

Declaration of Restrictions for COLTON MEADOW

THIS DECLARATION, by COLTON MEADOW DEVELOPMENT CO., L.P., a Delaware limited partnership, hereinafter referred to as “Declarant”.

WITNESSETH:

WHEREAS, Declarant is the owner of all that certain parcel of land (hereinafter referred to as the “Premises”) situate in Red Lion Hundred, New Castle County, State of Delaware as set forth in Exhibit “A” attached hereto and made a part hereof, and

WHEREAS, the aforesaid Premises are part of a certain parcel of land situate in Red Lion Hundred, New Castle County, State of Delaware identified as COLTON MEADOW (hereinafter referred to as the “Community of Colton Meadow” or “the Community”), and more particularly described and set forth on the Record Major Subdivision Plan for Colton Meadow, as prepared by Karins and Associates, Professional Engineers and Land Surveyors, which such plan, (herein referred to as the “Subdivision Plan”), which said Subject Property has been approved for subdivision and development by New Castle County as shown and set forth on the said Subdivision Plan as such Subdivision Plan may be approved as amended (including without limitation resubdivision for the Subject Property); and

WHEREAS, Declarant desires to create on the Premises a residential community comprised of individual building lots (“Lots”) on which single family residential dwellings are planned to be built, and further including additional lands identified on the aforesaid plan as “Private Open Space”, and further including all other lands within the Premises and

WHEREAS, the Declarant desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in the Community contributing to the personal and general health, safety and welfare of residents and the enforcement of covenants and restrictions set forth in this Declaration and to subject the Premises to the covenants, restrictions and easement set forth in this Declaration, each and all of which is and are for the benefit of the Community and for each owner of a part thereof; and

WHEREAS, pursuant to a certain “Maintenance Declaration” recorded in the Office of the Recorder of Deeds of New Castle County, to which all of the lands comprising the Community are subject, and pursuant to which, under the laws of the State of Delaware, the “Colton Meadow Homeowners Association, Inc.”, a non-profit corporation has been or will be incorporated, and in which such corporation each Lot Owner in the Community shall be a member and which such membership shall run with and be inseparable from ownership of a Lot in the Community;

NOW, THEREFORE, THIS DECLARATION WITNESSETH:

THAT the DECLARANT does hereby covenant and declare that it shall hold and stand seized of the Premises, more particularly described in Exhibit "A" attached hereto, excepting any portion of, or rights in any portion of, the Premises conveyed, dedicated or otherwise transferred to any governmental entity or dedicated to public use and further excepting any portion of, or rights in any portion of, the Premises conveyed or otherwise transferred to or for the use of any entity providing public utility services including, but not limited to, electricity, gas, telephone, water, sewer, and/or cable television, under and subject to, and hereafter each part of, or Lot in, the Premises is and shall be held, transferred, sold, conveyed and occupied subject to, the following covenants, restrictions, and easements which shall be covenants running with the land and which shall be binding upon the Declarant, its successors and assigns and all subsequent owners, occupants and visitors of the Premises.

AND FURTHER, Declarant hereby delegates and assigns to the Colton Meadows Homeowners Association, Inc. the power of administering and enforcing the covenants and restrictions set forth in this Declaration and promoting the recreation, health, safety, and welfare of the residents of the Community.

1. SINGLE FAMILY RESIDENCES ONLY

Unless otherwise hereinafter expressly provided, all Lots shall be used solely for private, single family residential purposes.

No buildings or other improvements shall be constructed, placed or maintained on any Lot except detached, single family residential dwelling houses with customary appurtenant structures, including but not limited to, garages, greenhouses, sheds and play structures. No more than one dwelling with such appurtenant structures shall be constructed, placed or maintained on each Lot, and the dwelling and structures appurtenant thereto shall be occupied by no more than one family as such term is defined in the Zoning Code of New Castle County, Delaware.

Every garage, shed or other storage facility constructed, placed or maintained on a Lot shall be used exclusively by the owners or occupants of the Lot on which it is located.

Any addition, enclosure, garage appurtenant building, fence, wall, planting or other improvement or modification erected, placed or maintained on a Lot shall be harmonious in design with the single family residential dwelling on the Lot.

The landscaping and maintenance thereof shall be in accordance with the residential character of the community. No hedges or mass groupings of shrubs and/or trees which could be a barrier to view comparable to a hedge or fence shall be placed or maintained closer to the street than the building set-back line established by zoning ordinance.

