

MAINTENANCE DECLARATION

u 16.

Tax Parcel No.: 06-024.00-001
Prepared by: Larry J. Tarabicos, Esquire
Young, Conaway, Stargatt & Taylor
P. O. Box 391
Wilmington, DE 19899-0391

MAINTENANCE DECLARATION

THIS DECLARATION, made as of this 10th day of September, 1996, by
CATHOLIC DIOCESE FOUNDATION, a Delaware corporation (formerly Catholic
Foundation of the Diocese of Wilmington, Inc.) (hereinafter referred to as "Declarant").

WHEREAS, Declarant is the owner of a certain 55.9 acres of land, more or less
(hereinafter "the Land"), situate along Naamans Road (Delaware Route No. 92)
Brandywine Hundred, New Castle County and State of Delaware as shown on the Record
Major Subdivision Plan (hereinafter "the Plan") of Ballymeade (hereinafter "the Subdivi-
sion") prepared by Vandemark & Lynch, Inc., dated January 12, 1996, said Plan
appearing of record in the Office of the Recorder of Deeds in and for New Castle County
and State of Delaware, in Microfilm No. 12959, said Land being more particularly
bounded and described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Declarant, or Declarant's successors and/or assigns intends to
construct dwelling units on the Land with appurtenant private open spaces and common
facilities ("Private Open Spaces"), in accordance with the Plan; and

WHEREAS, the Declarant desires to provide for the orderly and proper
maintenance of the said Private Open Spaces located on the Land; and

13/20065

WHEREAS, Declarant desires to impose upon each lot to be developed on the Land, certain covenants and obligations with respect to the maintenance of the Private Open Spaces and to bind Declarant as well as Declarant's successors and assigns with respect to the Land to such covenants.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT:

Declarant does covenant and declare that it shall hold and stand seized of all the Land, under and subject to the following covenants with respect to the maintenance of the Private Open Spaces, which covenants shall perpetually run with the Land and bind Declarant, its successors and assigns (as the owner(s) from time to time of the lots established by the Plan) for the benefit of Declarant and such subsequent owners and for the benefit of New Castle County, Delaware (hereinafter "the County").

1. The following definitions are also applicable hereto:

(a) "Private Open Spaces" shall mean any and all private open spaces and common facilities designated and established as such on the Plan, including and together with any sidewalks abutting thereto, signs, monuments, storm water management basins, areas and facilities, landscaping and berms therein, active recreational facilities and other common amenities depicted, located or constructed on the Land, as determined by the Corporation.

(b) "Corporation" shall mean and refer to the "maintenance corporation", (as defined in Paragraph 2) its successors and assigns, and to the proper named corporate entity to be formed as provided hereunder.

(c) "Lot" or "lot" shall mean and refer to a separately subdivided

residential lot or parcel as shown on the Plan.

(d) "Member" shall mean and refer to every person or entity who holds membership in the Corporation.

(e) "Owners" shall mean and refer to the record owners of a fee simple title to any Lot.

(f) "Plan" shall mean the Plan referred to on page 1 of this Declaration or the most currently recorded subdivision, resubdivision or land development plan or plans for the Land, or portions thereof, as the same be amended, resubdivided or enlarged from time to time by Declarant, its successors and assigns.

2. In order that the Private Open Spaces as set forth on the Plan shall be maintained in a good and proper condition, fit for their intended purposes, and according to the provisions of Section 20-70 of the New Castle County Code and this Declaration, Declarant shall incorporate under the laws of the State of Delaware, prior to the conveyance of the first lot within the Subdivision, a non-profit Corporation to be known as the "Ballymeade Maintenance Corporation". Such Maintenance Corporation shall be charged with the duty of maintaining the Private Open Spaces in accordance with the terms of this Declaration and such other or more stringent standards imposed by the County or assuring that such maintenance is performed. The Members of the Corporation shall be the owner(s) from time to time of the several lots comprising the Subdivision. Declarant shall be responsible to secure a Federal Employer Identification Number for the Maintenance Corporation and file an application to secure Internal Revenue Service status as a corporation not organized for profit and to be qualified as an exempt organization

under Section 501(c) of the Internal Revenue Service Code of 1954 [26 U.S.C. §501(c)], as amended.

3. (a) The purchaser of any lot, by the acceptance of the deed thereto, shall thereby obligate and bind such purchaser as well as the purchaser's heirs, successors and assigns as a member of the aforesaid Maintenance Corporation and be bound by all of such Corporation's rules and regulations and be subject to all of the duties and obligations imposed by reason of such membership.

