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Tax Map: 1-34-17-382 through 414, inclusive  
1-34-17-416 through 437 inclusive; and 1-34-17-438

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
BETHANY MEADOWS SUBDIVISION, SECTION II

THIS DECLARATION is made and executed this 14th day of July, 1998, by Murray's Enterprises, Inc. of Ocean View, Delaware 19970, a Delaware corporation, hereinafter referred to as the "Developer."

WHEREAS, the Developer is the fee simple owner of certain real property located in Baltimore Hundred. The lands of Bethany Meadows Subdivision, Section II, which are owned by Murray's Enterprises, Inc., are described in a plot recorded among the land records of Sussex County, Delaware in Plot Book 40, page 226, (hereinafter "Plot"), and the Developer desires to develop on the lands described in said Plot a subdivision of individual residential lots, proposed condominiums and townhouses, to be known as "Bethany Meadows Subdivision, Section II"; and

WHEREAS, it is the desire and intent of the Developer which currently owns the lands described in said Plot, to submit all the lands of said Plot designated as Section II to this set of restrictive covenants and to have a property owners association administer the common areas, Section II, that are or will be developed in accordance with the existing subdivision plan of Bethany Meadows Subdivision, Section II, as shown on the said Plot ; and

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in the development and for the maintenance of common areas, Section II, and facilities and to this end, desires to subject the lands of said Plot to the covenants, restrictions, easements, charges and liens (hereinafter referred to collectively as the "Restrictions"), as hereinafter set forth, for the benefit of the lands of the said Plot and each owner thereof; and

WHEREAS, the Developer has deemed it desirable for the efficient preservation of values and amenities in the development to create an agency to which all be delegated and assigned the powers of maintaining and administering any community facilities, common lands and recreational

amenities, and administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Developer has previously incorporated under the laws of the State of Delaware, as a nonprofit corporation, the Bethany Meadows Recreation Association, Inc., for the purpose of exercising the functions aforesaid; and

WHEREAS, it is the intention of the Developer, by this Indenture, and by future amendments or supplements to this indenture, to set aside certain interests in the real estate and to impose upon certain portions of the real estate the condition that they be held as Common Areas, and Recreation Areas in which Owners in the Development will have an "in common interest" and easements of enjoyment herein, the ultimate title of which shall be placed in an Association comprised of the Owners and being a membership corporation; and

WHEREAS, the Developer has previously imposed upon the community identified as Bethany Meadows as Indenture of Covenants, Conditions and Restrictions of record in the Office of the Recorder of Deeds, in and for Sussex County, in Deed Book 1135 at page 136, which contemplates that the Bethany Meadows residential community could be developed by Phases which refer to submitting portions of the land to the Unit Property Act and Subdivisions and it is provided in the aforesaid indenture a mechanism for maintaining the common areas and recreational areas through the Foxfire Meadow Recreation Association, Inc. now known as, Bethany Meadows Recreational Association, Inc.; and

WHEREAS, the Developer is submitting this Declaration of Covenants, Conditions and Restrictions for Bethany Meadows Subdivision Section II as a subdivision under the previous indenture of Covenants, Conditions and Restrictions for Bethany Meadows and as submitting this subdivision as a subdivision under the aforesaid indenture of Covenants, Conditions and Restrictions for Bethany Meadows.

NOW THEREFORE, the Developer hereby declares that the following Restrictions shall run with, burden and bind the lands shown and depicted on the subdivision plan of Bethany Meadows Subdivision, Section II, as recorded in the Office of the Recorder of Deeds, in and for Sussex County, in Plot Book 40, at page 226, the "Record Plot," and the Developer hereby declares that the lands of Section II of said Plot shall be held, transferred, sold, conveyed, occupied and used subject to the Restrictions hereinafter set forth during the period of time hereinafter set forth; and subject to all easements, rights of way and restrictions previously placed upon the property as recorded in the Office of the Recorder of Deeds, in and for Sussex County, by the Developer or its predecessors in title.

ARTICLE 1

DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meaning:

A. "Association" shall mean and refer to the Bethany Meadows Recreation Association, Inc., or such other nonprofit corporation, as the Developer shall form, its successors and assigns.

B. "Common Areas" shall mean and refer to those areas of the Bethany Meadows Development designated common areas pursuant to Indenture of Covenants, Conditions and Restrictions for Bethany Meadows currently of record in the Office of the Recorder of Deeds, in and for Sussex County, in Deed Book 1135 at page 136, and the common areas designated herein as an amendment or supplement to that indenture. The common areas set forth with respect to this Indenture which are incorporated into the common areas pursuant to the previous Indenture are designated common areas on the record plot for Bethany Meadows Subdivision Part II.

