the land Records of Montgomery County, subject to the limitations expressed in Section 6, 8 and 10 of this Declaration.

5. Enforcement and Remedies

(a) Declarant for itself and its respective assigns, representatives, agents and employees expressly reserves the right to enforce the provisions of this Amended Declaration and to take all necessary actions within the boundaries of the Public Use Trail to comply with all governmental requirements, to service and protect the Property and the agricultural and permitted uses of the Property and to protect the Trail from physical damage. These rights

include, but are not limited to, the right to implement the approved Preliminary Plan, pave portions of the Public Use Trail where Declarant, in its sole and absolute discretion determines it necessary to do so under State and/or County laws and to grant utility easements.

(b) The Declarant, its successors and assigns are entitled to recover reasonable attorney's fees and costs incurred in the event of any violation of the terms and restrictions of this Amended Declaration of Covenant and any litigation instituted to enforce this Amended Declaration of Covenant.

6. Prior Easements

This Amended Declaration of Covenant supersedes and replaces the Declaration of Covenant dated September 11, 2014 recorded among the Montgomery County Land Records in Liber 49221 at folio 445, *et. Seq.* This Amended Declaration is subject to all other prior easements of record for public roads, private drives and highways, public utilities, and pipelines. This Amended Declaration is also subject to future easements granted in connection with the development of the Property, including but not limited to public roads, private drives and highways, public utilities, pipelines, and ingress/egress easements, and to easements pertaining to the establishment or transfer of Transferable Development rights("TDR's") or building Lot Termination easements ("BLT's").

7. No restriction on Agricultural or Other Existing Use, or Development

Nothing in this Amended Declaration may be construed, interpreted or enforced in any manner that would impinge, restrict, conflict with or impede in any way whatsoever the agricultural use, other existing use, residential development use or other permitted uses of the Property, including but not limited to its development (including but not limited to clearing and grading), the establishment or transfer of TDR's or BLT's .

8. Public Access to the Public Use Trail

(a) Access to the recreational Public Use Trail by the general public shall commence on a date determined by the Declarant, but no later than 90 days following Planning Board approval and recordation of the last subdivision plat required to implement the approved Preliminary Plan and the expiration of all periods during which an appeal of any subdivision related approval may be taken.

(b) Access to the recreational Public Use Trail by the general public is strictly limited to the precise location of the approved Trail as shown on the approved Preliminary Plan and replicated on Exhibit "A".

9. Public Use Trail to be referenced on Record Plats

(a) Record Plats submitted by the Declarant for approval by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission shall include specific references to the Preliminary Plan approved Trail and shall reference this Amended Declaration by its Liber and folio number.

(b) Record Plats submitted by the Declarant for approval by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission shall include

the following "Special Notes" the terms of which are an integral part of this Declaration of Covenant:

SPECIAL NOTES

(i) These Special Notes comply with Condition Number 3 of MCPB Resolution No. 10-129 approving Preliminary Plan No. 120090110. Condition Number 3 established the location of an equestrian trail for use by the general public as shown on the Planning Board approved Preliminary Plan. As required by the Planning Board, the equestrian trail may be used by the general public without charge solely for recreational horseback riding, walking, non-motorized bicycle riding and routine maintenance. The use of any motorized equipment or motorized vehicles for any purpose is strictly prohibited. Such uses are expressly restricted to the trail area within the boundaries of the Planning Board approved natural surface trail as depicted hereon and subject to the terms and restrictions in the Amended Declaration of Covenant recorded in Liber ____ at folio ____ among the County Land Records. The natural surface trail is on private property and any activity outside of the boundaries of the approved trail as depicted hereon is strictly prohibited. Use of the trail by members of the general public is at the user's own risk. The owners of the Property and their employees, agents and representatives are not liable for any death or injury to persons or for property damage arising out of a person's use of the trail. Use of the trail is also subject to the provisions and property owner protections enumerated in Subtitle 11 of Title 5, Sections 5-1101 through 5-1104 of the Natural Resources Article of the Maryland Annotated Code. Smoking and fires of any kind are strictly prohibited on the trail. The natural surface trail is privately owned and is not owned, operated or maintained by the Parks Department, the Maryland-National Capital Park and Planning Commission, or any other governmental entity. Unless expressly authorized by the Property Owner, other than the routine maintenance by the general public, no entity or individual is authorized to operate, maintain or manage the trail and, in accordance with Section 5-1103 of the Natural Resources Article, the Property Owner is not required to maintain the trail or keep it safe for entry or use by members of the general public.