(b) Each owner of any lot, by accepting the deed thereto, is deemed to covenant and agree to pay to the Maintenance Corporation when necessary, periodic assessments or charges, such assessments to be fixed, established and collected from time to time as hereinafter established, provided that all assessments must be fixed at a uniform rate for all lots. In addition, at the time of settlement on any lot within the Subdivision, the Declarant, on behalf of the Maintenance Corporation, shall collect the equivalent of not less than Two Hundred Dollars (\$200.00), of assessments for the maintenance costs associated with the maintenance of the Private Open Spaces. The assessments levied by the Maintenance Corporation shall be used exclusively for the purpose of maintaining the Private Open Spaces, but only after the Private Open Spaces have been transferred to the Maintenance Corporation in accordance with the provisions contained herein and in Section 20-70 of the New Castle County Code. Nothing in this Declaration shall prevent the Corporation from levying other assessments for such purposes as the Corporation, pursuant to its governing documents, determines appropriate.

(c) An annual assessment, if necessary, shall be set by a majority of the Corporation's members in good standing voting in person or by proxy at the annual

meeting. Similarly any special assessments or other matters to be decided by the members of the Maintenance Corporation with respect to the Subdivision or the Corporation's ongoing operation shall, unless otherwise specified in this Declaration, be set or decided by a majority vote of the Corporation's members in good standing, voting in person or by proxy at the annual meeting or at any other membership meeting duly called for this purpose. A member shall be in good standing only if all assessments and other charges due the Maintenance Corporation from such member or with respect to such member's particular lot are current. Each lot shall be entitled to one vote regardless of whether or not such lot is owned by a single individual or entity. In the case of a lot owned by an entity rather than a single individual, the vote pertaining to such lot shall be effective only if such vote constitutes the duly authorized action of such entity. In the case of any lot having multiple owners such vote, to be effective, shall require the unanimous accord of such multiple owners.

(d) No owner may waive or otherwise avoid liability for the assessments provided for herein by nonuse of the Private Open Spaces. The due date for payment of each assessment shall be established by the Maintenance Corporation at the time such assessment is levied. Any assessment not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of one and one-half per centum (1-1/2%) per month (or, if less, the maximum rate of interest then chargeable for such purpose under applicable law) until such delinquency is cured and the Maintenance Corporation may bring an action at law or in equity against the delinquent lot owner (who shall be

personally obligated to pay the same) or foreclose the lien against the pertinent lot. Costs and reasonable attorney's fees incurred by the Maintenance Corporation incident to any such action, as well as interest due on delinquent assessments, shall be added to the amount of the original assessment.

(e) It is expressly agreed that the assessments referred to above shall be a lien or encumbrance on the lot(s) with respect to which the assessments are made and it is expressly stated that by acceptance of title to any lot within the Subdivision, the owner from the time of acquiring title thereto shall be held to have covenanted and agreed to pay all applicable assessments to the Maintenance Corporation (including both current and prior unpaid assessments).

(f) By acceptance of title to any lot within the Subdivision an owner shall be held to vest in the Maintenance Corporation the right and power (in addition to the authority established by subsection (d) of this provision) to take and prosecute all actions or suits, legal, equitable or otherwise, which may, in the opinion of the Maintenance Corporation, be necessary or advisable for the collection of any assessment(s) imposed pursuant to the terms of this Declaration.

(g) Such assessments shall be subordinate in lien to the lien of any bona fide mortgage or mortgages on any lot which is subject to such charges regardless of when such mortgage lien or liens were created or when such charges accrued; provided that such subordination shall apply only to charges that shall have become payable prior to the passing of title pursuant to foreclosure under such mortgage or mortgages. The foreclosure purchaser(s) shall not be liable for payment of any assessments accruing prior to the foreclosure sale, but nothing herein shall affect the rights of the Maintenance

Corporation to enforce the collection of assessment charges accruing prior to such foreclosure sale under such mortgage or mortgages against any pre-foreclosure owner(s) of the pertinent lot or to enforce collection of assessment charges accruing after such foreclosure sale against any post-foreclosure owner(s) of the pertinent lot or against the lot itself; provided further, however, that assessment charges accruing after such sale shall also be subordinate in lien to the lien of any further bonafide mortgage or mortgages which are placed against the pertinent lot which is subject to such charges, with the intent being that no such charges shall at any time be prior in lien to any bonafide mortgage or mortgages whatsoever on such lot.

(h) In the event the Maintenance Corporation fails to maintain the Private Open Spaces as contemplated herein, Declarant hereby grants to the County, its successors and assigns, the right, privilege and authority to enter upon the Land for the purposes of maintaining the Private Open Spaces at the collective expense of the owner(s) from time to time of the lots. In the event that the County elects to maintain the Private Open Spaces as set forth above, all maintenance expenses which the County elects to assess against the lot owners shall be allocated among the owners as contemplated by Paragraph 4 of this Declaration and shall be collectible by the County in accordance with procedures established by the County for that purpose, or in the manner set forth above with respect to collection by the Maintenance Corporation. The provisions of Paragraph 3(g) above to the contrary notwithstanding, any lien for such expenses or maintenance asserted by the County and filed with the Recorder of Deeds shall be a lien from the time of recording and shall have priority in relation to all other liens, either general or special

(including mortgages) according to the time of the proper recording of the same.