B. "Common Areas" shall mean and refer to those areas of land designated as common areas pursuant to the Indenture.

C. "Common Areas, Section II" shall mean and refer to those areas of land designated as Common Areas, Section II, on the record plot, including the named roads thereon.

D. "Developer" shall mean and refer to Murray's Enterprises, Inc.

E. "Development" shall mean and refer to all the lands submitted by the Developer described in said Plot, which are encumbered by the Indenture of record in the Office of the Recorder of Deeds, in and for Sussex County, in Deed Book 1135 at page 136. The Development includes at the time of recordation of this Declaration of Covenants, Conditions and Restrictions Bethany Meadows Subdivision, Part II.

F. "Bethany Meadows Subdivision, Section II" refers to the lands shown on the "record Plot" of record in the Office of the Recorder of Deeds, in and for Sussex County, in Plot Book 40 at page 226, and made a part of the development and submitted to these restrictive covenants as lots and common areas with the recording of this Indenture.

G. "Indenture" shall mean and refer to the Indenture of Covenants, Conditions and Restrictions of Bethany Meadows, of record in the Office of the Recorder of Deeds, in and for Sussex County, in Deed Book 1135 at page 136. Such Indenture imposes restrictions and benefits for a larger parcel of land which the lands described on the record plot are a part.

H. "Lot" shall mean and refer to any unimproved or improved residential plot of land intended and subdivided for a detached single family residence, shown upon the "Record Plot" as numbered parcel, but shall not include the "Common Areas, Section II" as hereinabove defined.

I. "Member" shall mean and refer to all those Owners who become members of the Association as provided in Article II, Section I of this Declaration.

J. "Mortgage" shall mean and refer to any mortgage, deed of trust, or similar instrument granted as security for the performance of any obligation.

K. "Owner" shall mean and refer to the record owner, whether one or more person or entities, holding a fee simple title to any Lot but shall not mean or refer to any mortgage or subsequent holder of a mortgage, unless and until such mortgage or holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. "Owner" incorporates the definition set forth in the Indenture.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Pursuant to the Indenture of Covenants, Conditions and Restrictions of Bethany Meadows, recorded in Deed Book 1135 at page 136, each owner of a lot in the Bethany Meadows Subdivision, Section II, which is subject to an assessment, shall be a member of the association, together with every owner of a lot or condominium unit which is created under the Indenture of Covenants, Conditions and Restrictions of Bethany Meadows in the Office of the Recorder of Deeds, in and for Sussex County, in Deed Book 1135 at page 136 in accordance with the membership and voting rights of the aforesaid Indenture. Membership shall be pertinent to and may not be separated from ownership of any lot or condominium unit in Bethany Meadows which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

(a) Class A members shall be all lot and condominium unit owners with in the Bethany Meadows Development (with the exception of the Developer),

and shall be entitled to one (1) vote for each lot or condominium owned. The Class A membership shall be an expanding class and each lot or condominium unit created in the development shall have created with it a mandatory membership as a Class A member in the Association. When more than one person holds an interest in any lot or condominium unit, all persons shall be members. The vote for such lot or condominium unit shall be exercised as they, among themselves determine, but in no event shall more than one vote be cast with respect to any lot or condominium unit. Class A members shall be added to the Association in accordance with the number of condominium units or lots created in the development by the Developer upon the recording of the first deed for each such lot or condominium unit from the Developer to the owner.

(b) The Class B member shall be the Developer and shall be entitled to a total number of votes equal to the total number of votes of all Class A members, plus one (1), so the Developer will have a number of votes equal to the majority of the total votes of all members of the Association. The Class B membership shall cease and terminate at such time as the Developer owns no land in the development, but shall, in any case, terminate on the thirtyth anniversary of the date of the Indenture of record in Deed Book 1135 at page 136, being the 3<sup>rd</sup> day of September, 2012.

ARTICLE III

PROPERTY SUBJECT TO DECLARATION

Section 1. Existing Property. The real property subject to this Declaration is all that property located in Baltimore Hundred, Sussex County, Delaware, shown on the "Record Plot" and described in Exhibit "A," and the lands subject to this Declaration shall also be subject to restrictions, easements, or rights of way previously granted by the Developer, or its predecessors in title, as recorded in the Office of the Recorder of Deeds, in and for Sussex County.