(ii). The Public Use Trail shall be posted with a Notice listing use restrictions and a notice to all persons entering the Trail that each person entering the Trail agrees to be bound by all of the terms posted on the sign and with the terms of the recorded Amended Declaration of Covenant as approved by the Planning Department. The signs shall be posted at locations approved by the Planning Department.

10. Plat Approval and Recordation

(a) In the event that any Court of competent jurisdiction reverses or remands any governmental approval pertaining to the subdivision of the Property, and/or the use of the Property or the Public Use Trail, this Amended Declaration and all terms, conditions, restrictions, covenants and agreements contained herein and the right of the general public to access the Trail for any purpose whatsoever shall immediately terminate, and this Amended

Declaration shall be automatically revoked, released and extinguished for all purposes (except for Declarant's rights of use, immunity, enforcement and remedies provided herein in this Paragraph 10 and in Paragraphs 5, 7 and 11) without any further action by Declarant.

(b) In the event of the termination of this Amended Declaration as herein provided in subsection 10(a), Declarant, its successors or assigns may at their sole discretion file in the Land Records a formal termination, revocation, release and extinguishment of this instrument.

(c) In the event that any of the subdivision plats required by Preliminary Plan No. 120090110 are not approved for recordation by the Planning Board and recorded in the Land records of Montgomery County, Maryland this Amended Declaration shall terminate as provided in subsection 10(a) and (b).

(d) In the event of any administrative or judicial challenge to the approval of the subdivision plats, their recordation, or this Amended Declaration or any portion thereof this Amended Declaration shall terminate as provided in subsection 10(a) and (b).

(e) This Amended Declaration shall terminate as provided in subsection 10(a) and (b) above if any Court of competent jurisdiction reverses or remands any governmental approval pertaining to the subdivision of the Property, and/or the use of the Property or the Trail.

(f) In the event the Property owners(s), the Declarant, or their successors or assigns prevail in any litigation filed in connection with maintenance of the Trail, the Property Owner(s), the Declarant, or their successors or assigns shall be entitled to an award by the Court of reasonable attorney's fees and litigation costs.

11 In addition to and not in substitution of any other provision hereof, this Amended Declaration is subject to the provisions and limits on liability established by Section 5-1104 of the Natural Resources Article of the Maryland Annotated Code, as codified on the date of recordation and the provisions of the Land Use Article of the Maryland Annotated Code, and Declarant shall be held harmless in accordance with all of the above referenced protections and the Maryland Annotated Code as codified on the date of recordation, and nothing herein may be interpreted or construed otherwise.

12. Amended Declaration to Run with the Land.
Subject to Section 10, this Amended Declaration of Covenant shall run with the land in perpetuity.

13. Recordation.

Declarant shall cause this Amended Declaration of Covenant to be recorded among the Land Records of Montgomery County, Maryland.

14. Construction and Interpretation

This Amended Declaration shall be construed, interpreted and enforced according to the laws of the State of Maryland.

15. Modification

This Amended Declaration may only be modified in a writing signed by the Declarant and its successors or assigns. Modification following recordation of the Final (Record) Plats is subject to the approval of the Montgomery County Planning Board, unless a modification is ordered by a court of competent jurisdiction.

16. Severability.

If any clause or provision of this Amended Declaration is deemed by a court of law illegal, invalid, or unenforceable under any present or future law, the remainder of this Amended Declaration will not be affected thereby. It is the express intention of the Declarant that if any such provision is held to be illegal, invalid, or unenforceable, that the remaining provisions of this Amended Declaration shall remain valid and enforceable.

IN WITNESS THEREOF, the parties hereto have executed this easement this 10th day of SEPTEMBER, 2015.

GRANTOR:

BARNESVILLE OAK FARMS, LLC
Agent for the Balsamah Corporation, N.V.

By: _____
Its

STATE OF MARYLAND
COUNTY OF MONTGOMERY:

On this 10th day of September, 2015, before me, the undersigned notary public personally appeared Katharine Sexton and proved to me through satisfactory evidence of identification, which consisted of her driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires:

THE UNDERSIGNED, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him or under his immediate supervision.

Stephen J. Orens