4. The expenses chargeable from time to time by the Maintenance Corporation shall be assessed equally among the several lots.

5. (a) Declarant, its successors and assigns, grants forever to the owner(s) from time to time of each lot within the Subdivision the free and uninterrupted use of the Private Open Spaces in common with the owner(s) of the remaining lots within the Subdivision as provided by this Declaration.

(b) The owner(s) from time to time of each lot, by acceptance of the deed therefor, shall thereby have further granted to the Maintenance Corporation the right to come upon such lot as reasonably necessary at any time or times to maintain the Private Open Spaces as hereinafter provided.

6. (a) Maintenance of the Private Open Spaces shall include, without limitation:

(i) Keeping such areas policed for trash, debris, and other refuse and washing or sweeping paved areas as required.

(ii) Maintaining, replacing and supplementing common area landscaping.

(iii) Maintaining the stormwater management areas in accordance with County regulations.

(b) Maintenance of the Private Open Spaces may also include, without limitation:

(i) Posting, maintaining and replacing as required within the

Subdivision necessary, reasonable or otherwise appropriate identification, entrance, exit, and other directional signs, markers or lights at the entrances or along the roadway servicing the Subdivision.

(ii) Cleaning, relamping and replacing lighting and lighted sign fixtures located at the entrance to or within the Subdivision.

(iii) Painting and repainting of striping, markers, light fixtures and signage relating to the overall operation of the Subdivision.

(iv) Maintaining the Subdivision entrances and thoroughfares free from any obstructions affecting the intended use thereof.

(v) Maintaining, replacing and supplementing utility conduits and service equipment used in whole or in part to provide services to common area facilities.

(vi) Maintaining, replacing and supplementing equipment and facilities in the common active recreation areas.

The cost of maintenance and operation of matters with respect to which the Maintenance Corporation is hereby directed to assume responsibility, as such cost shall be charged to the several lots comprising the Subdivision, shall be defined to mean the total of all items of direct cost and expense properly expended by the Maintenance Corporation or others on the Corporation's account for performing, planning, supervising, coordinating or otherwise providing services relating thereto, or causing others to do the same, as determined in accordance with generally accepted accounting principals on the accrual method for accounting. Such cost shall include all maintenance, replacement and reconstruction services necessary to preserve the entrances and other common area in good

order, condition and repair, and further includes all rental charges for equipment, the cost of small tools and supplies, all costs for security protection and traffic direction and control; the cost of cleaning, including removal of rubbish, dirt, and debris; the cost of landscaping and supplies incidental thereto; all charges for utility services used in connection with such, together with all costs of maintaining lighting fixtures and all premiums for public liability and property damage insurance covering matters with respect to which the Maintenance Corporation has responsibility.

7. The Plan, as of the date hereof, anticipates an eighty-four (84) lot single-family and one hundred thirty-two (132) townhome lot subdivision. In the event that any additional lots are established on the Land, or existing lots are merged or otherwise realigned by means of a duly approved and recorded resubdivision plan, the terms of this Declaration (unless correspondingly amended in accordance with paragraph 12 hereof) shall continue to apply to such redefined lots and be interpreted and enforced by the Maintenance Corporation in an equitable manner consistent with the intent hereby reflected in the context of the Plan as originally approved and recorded.

8. Prior to the completion and conveyance of seventy-five per cent (75%) of the lots in the Subdivision, but no later than the conveyance of ninety percent (90%) of such lots, Declarant shall: (a) transfer control of the Board of Directors for the Maintenance Corporation to the owners of lots; and (b) convey good title to the Private Open Space(s), and any other common facilities to the Maintenance Corporation, free of liens (collectively the "Affirmative Acts"), all in accordance with the provisions of Section 20-70 of the New Castle County Code. Notwithstanding any other provision contained

herein, the Declarant shall be solely responsible for the maintenance of the Private Open Spaces, at Declarant's sole expense, during all periods of construction within the Subdivision, unless and until control of the Maintenance Corporation has been properly conveyed to the lot owners in accordance with the provisions contained herein.

9. The provisions of this Declaration shall bind all the lots shown on the Plan, and shall apply to and govern all lots created by any subsequent plan which may supersede the Plan, in whole or in part, and the owners of any such lots.

10. Nothing herein shall preclude the Corporation from fixing, establishing and collecting, from time to time, additional assessments or charges for such purposes as the Corporation deems necessary or desirable, including for example, but not by way of limitation, snow removal and community activities. Such additional assessments or charges shall be established, paid and collected in accordance with the provisions and procedures set forth herein.