*Sub Plot Sec II*

Section 2. Mergers. Upon a merger or consolidation of the Association with another association as provided in its Certificate of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the association as a surviving corporation pursuant to a merger; provided however, that such merger shall have been approved by a vote of two-thirds (2/3) of the Class A membership and Class B membership (if applicable), at a meeting duly called for such purpose. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the lands of the "Record Plot," together with covenants and restrictions established upon any other properties as one community. No such merger or consolidation, however, shall affect any revocation or change to the covenants established by this Declaration.

*or otherwise*

*Sub Plot*

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON AREAS AND RECREATION AREAS

Section 1. Owner's Easement of Enjoyment. Subject to the provisions of Section 3 of ARTICLE IV, every Owner shall have a right and easement of enjoyment in and to the Common Areas, Section II, shown on the Record Plot, the common areas declared by the Indenture, and the recreation areas declared by the indenture and such easement shall be appurtenant to and shall pass with the title to every lot.

Section 2. Title to Common Areas, Section II. The Developer shall convey legal title in the Common Areas, Section II, to the Association. The Developer may retain legal title in the Common Areas, Section II, until such time as, in the opinion of the Developer, the Association may be able to maintain the same. Notwithstanding any other provision herein, the Developer hereby covenants for itself, its successors and assigns, that it shall convey all its right, title and interest in the Common Areas, Section II, to the Association, subject to all previous restrictions of record and this Declaration no later than December 1, 2010. Upon conveyance of the Common Areas, Section II, the lands shall become part of the Common Areas as described in the Indenture.

Section 3. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association as provided in its Certificate of Incorporation and by-laws, to suspend the enjoyment rights of any Member in any easement or in the Common Areas, Section II, the Common Areas declared by the Indenture, and the recreation areas declared by the Indenture, for any period during which any assessment against such Member remains unpaid, and for any period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations.

(b) The right of the Association and/or the Developer to dedicate or transfer all or any part of its interest in the Common Areas, Section II, the Common Areas declared by the Indenture and the recreation areas declared by the Indenture (subject to easements created hereunder, or previously created of record) to any public agency, authority or utility.

(c) The right of the Developer prior to the conveyance of the Common Areas, Section II, to the Association, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, Section II, for the installation, maintenance and inspection of lines and appurtenances for water, sewer, drainage, gas, electricity, telephone, cable television and other utilities.

(d) The right of the Association to adopt rules and regulations governing the use by the Owners of the Common Areas, Section II, the Common Areas declared by the Indenture and the recreation areas declared by the Indenture.

Section 4. Delegation of Use. Any Owner may delegate his rights of enjoyment to the Common Areas, Section II, the Common Areas declared by the Indenture and the recreation areas declared by the Indenture, and facilities to the members of his family, tenants, or contract purchases (and members of the family of any tenant or contract purchaser) who reside on the property or to such other persons as may be permitted by the Association.

Section 5. Obligations of the Association. The Association shall:

(a) Operate, reinstall, maintain and replace, for the use and benefit of all Members of the Association, all Common Areas, Section II, the Common Areas declared by the Indenture, and facilities and improvements developed thereon, including the road improvements and recreational improvements, and keep the roads open and operational for year round vehicular use, including reasonable snow removable. Provided however, the Developer shall be obligated to install to the required County specifications the initial road improvements.

(b) Maintain and install all facilities on, mow the grass on, replace all dead or destroyed landscaping on, all Common Areas, Section II, the Common Areas declared by the Indenture and the recreation areas declared by the Indenture.

ARTICLE V\*

COVENANT FOR MAINTENANCE

Section 1. Creation of Lien and Personal Obligation of Assessments. The Developer, for itself and its successors and assigns, and for each lot or condominium unit with the Development, hereby covenants, and each Owners of any lot or condominium unit, by acceptance of a deed

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\*Article V is the same as Article V of the Indenture, but is repeated herein for ease of reference.

or other transfer document therefore, whether or not it shall be so expressed in any such Deed or other transfer document, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and operating, repair and replacement and reserve funds, such assessments to be fixed, established and collected as

hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the owner's successors in title (other than as a lien on the land), unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the development, and in particular for the improvement and maintenance of the Common Areas located in the development, and for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereto, for the cost of labor, equipment, materials, management and supervision thereof, and for operating reserve funds and reserve funds for repair and replacement of the Common Areas and facilities thereon.

Section 3. Basis and Maximum of Monthly Assessment.

(a) An initial payment, in addition to all assessments, of Seventy-five Dollars (\$75.00) for each lot and condominium unit shall be payable by the Owner at the closing of the sale of each lot or condominium unit. Commencing with the conveyance of the first lot or condominium unit from the Developer to an Owner and until changed by the Board of Directors as herein provided, the monthly assessment imposed upon each member of the Association shall be at the rate of Ten Dollars (\$10) per lot or condominium unit owned by such member. The monthly assessment may be increased as hereinafter provided in section 4 of this Article V.