2. TEMPORARY FACILITIES

No temporary structure, trailer, garage, tent, or other similar facility shall be used at any time for residential purposes.

Nothing herein shall prohibit the placement on any Lot of temporary construction trailers, sheds, portable toilets or similar items during construction, repair of, or addition to, any improvements on such Lot.

3. BUSINESS USE

No trade, business or profession, except customary home occupations clearly incidental to the residential use of the dwelling on a Lot and subject to compliance with and approval of all governmental agencies having jurisdiction thereof, shall be regularly conducted or pursued on any Lot or within or without any structure on any Lot.

No vehicle, equipment, or structure shall be placed, maintained, constructed or operated, temporarily or permanently, on any Lot for any trade, business, or other commercial purpose.

4. ANIMALS

Except for animals commonly recognized as domestic house pets, no animals of any kind, whether mammal, bird, reptile or other, shall be at any time kept on any Lot.

Pets shall be maintained and controlled at all times so as not to offend or disturb other Lot owners or occupants by noise, elimination, odor, intrusion, destruction of property or otherwise.

5. NUISANCES

No nuisance, or noxious, offensive, or dangerous activity or thing shall be created, permitted or conducted on or about any Lot including but not limited to open or smoking fires, unfenced swimming pools, and uncovered refuse.

All garbage, trash, and other refuse shall be placed in tight, enclosed containers which shall be kept out of sight except on collection days.

6. VEHICLES

No mobile home, bus, house car, motor home, camper, trailer, commercial vehicle, airplane, boat, unlicensed motor vehicle, snowmobile or other specialized recreational vehicle, or any inoperative vehicle shall be placed, used, operated, maintained or stored on any Lot or any other part of the Community, nor parked on any street within the Community, except for such time as is necessary to load or unload same, or pickup or discharge passengers there from.

Nothing herein shall prohibit the storage of any of the aforesaid items or vehicles provided, however, that any such storage is completely within a garage, enclosed within a fence, which such fence shall not be in violation of the provisions therefore set forth in these Restrictions, or screened by landscaping such that the item or vehicle is not within the sight of any portion of the Community excepting only the Lot on which storage is maintained.

7. FENCES

No "chain link" or other wire or metal construction fence shall be placed, erected or maintained on any Lot at any time.

No fence, wall, or similar structure in excess of six (6) feet in height shall be erected, placed or maintained on any Lot.

No fence in excess of four (4) feet high be erected or maintained along or within eight (8) feet of the property lines of any lot.

No fence in excess of four (4) feet high (and six (6) feet or less in height) shall be erected or maintained on any Lot excepting only fences enclosing a patio, storage, swimming pool, or similar area provided that such fence shall be permitted only with twenty five (25) feet of the principal building on any lot, provided however, that in no case shall a fence in excess of four (4) feet high be erected or maintained along or within eight (8) feet of the property lines of any Lot.

No fence shall be erected or maintained closer to the street than the building set-back line established by zoning ordinance.

8. SWIMMING POOLS

No swimming pool shall be constructed, placed or maintained upon any Lot unless such swimming pool shall be constructed such that when the pool has been filled with water, the surface of the water shall be lower than the grade of the soil of the Lot surrounding the pool on all sides thereof, it being the intent that no “above-ground” swimming pools be permitted on any Lot at any time.

9. SURFACE WATER FLOW

After the completion of the construction thereon of a residential dwelling and the establishment of grades for the flow of surface water, the grading of any Lot shall not be changed or modified so as to impede, redirect, accelerate or otherwise change or modify the flow of surface water to, over or from the Lot.

10. SIGNS

No signs, billboards, notices, advertising, displays, or other attention attracting devices shall be erected or maintained on any Lot excepting only small signs not exceeding one (1) square foot in size identifying the occupant, address and home occupation, if applicable, and further excepting temporary real estate signs not exceeding eight (8) square feet in size advertising the sale or lease of the property.

11. ANTENNAS

No antenna and no exposed electrical wires or lines shall be erected or maintained on the outside of a structure on any Lot or any other part of the Community, including without limiting the generality thereof, any television receiving antenna, satellite receiving antenna, radio receiving antenna or radio or television transmitting antenna such that any such item is within the sight of any portion of the Community excepting only the Lot on which such item is erected or maintained.