11. These covenants and restrictions shall be taken to be real covenants running with the Land and binding thereupon perpetually.

12. The foregoing covenants may not be modified, amended or altered, in whole or in part, without the express written consent of two-thirds (2/3) of the current lot owners of record as of the date of such modification, amendment or alteration, together with the written consent of the then County Council of New Castle County, Delaware.

IN WITNESS WHEREOF, Declarant has executed and sealed this Declaration as of the day and year first above written.

CATHOLIC DIOCESE FOUNDATION

By: Michael A. Saltarelli
 President
 MOST REV. MICHAEL A. SALTARELLI

Attest: J. Thomas Cini
 Secretary
 REV. MSGR. J. THOMAS CINI
 [Corporate Seal]

STATE OF DELAWARE)
) SS.
 COUNTY OF NEW CASTLE)

BE IT REMEMBERED, that on this 10 day of September, 1996, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, MOST REV. MICHAEL A. SALTARELLI, President, of Catholic Diocese Foundation, party to this Indenture, known to me personally to be such, and has acknowledged this Declaration on behalf of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Patricia Skipsky-Bossi
 Notary Public

PATRICIA SKIPSKY-BOSSI
 Printed Name of Notary Public

Exhibit "A"

ALL THAT CERTAIN lot, piece or parcel of land situate in Brandywine Hundred, New Castle County, State of Delaware, being known as the Subdivision of Ballymeade, being more particularly bounded and described according to the Record Major Subdivision Plan of Ballymeade, said Plan being of record in the Office of the Recorder of Deeds, in and for New Castle County, State of Delaware, in Microfilm No. 12959, as follows, to-wit:

BEGINNING at a point on the Northeasterly side of Naamans Road (Delaware Route No. 92) said point being at the center of Log Run and a corner for lands now or formerly of Delmarva Power and Light Company and being located Northwesterly 1076.10 feet measured along the said Northeasterly side of Naamans Road, from its intersection thereof with the centerline of Marsh Road (also known as Hay Road); thence, from said point of Beginning and continuing along the said Northeasterly side of Naamans Road, North 61 degrees 38 minutes 30 seconds West, 810.65 feet to a point in line of lands now or formerly of William E. Schmidt; thence, leaving the Northeasterly side of Naamans Road and along the line of lands now or formerly of Williams E. Schmidt, the two (2) following described courses and distances: (1) North 02 degrees 59 minutes 55 seconds West, 376.07 feet to a point; and (2) South 87 degrees 00 minutes 05 seconds West, 170.03 feet to a point in line of lands now or formerly of First State/Baldini Joint Venture; thence, thereby, North 02 degrees, 59 minutes 55 seconds West, 1016.51 feet to a point in the Southeasterly side of a Subdivision known as Crestfield; thence, along the line of Crestfield, North 53 degrees 20 minutes 15 seconds East, 1217.39 feet to a point in line of lands now or formerly of James I. Reist, et. ux.; thence, along the line of lands now or formerly of James I. Reist, et. ux., Neil R. Prentice, Francis J. Ackerman, et. ux., Robert L. Fulmer, et. ux., Edward A. Eichholz, et. ux., and Richard Kwasizur, et. ux., South 24 degrees 52 minutes 20 seconds East, 776.74 feet to a point in line of other lands now or formerly of Richard Kwasizur, et. ux.; thence, thereby, in part, and along the line of a Subdivision known as Log Run, in part, South 24 degrees 38 minutes 40 seconds East, 253.24 feet to a point in the centerline of the said stream known as Log Run; thence, in a Southeasterly and Southwesterly direction by various meanderings of the said centerline of Log Run, 1580.00 feet, more or less, to a point, being a corner for Lot 26, Log Run, said point being distant by a tie line of South 06 degrees 31 minutes 46 seconds West, 1095.78 feet from the last described point; thence, leaving the said centerline of Log Run and partially along the line of Lot 26, South 43 degrees, 48 minutes 05 seconds East, 21.26 feet to a point, a corner for lands now or formerly of Thomas Hatzis; thence, along the line of lands now or formerly of Thomas Hatzis, South 24 degrees 46 minutes 20 seconds West, 316.26 feet to a point in line of lands now or formerly of Delmarva Power and Light Company; thence, thereby, the two (2) following described courses and distances: (1) South 51 degrees 26 minutes 40 seconds West, 29.74 feet to a point in the centerline of the said creek known as Log Run; and (2) in a generally Southwesterly direction along the various meanderings of the said centerline of Log Run, 310.00 feet, more or less, to a point in the said Northeasterly side of Naamans Road, the point and place of Beginning, said point being distant by a tie line of South 51 degrees 26 minutes 40 seconds West, 239.32 feet from the last described point. Be the contents thereof what they may.