(b) The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the monthly assessment for any year in a amount below the monthly assessment set forth in Section 3(a), as the same may be increased pursuant to Section 4 of this Article V, and may provide for the payment of such assessment on an annual basis, rather than in monthly installments, if the amount of such annual assessment does not exceed Three Hundred Dollars (\$300), provided that it shall be an affirmative obligation of the Association and its Board of Directors to fix such assessments at an amount sufficient to maintain and operate the Common Areas, recreation areas and facilities and to provide reserves for the operation, repair, and replacement of the Common Areas, recreation areas and facilities.



Section 4. Change in Maximum of Monthly Assessments. The Board of Directors of the Association may, without a vote of the members of the Association, prospectively increase the maximum of the monthly assessments [fixed by Section 3(a) hereof] to an amount which is the greater of (i) twenty-five percent (25%) above the monthly assessments for the previous December or (ii) the monthly assessment fees stated in Section 3(a) of this Article V. The Association may prospectively increase the maximum of the assessments above the amount permitted pursuant to the preceding sentence, provided that any such change shall have the assent of a majority of the members of the Association and the vote to change assessments is taken at a meeting held in accordance with the by-laws of the Association.

Section 5. Special Assessment for Capital Improvements and Operating Reserves. In addition to the monthly assessment authorized by Section 3 of this Article V, the Association may levy in any assessment year a special assessment (which must be fixed at one uniform rate for each Lot or condominium unit) applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capitol improvement upon the Common areas, including the necessary fixtures and personal property related thereto, and for operating the Common Areas and recreation area, for which a reserve fund does not exist or is not adequate, provided that any such assessment shall have the assent of fifty percent (50%) of members who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the by-laws of the Association.

Section 6. Date of Commencement of Assessments; Due Dates. The monthly assessments as to any Lot or condominium unit shall commence on the conveyance of such lot or condominium unit from the Developer to an Owner and shall be due and payable thereafter on the first day of each calendar month thereafter unless the assessments are required by the Board of Directors to be paid annually; in such event they shall be due and payable thirty (30) days after the assessment date or, in the event of a special assessment, the same is due and payable thirty (30) days after the special assessment.

Section 7. Duties of the Board of Directors. In the event of any change in the monthly assessment as set forth herein, the Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each lot or condominium unit for each assessment period at least thirty (30) days in advance of such date or period and shall at that time, prepare a roster of the lots and condominium units and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment had been paid, or the amount of any unpaid assessment. A reasonable charge

may be made by the Association for the issuance of such certificate. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessment. The Personal Obligation of the Owner; the Lien; Remedies of the Association. If any Assessment is not paid on the date when due (as specified in Section 6 and 7 hereof), then such Assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the Lot or condominium unit which shall bind such lot or condominium unit in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. In addition to such lien rights, the personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title (other than as a lien on the land) unless expressly assumed by them. If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the date it is due at the Delaware interest rate on judgments per annum, and the Association may bring a legal action against the Owner personally obligated to pay the same or may enforce or foreclose the lien against the property; and in the event a judgment is obtained, such judgment shall include interest on the Assessments above provided and a reasonable attorney's fee to be fixed by the court, together with the cost of the action. No Owner of a lot or condominium unit may waive or otherwise escape liability for the Assessment provided for herein by nonuse of the Common Areas, recreation area, or abandonment of his or its Lot or condominium unit.

Section 9. Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage on the lot or condominium unit. Sale or transfer of any Lot or condominium unit, shall not affect the assessment lien. However, the sale or transfer of any lot or condominium unit by foreclosure of any first mortgage on the lot or condominium unit or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot or condominium unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following properties subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- (a) All properties dedicated to and accepted by a governmental body, agency or authority and devoted to public use;
- (b) All Common Areas;
- (c) Recreation Area; and

(d) All lots or condominium units owned by the Developer and not leased by the Developer to third persons.

## ARTICLE VI

### RESTRICTIVE AND PROTECTIVE COVENANTS

#### Section 1. Utility Easements.

(a) The Developer, for it, its successors and assigns, and for the Association, hereby reserves the right to grant easements over, under, in, on and through the Common Areas, Section II, the Common Areas declared by the Indenture, in the recreation area declared by the indenture, an all roads plotted and shown on the Recorded Plot for the installation, construction, reconstruction, relocation, removal, maintenance, repair, operation, inspection of water service, sewer, drainage, electric, gas, television, telephone, and cable telephone and television facilities and wires, lines, conduits and other necessary and proper attachments in connections therewith, for the benefit of the adjoining land owner, the Developer, any federal, state, or local authority, commission or agency having jurisdiction thereover or any corporation, either public, quasi-public, or private, supplying or serving such facilities.