12. COMPLIANCE WITH LAWS

No building, appurtenant structure or other improvement shall be constructed, placed or maintained on any Lot nearer to any front, side or rear property line than is permissible, with, if required, variance sought and granted, under the Zoning Code of New Castle County, Delaware, as enacted and in force on the date when this Declaration of Restrictions is recorded. Nothing herein shall prevent an Owner from securing a variance under the Zoning Code of New Castle County, Delaware and construction pursuant to a grant thereof shall comply with the provisions of the Declaration.

All construction, and all parts and phases thereof including, but not limited to, electrical work and plumbing, shall be performed in accordance with all applicable building codes and regulations.

13. EXCEPTION FOR DEVELOPMENT AND SALES

Notwithstanding anything in this Declaration of Restrictions to the contrary, nothing herein shall prohibit the use of any portion of the Premises, including any Lots or any other portion of the Community, for the development, construction, and sales of the Lots, with or without residential dwellings thereon, and/or the sale of or contracting for construction of residential dwellings and appurtenant structures on the Lots.

No prohibition against business use, prohibition against signage, or prohibition against other uses of the Lots or other portions of the Community shall prohibit the Seller of Lots and/or residential dwellings thereon from placing, constructing, installing and maintaining such sales offices, signs, temporary structures and facilities, business activities and similar things and activities as such Seller shall deem appropriate for the purposes of such sales, construction and related activities.

14. CONSTRUCTION EASEMENT AND RIGHTS

Notwithstanding any provision of this Declaration or of any amendment to this Declaration, so long as the Declarant or successor to or assign of Declarant is engaged in developing or improving any portion of the Property, Declarant or his designees shall have an unlimited easement of ingress, egress and use over any lands not conveyed to an Owner for occupancy for: (1) movement and storage of building materials and equipment; (2) erection and maintenance of directional and promotional signs; and (3) conduct of sales activities, including maintenance of any office or model homes.

15. TEMPORARY CONSTRUCTION COMPLETION EASEMENT

Each Lot in the Community is subject to the right of the Declarant to temporarily trespass upon such Lot for a period of one (1) year commencing upon conveyance of the Lot from the Declarant to the Owner occupant thereof for the purposes of completion of construction of any and all portions of the Community.

16. EASEMENTS FOR DRAINAGE AND UTILITIES

A six (6) foot wide easement on and along each side and rear lot line of each Lot is hereby dedicated to be available for any storm water drainage or utility use, provided that where any lot line is eliminated, the easement along said lot line shall be extinguished except as to utilities or storm water drainage use then existing in said easement.

Ten (10) foot wide easements on each Lot, on and along each lot line which is also a right-of-way line for any street, is hereby dedicated to be available for any storm water or street drainage or utility use.

17. NO WAIVER

Failure to enforce any restrictions, covenants or agreements herein contained shall in no event be deemed a waiver of the rights to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto.

18. SEVERABILITY

Invalidation of any one of these covenants or restrictions or portion thereof by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

19. ENFORCEMENT

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages. Action of enforcement may be brought by the Colton Meadow Homeowners Association, Inc., its successors or assigns, the Declarant, its successors or assigns, or any owner of, or holder of any interest in, any land subject to this Declaration.

20. MODIFICATION

These restrictions and covenants may be changed, altered, modified or extinguished in whole or in part, at any time, by an instrument, in writing, signed by the record owners of sixty percent (60 %) of the lots within the Premises which shall be recorded in the office of the Recorder of Deeds, New Castle County, State of Delaware.

Notwithstanding the foregoing, Declarant, so long as it is the owner of any of the lots within the Community of Colton Meadow, shall have the absolute right to amend this declaration without the joiner of any other owners by executing and recording an amendment in the Office aforesaid, if such amendment is:

- (a) required by Federal, State, County or local law, ordinance, rule or regulation;  
or
- (b) required by any mortgagee of improved lots or dwelling houses in the Community; or
- (c) Required by any title insurance company issuing title insurance to owners and/or mortgages of same; or
- (d) Required by the Federal Housing Administration, Department of Housing and Urban Development, Veterans Administration, Farmers Home Administration, Delaware State Housing Authority, GNMA or any like public or private institution acquiring, guaranteeing, or insuring mortgages or providing any type of financial assistance, with respect to dwelling units or Lots within the Community.