(b) There is hereby reserved along the rear of each numbered lot shown on the Record Plot an easement of ten (10) feet in width for utilities. There is hereby reserved along the side line of each lot an easement of ten (10) feet in width; provided however, that any combined lots will extinguish the easement along the interior division line, which shall be abolished in a lot combining.

Section 2. Utility Easements; Prior Restrictions. The properties are subject to all those prior easements, rights of way and restrictions placed upon the lands of the "Record Plot" by the Developer or Developer's predecessors in title as such be recorded among the land records in the Office of the Recorder of Deeds, in and for Sussex County.

Section 3. Residential Use. All numbered lots as plotted on the Record Plot of Bethany Meadows Subdivision, Section II shall be used for residential purposes exclusively. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain upon any such numbered Lot other than one (1) detached single family dwelling, with optional attached garage building or carport (hereinafter sometimes referred to as the main dwelling). Accessory structures for storage may be permitted by the Architectural Review Committee, as hereinafter provided for, however, such structures shall be of the same style and exterior finish as the main dwelling. Garage doors facing any street must be kept closed, except when used for entering or exiting the garage.

Section 4. Restrictions as to Types of Construction, Prohibiting Mobile Homes. No trailer, mobile home, double wide or similar type structure, which moves to a building site or wheels attached to its own under carriage, tent, shack, garage, barn or other type outbuildings shall at any time be used as a residence, temporary or permanently, and no trailer, mobile home, double wide, tent, shack, garage, or barn shall be utilized as a main or single family dwelling unit on any lot as shown on the recorded plot.

Section 5. Restriction Against Business Use. No numbered lot on the "Record Plot" of Bethany Meadows Subdivision, Section II shall be used at any time to conduct business of any description, or for conduct on such numbered lot for trade or business, nor shall said premises be used for any purpose whatsoever except for the purpose of private dwelling or residence, without the permission of the Developer. Permission may be granted by the developer for homebased businesses that have minimum traffic impact such as tutoring, real estate activity or similar use. No building shall be used as a residence until the exterior is fully completed, according to the plans and specifications approved therefor, as such approval is hereinafter provided. No one shall reside on any numbered lot, casually, temporarily or permanently except in a dwelling house, completed according to the plans and specifications approved as hereinafter provided.

Section 6. Approval of Plans and Specifications Required. No main building, garage, structure, fence, wall, pool or other improvement, shall be commenced, erected, maintained or used, nor shall any addition to or change or alterations therein, or in the use thereof, be made upon any of the numbered lots which are shown on the "Record Plot" of Bethany Meadows Subdivision, Section II, no matter for what purpose of use, until complete and comprehensive plans and specifications, showing the nature, kind, shape, height, materials, floor plans, exterior architectural scheme, location and frontage on the Lot, approximate cost of such building, structure, or other erection, and the grading and landscaping of the Lot to be built upon or improved, shall be submitted to and approved in writing by the Association, through its duly designated Architectural Review Committee ("ARC"), its successors or assigns, and until a copy of all such plans and specifications, finally approved as aforesaid, shall be lodged permanently with the Association, its successors or assigns, providing that nothing herein shall require the aforesaid approval as to interior decorations, alterations or changes. The Association, its successors and assigns, shall have the right to refuse approval of any such plans or specifications, or grading or landscaping plans or changes, which are not suitable or desirable in its or its successors opinion, for architectural style or other reasons. In passing upon such plans and specifications, or grading and landscaping plans, the Association, its successors or assigns, shall have the right to take into consideration the suitability of the proposed building or improvements or erections and/or the materials of which the building or other improvements or

erections are to be built and the site upon which it is proposed to be erected and used, the harmony thereof with the surroundings and the effect of such improvements, additions, alterations or changed use, as planned, on the outlook from the adjacent or neighboring property, and any and all factors which in its opinion would affect the desirability or suitability of such proposed improvements, erections, or alteration or change, including the compatibility of the architectural style with the community as a whole. Corner lot owners must elect the front yard on one of the streets. In order to insure the development and maintenance of the properties as a residential development of high standard, the Owner of each Lot, as shown on the Record Plot of Bethany Meadows Subdivision, Section II, by accepting title thereto or by occupying the same, hereby covenants and agrees that no building, structure or improvement shall be erected, altered, placed or permitted to remain upon any such Lot, or other land area, unless and until plans and specifications therefor have first met the requirements of this Section. Until the first meeting of the Association which elects a Board, and the Board appoints an ARC, the Developer shall act as the ARC.

\*The Association shall appoint an ARC for the Bethany Meadows Subdivision, Section II, of from three to five persons, at least 50 percent of such ARC members to be owners of lots shown on the Record Plot.

Section 7. Resubdivision. No lot as shown upon the recorded plot of Bethany Meadows Subdivision, Section II shall be resubdivided, sold, or otherwise alienated in a lesser or smaller parcel, except in accordance with a supplemental plot plan thereof being approved by the Association or its successors and recorded in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware.

Section 8. Water. Water shall be supplied to each lot by a Public Service Commission regulated water utility company or the Association. No lot owner may obtain a separate well unless the water company serving the subdivision approves in writing such separate well. Water fees and charges shall be as established by the tariff of such water company approved by the Public Service Commission or the Association.

Section 9. Signs and/or Description Advertising Regulated. No signs, notices or advertising matter of any nature or description shall be erected, used or permitted upon any of the Lots or Homes nor in windows shown on Exhibit "B," unless erected after securing the written permission of the Association or its successors or assigns. The Developer, however, retains the right to erect signs on any lot or home to advertise said lot for sale.

Section 10. Setback Restrictions-Height Limitation. The building setback requirements and height limitations are as follows:

- (a) Required Front Yard - 30 feet;

(b) Required Rear Yard - 10 feet;

(c) Required Side Yards (two required) - 10 feet each;

(d) Maximum Height of any structure is 35 feet measured from the crown of the road on which the lot fronts to the mid-point of the roof of the structure;

(e) Yard means an open space free of any structure, elevated more than one foot above natural ground level, except fences. Fences are the only elevated structure permitted in the required yard;

(f) For corner lots, the owner shall designate one street upon which his lot will front for determining the required front, rear and two side yards.

Section 11. Garbage Receptacles. Each lot shown on the recorded plot shall provide receptacles for garbage in a screened area not generally visible from any interior road, as shown upon the recorded subdivision plot of Bethany Meadows Subdivision, Section II, or provide underground garbage receptacles or similar facilities in accordance with reasonable standards established by the Association or its successors or assigns.

Section 12. Storage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view; but same may be installed within the main dwelling, or within an accessory building or buried underground or properly screened from view providing the method of screening is approved by the Association. Notwithstanding the foregoing, tanks for motor vehicle fuels are expressly prohibited.

Section 13. Construction and Demolition. Once construction or demolition of any building has been commenced on any numbered lot, such construction or demolition shall proceed without delay until the same is completed except where such completion is possible or results in great hardship to the owner or builder due to strikes, fires, national emergencies or national calamities. Cessation of work upon the construction or demolition of any building once started and before completion thereof for a continuous period of sixty (60) days shall be prima facie evidence of an attempt to abandon the same in its partially completed or demolished state and shall be deemed to be a public nuisance. In the event construction plans have been approved pursuant to Section 6, construction must commence pursuant to said approved plans within one (1) year of the date of approval. Failure to commence construction within one (1) year of the date of approval of plans will void the approval.

Section 14. Fences. No boundary fence or wall shall be constructed to a height of more than Four (4) feet. No wall or fence of any height shall be

constructed upon any Lot until the height, design and approximate location thereof has been approved in writing by the Association or its successors or assigns. No boundary fence or wall shall be constructed within any front setback area. Provided however, the fences enclosing pools or garbage receptacles may at be constructed to a height of up to eight (4) feet by the Association through its designated Architectural Review Committee.

Section 15. Pools. Private on lot pools are permitted provided they are inground; that is, no part of the pool may be elevated more than one (1) foot above ground level. All pools must be fenced by a fence of at least four (4) feet in height to prevent any unauthorized access. Location of pools must be approved by the ARC.

Section 16. Nuisances. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly, or unkept conditions of buildings or grounds upon a Lot which will tend to substantially decrease the beauty of the development as a whole, or the beauty of the specific area. No noxious or offensive activity shall be permitted upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the lands of the "Record Plot." There shall not be maintained upon any Lot any plant, animal, device or thing of any sort, the normal activities of which is in any way noxious, dangerous, unsightly, unpleasant or of such a nature as may diminish or destroy the enjoyment of the community. Specifically included under this Section is the prohibition against any livestock being kept on any Lots. The keeping of any nondomestic animals shall be deemed a nuisance per se under this Section; but the keeping of domestic cats and dogs, or other traditional household pets, unless the activity of such pets is in any way noxious, dangerous, unsightly, or unpleasant, shall not be prohibited under this Section. All pets must be leashed if not confined within the boundaries of the Owner's lot. Owners of pets shall be responsible for preventing pets from fouling Common Areas and recreation areas. The Association may promulgate rules and regulations and impose assessments against Owners whose pets are the cause of expenses to the Association to maintain any area within the development.

Section 17. Landscaping. No landscaping, shrubs or trees to be placed on or removed from any lot in conjunction with the erection of any main dwelling or permitted accessory structure shall be planted, until complete and comprehensive landscaping plans shall be submitted to and approved in writing by the Association through its daily designated Architectural Review Committee. The land area not occupied by structures, hard-surfacing, vehicular driveways or pedestrian paths shall be kept planted with grass, trees or shrubs or other ground covering or landscaping in conformance with the standards set by the Architectural Review Committee of the Association. Such standards will take into consideration the need for providing effective site development to:

- (a) Enhance the site and building;

- (b) Screen undesirable areas or views;
- (c) Establish acceptable relationships between buildings, parking and adjacent properties;
- (d) Control drainage and erosion; and
- (e) Drain pipes shall be installed under the driveways, with the size, shape, and location of same, to be approved by the ARC, to facilitate surface drainage.

Section 18. Weeds and Undergrowth. No noxious weeds, undergrowth or accumulated trash of any kind shall be permitted to grow or maintain upon any lot by the owner or occupier thereof. The Association, its successors and assigns reserves the right to notify the owner or occupier to cut and/or remove any such offending growth or trash. The Association shall give notice to cut weeds and grass, in non-wooded areas, if the grasses or weeds exceed on the average 7 inches in height. Within ten (10) days of the giving of the notice in writing by the Association to the owner or occupier of any lot to remove trash or control undergrowth or weeds and, if the owner or occupier shall fail or neglect to comply with any notice, in such an event, the Association or its successors shall be empowered to enter upon such lot, together with such assistance and equipment as may be required, and thereupon to cut and/or remove the same, all without being deemed a trespasser, and all at the expense of the owner of said lot. Any expense incurred by the Association or its successors in conjunction with this Section, shall be billed to the owner, and the owner agrees to remit same within thirty (30) days of billing. Failure to remit within thirty (30) days of such bill, on the receipt thereof by the owner, shall entitle the Association, its successors or assigns to bring suit, for such charges; and in any such suit the Association shall be entitled to treble the amount of such expenses it has incurred, plus the costs of said suit, and the reasonable attorneys' fees, incurred by it, enforcing this restriction. By the acceptance of any numbered lot in the subdivision, each owner thereof, hereby accepts this Section, and agrees that the treble damages and reasonable attorneys' fees to collect same, for nonremittance of the expenses of the Association, its successors and assigns, incurred to remove trash or noxious growth is reasonable and will constitute liquidated damages for the cost and expense of the Association, its successors and assigns in enforcing this restriction through litigation. This Section and any part hereof shall not be construed as an obligation on the part of the Association or its successors and assigns to provide garbage or trash removal services, nor shall it be construed as an obligation on the part of the Association or its successors and assigns to provide garbage or trash removal services, nor shall it be construed as an obligation upon the Association to remove the underbrush or rubbish or to cut grass or brush from any of the lots in the development, after same have been outconveyed by the Developer. However, the Association, its



successors and assigns, reserves the right and privilege to enter upon any said lot for the purposes as set forth herein, being to maintain the appearance of any lots so as not to cause detriment to the community at large.

Section 19. House Details. The main dwelling to be erected or used on any lot in Section II must be a minimum of 27.5 feet in width and have at least two bedrooms. All railings, which are visible to the public, are to be painted white and kept in good condition. The house must have curb appeal, similar style roof shingle and colors; shutters on the front and the front door color must match the shutters. Two story homes are not permitted on lots #94 & #41 in Section II without the permission of the developer.

All porches and decks must have supporting posts and exterior bands painted white and white vinyl lattice skirting. All step risers must be painted white. Garage doors must remain white.

Section 20. Parking Spaces. Each numbered lot shall have provided space for parking two (2) automobiles off the private roads of the subdivision prior to occupying any dwelling constructed on any lot. All boats, recreation vehicles, trucks, campers or vehicles, except currently licensed passenger cars must be parked in an enclosed garage.

Section 21. Exterior Lights. Exterior lights not attached to any permissible main structure placed or erected, and maintained on any lot set forth on the recorded plot, shall not be in excess of eight (8) feet in height above ground level. In no event shall any vapor or security exterior lights be placed on any lot in the subdivision, whether attached, or not attached, to any building permitted pursuant to these restrictions.

Section 22. Roof Pitch. All roofs shall have a minimum pitch of 5/12 feet.

Section 23. The developer reserves the right to develop any part of the property, which is subject to these restrictions, as a multi or single family unit. If a multi-family unit is developed then the provisions of this declaration which are related to construction specification are suspended with regard to multi-family units.

Section 24. The provisions of Article VI, Sections 3, 5, 9, 10, 14, 18 and 19 shall not apply to Common Areas, Section I, or Common Areas declared by the Indenture or recreation areas declared by the Indenture.

## ARTICLE VII

### GENERAL PROVISIONS

benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives heirs successors and assigns, as the case may be in perpetuity; subject, however, to the provision that the Association or its successors, by and with the vote or written consent of two-thirds (2/3) of the then Owners, shall have the power to waive, abandon, terminate, modify, alter, change, amend, eliminate or add to these Restrictions and this Declaration at any time hereafter. Any such waiver, abandonment, termination, modification, alteration, change, amendment, elimination, or addition shall take effect when a copy thereof executed and acknowledged by the Association or its successors in accord with the usual form of execution and acknowledgement of deeds, together with written consent of the requisite number of Owners, has been filed for record in the Office of the Recorder of Deeds, in and for Sussex County, and the same shall thereafter remain in effect in perpetuity unless otherwise provided.

Section 2. In addition to the amendment power set forth in Article VII, Section 1, the Association's action through the Architectural Review Committee, shall have the power, at its sole discretion, and for the purpose of architectural style and providing a systematic development of the community, to waive, modify, or vary the restrictions establishing minimum setback requirements, front, side and rear lines, and the minimum square footage required for any structure built upon any lot.

In the event the Association through, its Architectural Review Committee, exercises its power or in the event of any exercise of power to modify, or grant a variance of the restrictions as to setback lines, front, rear and side, and minimum main building square footage size, such grant of modification or variance shall take effect upon a copy of said grant of modification or variance thereof executed and acknowledged by the Association, its successors and assigns, being filed for record in the Office of the Recorder of Deeds, in and for Sussex County and the same shall thereafter remain in effect as to that lot in perpetuity provided however, that such modification, or variance as to a particular lot, shall have no effect as to the setback restrictions, and minimum square footage requirement of main residential structures as to any lot in the subdivision. It is specifically recognized that this right to grant a variance or modification as to the setback restrictions and the minimum square footage restrictions, is reserved, and acknowledged to be in the Association for the purpose of allowing each lot in the subdivision to be developed to that lot's maximum architectural potential as a residential lot, taking into consideration the configuration of the lot, and preserving the value of the lot in question, and lots which are adjacent, or in close proximity to such lot which is the subject matter of the grant of an such modification or variance.

Section 3. Remedies. The Association, or any Owner, shall have the right to enforce this Declaration and the Restrictions contained herein by any proceeding at law or in equity, against any person or persons violating or

attempting to violate any provision of this Declaration or any restrictions contained herein, to restrain violation, to require specific performance and/or to recover damages; and to proceed against any lot to enforce any lien created by these Restrictions. The expense of enforcement by the Association shall be chargeable to the Owner of the Lot, including the costs of reasonable attorneys fees, in the event any legal action is taken by the Association, and such fees, approved by a court of competent jurisdiction, shall constitute a lien on the lot, collectable in the same manner as assessments hereunder.

Section 4. Assignability. The Developer, its successors and assigns, shall at all times have the right to fully transfer and assign any or all of its rights and powers under this Declaration, subject to the Developer's obligations hereunder.

Section 5. Nonwaiver. Failure of the Developer or any Owner, or their respective legal representatives, heirs, successors and assigns to enforce any Restrictions contained in this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

Section 6. Construction and Interpretation. The Association, to the extent provided herein may adopt and promulgate reasonable rules and regulations regarding the administration, and interpretation and the enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interest of the Owners to the end that lands of the "Record Plot" shall be preserved and maintained as a viable community.

Section 7. Severability. All the covenants, conditions, restrictions, and reservations contained in this Declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof is void, unlawful or unenforceable shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations, clause or phrase thereof.

Section 8. Nonliability. Nothing contained in this Declaration shall be construed in any manner as to impose upon the Association or the Developer, or their successors or assigns, any liability whatsoever for property damage and/or personal injury occurring to any person or persons whomsoever, or by reason of any use of Common Areas, or roads, or adjacent waters, depicted on the recorded plot. Any and all persons using any such roads, common areas, easements, pool, or other recreation area, or any of them, shall do so at their own risk and without any liability whatsoever on the part of the Association, the Developer or their respective successors or assigns, as the case may be.